

(2016) 02 MAD CK 0180

In the Madras High Court

Case No : W.A. Nos. 884, 885 of 2015, 116, 117 of 2016 and M.P. No. 1 of 2015

M. Gowrishankar

APPELLANT

Vs

Deputy General Manager (SME), State Bank of India and
Others

RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 1, Section 10(1), Section 11A, Section 11-A,
Section 2(s), Section 3

Citation : (2016) 1 CWC 824 : (2016) 1 LLJ 735 : (2016) 2 LLN 712

Hon'ble Judges : Dr. S. Tamilvanan and D. Hari Paranthaman, JJ.

Bench : Division Bench

Advocate : N.G.R. Prasad, Advocate, for the Appellant; G. Masilamani, Senior
Counsel for G. Anand for T.S. Gopalan & Co., for the Respondent

Final Decision : Disposed off

Judgement

D. Hari Paranthaman, J.—1. Since common question has arisen in all these appeals, all the appeals are heard together and disposed of by this common judgment.

The background facts in a nutshell:

1.1. The appellant herein is a last grade servant (Daftry - sub staff) in the respondent bank. He belongs to Scheduled Caste community. He rendered 19 years and 6 months of service. He is a member of SBI SC/ST Employees Welfare Association (SEWA).

1.2. While he was working as Sub Staff in the Adyar Branch during 2004, a portrait of Dr. Ambedkar was put up in the Adyar Branch at 3.00 p.m. on 15.07.2004.

1.3. Immediately, the Bank gave a memo on 16.07.2004 to the appellant stating that by placing the portrait of Dr. Ambedkar, the "ambience of the hall has been

spoiled". This was objected to by various SC/ST Associations, as according to them, it amounts to disrespect to Dr. Ambedkar.

1.4. However, this led to the issuance of a charge memo in No. MBS/101, dated 21.09.2004 to the appellant, containing as many as 11 charges.

1.5. An enquiry was held, wherein, eight persons were examined on the side of the Bank as P.W. 1 to P.W. 8 and four persons were examined by the workman as D.W. 1 to D.W. 4, besides examining himself as one of the witnesses as D.W. 5. PEX. 1 to PEX. 32 were marked on the side of the Bank and DEX. 2 to DEX. 6 (DEX 1 has been withdrawn by the defence) were marked on the side of the workman. The enquiry proceeding runs to 291 pages. The enquiry proceeding is in Tamil.

1.6. The Enquiry Officer gave his findings in his Enquiry Report dated 24.08.2005 holding that the charge Nos. 1 to 6, 8 and 9 were proved and charge No. 7 was partly proved, while holding that charge Nos. 10 and 11 were not proved.

1.7. Based on the said findings of the Enquiry Officer, the Disciplinary Authority dismissed the appellant from service by an order dated 02.12.2005.

1.8. The appellate authority, on appeal, held that Charge Nos. 1 to 6, 8 and 9 were proved and Charge No. 7, 10 and 11 were not proved. The appellate authority modified the punishment into one of Removal from service with superannuation benefits, by an order dated 03.04.2006.

1.9. Since the conciliatory efforts before the conciliation machinery under the Industrial Disputes Act (hereinafter referred to as "the I.D. Act") failed, the Ministry of Labour, Government of India made a reference on 04.12.2006 under Section 10(1) of the I.D. Act to the Central Government Industrial Tribunal-cum-Labour Court (hereinafter referred to as "CGIT") to adjudicate the following issue:

"Whether the action of the Management of State Bank of India in imposing the punishment of removal from services of Sri. M. Gowrishankar with effect from 03.04.2006 for the charges levelled against him is just and proper? If not to what relief is the applicant entitled to?"

The CGIT took it up on its file in I.D. No. 90 of 2006.

1.10. Before the CGIT, the appellant examined himself as W.W. 1 and filed 60 documents, which were marked as Ex. W. 1 to Ex. W. 60. On the side of the respondent - Bank, no witness was examined and no document was marked. Those documents produced before the CGIT relate to the removal of the appellant, including the disciplinary files.

1.11. The CGIT rejected I.D. No. 90 of 2006 by the Award dated 15.05.2009.

1.12. The appellant filed W.P. No. 21625 of 2009 questioning the aforesaid Award of the CGIT dated 15.05.2009. This Court by an order dated 15.09.2011 in W.P. No. 21625 of 2009 set aside the Award of the CGIT dated 15.05.2009 and

remanded the matter back to the CGIT for fresh consideration. This Court found that the CGIT failed to exercise the power vested under Section 11-A of I.D. Act and there was no re-appreciation of evidence, that was let-in in the departmental enquiry before holding that the dismissal was justified by the CGIT. It was pointed out that the learned Presiding officer of the CGIT does not know Tamil, while the disciplinary proceedings (enquiry proceedings) are in Tamil. Hence, the CGIT did not look into the evidence, i.e., there was no re-appreciation of evidence, at all before rejecting the industrial dispute. This Court, thus, remanded back the matter to the CGIT and the Bank was directed to give English translation of the enquiry proceedings.

1.13. After the remand, the CGIT passed an Award on 30.04.2012 in I.D. No. 90 of 2006 holding that the charges were proved, but interfering in the punishment, by ordering reinstatement of the appellant with continuity of service and all other attendant benefits, but without backwages.

1.14. The Award was questioned both by the appellant as well as by the respondent Bank. The appellant filed W.P. No. 2529 of 2013 questioning the portion of the Award denying backwages, while the Bank filed W.P. No. 24952 of 2012 questioning the Award of reinstatement.

1.15. A learned Single Judge passed a common order dated 17.10.2014, allowing the writ petition filed by the Bank, while dismissing the writ petition filed by the workman/the appellant herein. Thus, reinstatement awarded by the CGIT was reversed by the learned Single Judge.

1.16. While so, the appellant filed Review Application Nos. 305 and 308 of 2014 seeking to review the aforesaid common order dated 17.10.2014. Those review applications were dismissed by a common order dated 02.06.2015 by the learned Single Judge.

1.17. The present writ appeals in W.A. Nos. 884 and 885 were filed questioning the aforesaid dismissal order dated 02.06.2015 in Review Application Nos. 305 and 308 of 2014 refusing to interfere with the common order dated 17.10.2014 in W.P. Nos. 2529 of 2013 and 24952 of 2012.

1.18. W.A. Nos. 116 and 117 of 2016 were filed against the common order dated 17.10.2014 of the learned Single Judge in W.P. Nos. 2529 of 2013 and 24952 of 2012.

2. Heard both sides.

Submissions of the learned counsel for the appellant:

3.1. The learned counsel for the appellant, in his usual style, has contended that the appellant was removed from service for putting up the portrait of Dr. Ambedkar, who is the architect of the Drafting of the Constitution of India and the action of the Bank was solely due to the putting up of the portrait of Dr. Ambedkar and other charges were added in a planned manner to remove the

appellant from the service of the Bank. According to him, the initiation of the very disciplinary proceeding is contrary to and in violation of the Circular of the Government of India dated 08.09.2006, wherein the respondent Bank and other Nationalised Banks are directed to display the portrait of Dr. Ambedkar.

3.2. He drew the attention of this Court on the materials available on record, that were produced before the CGIT and submitted that even after the remand by this Court, the CGIT failed to exercise the power vested in it under Section 11-A of I.D. Act by re-appreciating the evidence adduced in the departmental enquiry. He took us through paragraph 18 of the Award. According to him, it is the only paragraph, wherein, it is held, without any discussion whatsoever, that the charges were proved.

3.3. The learned counsel has submitted that the CGIT simply reiterated the findings of the disciplinary authority/appellate authority of the Bank, without discussing the evidence, while passing the Award dated 30.04.2012, after remand, thereby not discharged the duties cast upon it under the Statute, namely, the duties under Section 11-A of I.D. Act, as an "Appellate Authority". He pointed out that the Presiding Officers of the Industrial Tribunals/Labour Courts are senior District Judges and they should exercise the power vested with them under Section 11-A of I.D. Act, by re-appreciating the evidence as an "Appellate Authority".

3.4. The learned counsel brought to our notice the judgment of the Apex Court reported in *Workmen of Firestone Tyre and Rubber Company of India (Pvt.) Ltd. v. Management*, , AIR 1973 SC 1227 : (1973) 1 SCC 813 : LNIND 1972 SC 133 : 1973-I-LLJ-278, and also the judgment of the Division Bench of this court reported in *Workmen of Engine Valves Limited v. Engine Valves Limited*, , 1983-II-LLJ-232 (Mad) : (1983) 1 MLJ 427, wherein, it is categorically held that even if the workman does not plead before the Industrial Tribunals/Labour Courts to exercise power under Section 11-A of I.D. Act, a duty is cast upon the Industrial Tribunals/Labour Courts to exercise the power vested under Section 11-A of I.D. Act.

3.5. The learned counsel submitted that prior to the introduction of Section 11-A of I.D. Act, the Industrial Tribunals/Labour Courts cannot re-appreciate the evidence as an Appellate Authority and now the Industrial Tribunals/Labour Courts have to re-appreciate the entire evidence while adjudicating the industrial dispute relating to the non-employment of workman. But, on the other hand, in the case on hand, the CGIT proceeded on the basis of the law, that existed prior to insertion of Section 11-A of I.D. Act. That is why, the CGIT came to the conclusion that the charges were proved. Had the CGIT re-appreciated the evidence as per Section 11-A of I.D. Act, it could have come to a different conclusion. But the CGIT proceeded as if it has very limited authority/jurisdiction to look into only as to the perversity of the findings of the Enquiry Officer/disciplinary authority/appellate authority of the Bank and it could not act as an "Appellate Authority". He took us through paragraph 18 of the Award, as stated

above, wherein, the finding is recorded by the CGIT on all the 11 charges.

3.6. According to the learned counsel for the appellant, there are more materials/evidence available in favour of the workman (defence) and those materials were not at all referred to by the Tribunal, as there was no re-appreciation of the evidence. There is no reference to defence witnesses at all. He pointed out those materials.

3.7. The learned counsel for the appellant has submitted that the appellant expressed the grievance about the non-exercise of power by the CGIT under Section 11-A of the I.D. Act before the learned Single Judge when W.P. Nos. 2529 of 2013 and W.P. No. 24952 of 2012 were heard. He brought to our notice paragraph 10 of the common order of the learned Judge in this regard. The learned Single Judge by the common order dated 17.10.2014 dismissed the writ petition filed by the appellant and allowed the writ petition filed by the Bank thereby depriving even the reinstatement.

3.8. According to the learned counsel for the appellant, the learned Single Judge has applied the law, that existed prior to the introduction of Section 11-A of I.D. Act. He took us through the judgment of the learned Single Judge, wherein, the learned Single Judge, in paragraph 19 relied on paragraphs 26 and 32 of the judgment in Workmen of Firestone Tyre and Rubber Company of India (Pvt.) Ltd. v. Management (supra) and proceeded as if the Apex Court held in those paragraphs about the power and jurisdiction of the Industrial Tribunals while adjudicating the industrial disputes relating to non-employment of workman. According to him, the Apex Court discussed about the law that existed prior to introduction of Section 11-A of I.D. Act upto paragraph 32. This was made clear by the Apex Court in paragraph 32-A of the judgment and the learned counsel took us through the said paragraph. In this regard, he also brought to our notice paragraphs 6 and 7 of the judgment, wherein, learned Senior Counsel for the respondent Bank made arguments contending that CGIT cannot re-appreciate the evidence and the power to interfere in the punishment is limited.

3.9. The learned counsel has submitted that a significant change took place on introduction of Section 11-A of I.D. Act. He brought to our notice paragraphs 2, 40, 41, 41-A, 50 and 65 of the above said judgment and according to him, the Apex Court laid down that Section 11-A of I.D. Act brought change in the then existing law and held that the Industrial Tribunals/Labour Courts have, after introduction of Section 11-A in I.D. Act, power to re-appreciate the evidence let in the Enquiry leading to the dismissal/removal and can act as "Appellate Authority" and can come to a different conclusion on the guilt of the charges from that of the disciplinary authority. Further, the Industrial Tribunals/Labour Courts also are clothed with the power to interfere in the matter of punishment, after the introduction of Section 11-A of I.D. Act.

3.10. The learned counsel has also submitted that the learned Single Judge erroneously proceeded as if the CGIT interfered with the punishment of removal

from service solely on sympathetic consideration and erroneously placed reliance on the judgment of the Apex Court in Kerala Sovent Extractions Ltd. v. A. Unnikrishnan, , (2006) 13 SCC 619. He has submitted that on coming to the conclusion that the appellant did not commit any "heinous misconduct", the CGIT thought to interfere with the punishment.

3.11. The learned counsel has further submitted that two judgments relied on by the learned Single Judge, namely, Chairman and Managing Director, United Commercial Bank v. P.C. Kakkar, , AIR 2003 SC 1571 : (2003) 4 SCC 364 : LNIND 2003 SC 183 : 2003-II-LLJ-181 and Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain, , AIR 2005 SC 584 : (2005) 10 SCC 84 : LNIND 2004 SC 1266 : 2005-I-LLJ-730 (SC), did not arise out of industrial adjudication and the persons concerned in those judgments are Officers of the Bank, who are not workmen under Section 2(s) of I.D. Act and those persons filed writ petitions questioning the dismissal from service. Further, those persons were dismissed for misappropriation of public money. Hence, he has submitted that those judgments were erroneously relied on by the learned Single Judge.

3.12. The learned counsel for the appellant submitted that taking into account the law laid down by the Apex Court in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha and Others, , AIR 1980 SC 1896 : (1980) 2 SCC 593 : LNIND 1979 SC 464 : 1980-I-LLJ-137, this Court in appropriate cases could exercise the power, that was vested with the Industrial Tribunals/Labour Courts, under Article 226 of the Constitution. Paragraphs 79 and 80 of the said judgment are relied on by the learned counsel for the appellant in this regard.

3.13. The learned counsel for the appellant also brought to our notice that the said judgment in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha and Others (supra) case was brought to the notice of the learned Single Judge, who heard W.P. No. 21625 of 2009, seeking to exercise the power under Article 226 of the Constitution, by looking into the evidence and mould appropriate relief accordingly. But the learned Single Judge declined to accede to the request on the ground that the CGIT did not record its finding by looking into and analysing the evidence under Section 11-A of I.D. Act, as the Presiding Officer of the Industrial Tribunal does not know Tamil, while the enquiry proceedings are in Tamil and this Court expressed its view that had the Tribunal recorded its findings, such a request could have been considered and hence, the matter was remanded back, as stated above. The learned counsel also submitted that now the CGIT was given English Transaction of the enquiry proceedings, on remand. Thereafter also the CGIT failed to exercise its jurisdiction under Section 11-A of I.D. Act and he has elaborately argued as to how the CGIT did not exercise its appellate power, taking us through the paragraph 18 of the Award.

3.14. According to him, other than paragraph 18, the CGIT did not deal with the merits of the case and that the CGIT failed to exercise the Appellate power vested with it under Section 11-A of I.D. Act. He has heavily relied on the Division Bench judgment of this Court in Workmen of Engine Valves Limited v.

Engine Valves Limited (supra).

3.15. Citing those decisions and also the other decisions, the learned counsel for the appellant submitted that this Court could look into the evidence and to mould the relief.

3.16. He submitted that after the Circular issued by the Banking Division, Department of Economic Affairs, Ministry of Finance, Government of India, in F. No. 5/7/2006-SCT(B), dated 08.09.2006, directing the SBI and other nationalised Banks to put up the portrait of Dr. Ambedkar, it is the duty of the respondent bank to place the portrait of Dr. Ambedkar and not to punish the workman for placing the portrait of Dr. Ambedkar. Therefore, the very departmental action itself is mala fide and none of the charges are established, in view of the materials on record, that are available in the departmental enquiry, that was placed before the CGIT.

Submissions of the learned Senior Counsel for the respondent Bank:

4.1. On the other hand, Mr. G. Masilamani, learned Senior Counsel for the respondent Bank, has vehemently contended that the appellant was not removed from service for putting up the portrait of Dr. Ambedkar, as contended by the learned counsel for the appellant.

4.2. The learned Senior Counsel submitted that the Bank took action against the appellant not for putting up of the portrait of Dr. Ambedkar, but for putting up the portrait without permission and thereafter committing various misconducts.

4.3. He submitted that the Bank expressed its regret for having used the word ""Ambience of the hall has been spoiled"" and it was unintentional. He submitted that the Branch Head of the Adyar Branch has expressed regret for having used that word "Ambience of the hall has been spoiled"" in his letter dated 20.07.2004 stating that it was not intentional and the Chief General Manager also in his letter dated 27.07.2004 addressed to SEWA has expressed that the usage of the word "Ambience of the hall has been spoiled"" is unintentional.

4.4. The learned Senior Counsel submitted that the respondent Bank permits putting up the portrait of Mahatma Gandhi, the Father of the Nation, alone and not any other leader. It is not due to any disrespect to other leaders, otherwise, the Bank would be forced to put up many portraits.

4.5. The learned Senior Counsel took us through the charge sheet, wherein, 11 charges were made. According to him, the Enquiry Officer held that the charge Nos. 1 to 6, 8 and 9 were held to be proved and charge No. 7 partly proved and based on such of the findings of the Enquiry Officer, the disciplinary authority dismissed the appellant from service. The appellate authority, besides holding that the Charge No. 7 was also not proved, modified the punishment of dismissal into one of removal from service.

4.6. He submitted that apart from those authorities, the CGIT concurred with the

findings of the Enquiry Officer, Disciplinary Authority and Appellate Authority of the Bank, on the charges, while dismissing I.D. No. 90 of 2006 on 15.05.2009 and again, on remand, the CGIT recorded the same findings on the charges, in the Award dated 30.04.2012 in I.D. No. 90 of 2006. The learned Single Judge also concurred with those findings. Thus, according to him, six authorities held that the charges were proved. According to him, this Court at the appellate stage, cannot upset those findings.

4.7. The learned Senior Counsel for the petitioner submitted that the reinstatement was ordered by the CGIT solely on sympathetic consideration and the same is deprecated by the Apex Court in various judgments and he has brought to our notice the following judgments:

I. Bharat Heavy Electrical Limited v. M.C. Reddy, , 2005 (1) LLN 1051 : AIR 2005 SC 2769 : (2005) 2 SCC 481 : LNIND 2005 SC 83;

II. Uttar Pradesh State Road Transport Corporation v. Mohan Lal Gupta and Others, , 2001 (3) LLN 707 : (2000) 9 SCC 521 : 2000-II-LLJ-1597;

III. Life Insurance Corporation of India v. R. Dhandapani, , AIR 2006 SC 615 : (2006) 13 SCC 613 : LNIND 2005 SC 933 : (2006) 1 MLJ 100 : 2006-I-LLJ-329; and

IV. Amrit Vanaspati Co. Ltd. v. Khem Chand, , AIR 2006 SC 2739 : (2006) 6 SCC 325 : LNIND 2006 SC 500 : 2006-III-LLJ-344.

4.8. The learned Senior Counsel for the Bank has sought to dismiss these writ appeals.

5. We have considered the submissions made by both sides.

Discussion:

6.1. In our considered view, the learned Single Judge, while passing the common order dated 17.10.2014 in W.P. Nos. 24952 of 2012 and 2529 of 2013 dismissing the writ petition of the appellant and allowing the writ petition of the bank, has committed grave error in relying on the law that existed prior to introduction of Section 11-A of the I.D. Act. We are in entire agreement with the submission of the learned counsel for the appellant in this regard.

6.2. The learned Single Judge in paragraph 19 of the Common Order dated 17.10.2014 in W.P. Nos. 24952 of 2012 and 2529 of 2013, relied on paragraphs 26 and 32 of the judgment of the Apex Court in Workmen of Firestone Tyre and Rubber Company of India (Pvt.) Ltd. v. Management (supra), to interfere with the Award of the CGIT dated 30.04.2012 ordering reinstatement. In the said judgment, the Apex Court discussed the law that existed prior to the introduction of Section 11-A of I.D. Act. Such a discussion takes place upto paragraph 31. The summarization of the law that existed prior to insertion of Section 11-A of I.D. Act is made in paragraph 32 of the judgment by the Apex Court. The same is heavily relied on by the learned Single Judge and paragraph 32 of the judgment

of the Apex Court is fully extracted by the learned Single Judge in paragraph 19 of the judgment.

6.3. In fact, after paragraph 32, the Apex Court held in paragraph 32-A of the judgment that the law existed prior to the coming into force of Section 11-A of I.D. Act is summarized in paragraph 32. Thus, the learned Single Judge applied erroneously the law that existed prior to insertion of Section 11-A of I.D. Act.

6.4. It is useful to extract paragraph 19 of the common order of the learned Single Judge dated 17.10.2014 in W.P. Nos. 24952 of 2012 and 2529 of 2013, wherein, paragraphs 26 and 32 of the judgment of the Apex Court in *Workmen of Firestone Tyre and Rubber Company of India (Pvt.) Ltd. v. Management (supra)*, were extracted, as hereunder:

"19. In this regard, it would be appropriate to see some of the decision of the Hon'ble Supreme Court. In *Workman v. Firestone Tyre and Rubber Co.,* , (1973) 1 SCC 813, the Hon'ble Supreme Court has observed as follows:

"26. The powers of the Tribunal when a proper enquiry has been held by an employer as well as the procedure to be adopted when no enquiry at all has been held or an enquiry held was found to be defective, again came up for consideration in *Management of Ritz Theatre (P) Ltd. v. Its Workmen,* , AIR 1963 SC 295 : 1962-II-LLJ-498. Regarding the powers of a Tribunal when there has been a proper and fair enquiry, it was held:

It is well settled that if an employer serves the relevant charge or charges on his employee and holds a proper and fair enquiry, it would be open to him to act upon the report submitted to him by the enquiry officer and to dismiss the employee concerned. If the enquiry has been properly held, the order of dismissal passed against the employee as a result of such an enquiry can be challenged if it is shown that the conclusions reached at the departmental enquiry were perverse or the impugned dismissal is vindictive or male fide, and amounts to an unfair labour practice. In such an enquiry before the Tribunal, it is not open to the Tribunal to sit in appeal over the findings recorded at the domestic enquiry. This Court has held that when a proper enquiry has been held, it would be open to the enquiry officer holding the domestic enquiry to deal with the matter on the merits bona fide and come to his own conclusion.

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32. From those decisions, the following principles broadly emerge:

(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and principles of natural justice. The enquiry should not be an empty

formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

(7) It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.

(8) An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.

(9) Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.

(10) In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in

Management of Panitole Tea Estate v. Workmens, , (1971) 1 SCC 742, within the judicial decision of a Labour Court or Tribunal."

6.5. It is stated by the Apex Court in paragraph 32-A that the summarisation of the law that existed prior to Section 11-A is made in paragraph 32 of the judgment. After summarizing the law that existed prior to insertion of Section 11-A in I.D. Act, the Apex Court laid down the law in paragraphs 40, 41 and 41-A holding that Section 11-A of I.D. Act brought a change in the matter of exercise of power by the Industrial Tribunals/Labour Courts in the adjudication proceedings relating to dismissal/removal of workmen. It is relevant to extract paragraphs 40, 41 and 41-A of the judgment in Workmen of Firestone Tyre and Rubber Company of India (Pvt.) Ltd. v. Management (supra):

"40. Therefore, it will-be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under section 11-A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.

41. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under section 11-A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, section 11-A now gives full power to the Tribunal to go into the evidence and satisfy-itself on both these points. Now the Jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by section 11-A.

41-A. Another change, that has been effected by section 11-A is the power conferred on a Tribunal to, alter the punishment imposed by an employer. If the Tribunal comes to the conclusion that the misconduct is established, either by the domestic enquiry accented by it or by the evidence adduced before it for the first

time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the, misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation. Under section 11-A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman any lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by section 11-A."

7.1. Section 11-A of I.D. Act brought two significant changes. Firstly, the Industrial Tribunals/Labour Courts have now got power to re-appreciate the evidence that were let-in in the domestic enquiry, after Section 11-A came into existence in the Statute Book. That is, the Industrial Tribunals/Labour Courts are duty bound to act as an "Appellate Authority/Court" over the decision of the employer and Industrial Tribunals/Labour Courts could come to a different conclusion from that of the Enquiry/Disciplinary Authority. The Industrial Tribunals, as an Appellate Authority, on re-appreciation of evidence could come to a different conclusion from that of the employer by going into the adequacy and sufficiency of evidence. But no such power was available prior to insertion of Section 11-A of I.D. Act, i.e., prior to insertion of Section 11-A in I.D. Act, the Industrial Tribunals/Labour Courts did not vest with such power. Secondly, the Tribunal vested with the power to interfere with the punishment of dismissal/removal from service, i.e., now the Industrial Tribunals/Labour Courts could interfere with the punishment of dismissal by substituting appropriate lesser punishment, by giving adequate reasons, if the dismissal is not justified, based on the materials placed before the Industrial Tribunals/Labour Courts. Such a power also did not exist prior to insertion of Section 11-A in I.D. Act.

7.2.1. The power of the Industrial Tribunals/Labour Courts prior to introduction of Section 11-A of I.D. Act was considered by the Apex Court in *Indian Iron and Steel Company Limited and Another v. Their Workmen*, , AIR 1958 SC 130, wherein, the Apex Court held that the Industrial Tribunals/Labour Courts has got limited power, while adjudicating the industrial disputes relating to dismissal.

7.2.2. It was held in that judgment that the Industrial Tribunals/Labour Courts could not act as an Appellate Authority.

7.2.3. It was further held that the Industrial Tribunals/Labour Courts could not substitute its own conclusion different from that of the management.

7.2.4. It was also held that the power of the Industrial Tribunals/Labour Courts to interfere with the punishment of dismissal and to modify the same into lesser punishment is limited and only when there is want of good faith, victimization, unfair labour practice, etc., on the part of the management.

7.2.5. This position was sought to be changed by the Parliament by inserting

Section 11-A of I.D. Act, particularly, since our country was a signatory to the resolution of the International Labour Organization (shortly "ILO"). The ILO recommended that a neutral body like a Court could be vested with the appellate power to examine the entire issue of dismissal imposed by the employers. In this regard, it is useful to extract paragraphs 2 and 3 of the aforesaid judgment of the Apex Court in *Workmen of Firestone Tyre and Rubber Company of India (Pvt.) Ltd. v. Management* (supra):

"2. Section 11-A was incorporated in the Industrial Disputes Act 1947 (hereinafter referred to as the Act) by Section 3 of the Industrial Disputes (Amendment) Act 1971 (hereinafter referred to as the Amendment Act). The Amendment Act passed by Parliament, received the assent of the President on December 8, 1971. Sub-section 2 of Section 1 provided for its coming into force on, such date as the Central Government by notification in the official gazette, appoints. The Central Government by notification No. F.S. 110-13/1/71-LRI dated December 14, 1971 appointed the 15th day of December, 1971, as the date on which the said Act would come into force. Accordingly, the Amendment Act came into force with effect from December 15, 1971. The Amendment Act introduced various amendments to the Act. In particular by Section 3, it inserted the new Section 11-A in the Act. The new section 11-A so inserted runs as follows:

"11-A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen - Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workmen including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter".

3. Regarding Section 11-A, in the Statement of objects and reasons it is stated as follows:-

"In *Indian Iron and Steel Company Limited and another v. their workmen* (, AIR 1958 S.C. 130 at 138), the Supreme Court, while considering the Tribunal's power to interfere with the management's decision to dismiss, discharge or terminate the services of a workman, has observed that in case of dismissal on misconduct, the Tribunal does not act as a court of appeal and substitute its own judgment for that of the management and that the Tribunal will interfere only when there is want of good faith, victimisation, unfair labour practice, etc. on the

part of the management.

The International Labour Organisation, in its recommendation (No. 119) concerning termination of employment at the initiative of the employer adopted in June 1963, has recommended that a worker aggrieved by the termination of his employment should be entitled, to appeal against the termination among others, to a neutral body such as an arbitrator, a court, an arbitration committee or a similar body and that the neutral body concerned should be empowered to examine the reasons given in the termination of employment and the other circumstances relating to the case, and to render a decision on the justification of the termination. The International Labour Organisation has further recommended that the neutral body should be empowered (if it finds that the termination of employment was unjustified) to order that the worker concerned, unless reinstated with unpaid wages, should be paid adequate compensation or afforded some other relief.

In accordance with these recommendations, it is considered that the Tribunal's power in an adjudication proceeding relating to discharge or dismissal of a workman should not be limited and that the Tribunal should have the power in cases wherever necessary, to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit or give such other relief to the workmen including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the 592 case may require. For this purpose, a new Section 11-A is proposed to be inserted in the Industrial Disputes Act, 1947"

8. The aforesaid judgment of the Apex Court still holds the field. A Division Bench of this Court in *Workmen of Engine Valves Limited v. Engine Valves Limited* (supra), has held in paragraph 5 that the Industrial Tribunals/Labour Courts have power to re-appreciate the evidence under Section 11-A of the I.D. Act and the same is extracted hereunder:

"5. On the scope and applicability of S. 11A, the earliest of the decisions is that reported in *Workmen of Firestone Tyre & Rubber Co. v. Management*, , 1973-ILLJ-278. It was held therein by the Supreme Court that:

".... The words "in the course of the adjudication proceedings the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal at that the finding of misconduct, is correct. The limitations imposed on the powers of the Tribunal by the decision in *Indian Iron & Steel Co. Ltd. case*, , 1958-ILLJ-260 can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an

employer is correct, but also to differ from the said finding if a proper case is made out. What was once largely in the realm of satisfaction of the employer, has ceased to be so, and now it is the satisfaction of the Tribunal that finally decides the matter."

It then held that even now the employer is entitled to adduce evidence for the first time before the Tribunal even if he had not held an enquiry or the enquiry held by him is found to be defective. Then it proceeded to hold:

".... To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved or not warrant the punishment of dismissal or discharge. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman any lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by S. 11A".

Hence, the contention raised that the stage for interference under S. 11A by the Tribunal is reached, only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer, was rejected, and held as above."

9.1. The learned Single Judge, while passing the common order dated 17.10.2014 in W.P. Nos. 24952 of 2012 and 2529 of 2013, placed reliance on the law that existed prior to introduction of Section 11-A in I.D. Act, considering the submission of the learned Senior Counsel for the Bank that the CGIT has only a limited power and the CGIT cannot act as an appellate authority. It is useful to refer to paragraph 6 of the common order of the learned Single Judge, which is questioned in this writ appeals, wherein, the said submission is recorded.

9.2. Therefore, in our considered view, the learned Single Judge failed to apply law laid down by the Apex Court in *Workmen of Firestone Tyre and Rubber Company of India (Pvt.) Ltd. v. Management* (supra) and the judgment of the Division Bench of this Court in *Workmen of Engine Valves Limited v. Engine Valves Limited* (supra) and failed to see as to whether the CGIT acted as an appellate Court, while passing the Award dated 30.04.2012 in I.D. No. 90 of 2006, that was questioned both by the workman and by the Management of the Bank.

10.1. At this juncture, it is useful to refer to the submission made by the learned counsel for the workman before the learned Single Judge that the CGIT failed to re-appreciate the evidence exercising the power vested with it under Section 11-A of I.D. Act. It is useful to extract a passage in paragraph 10 of the common order of the learned Single Judge, that is questioned in these writ appeals:

"10. In this regard, the learned counsel appearing for the Workman, by inviting the attention of this Court to each of the charges and findings of the Tribunal as

well as the findings of the Enquiry Officer, submitted that the Tribunal has willfully failed to re-appreciate the evidence and the documents produced by the Workman in support his case; the Tribunal verbatim concurred with the findings of the Authorities in respect of all the charges and by invoking Section 11A of the Industrial Disputes Act, directed for reinstatement of the Workman, but without backwages as punishment to him; therefore, the impugned order passed by the Tribunal with regard to the withholding of backwages has to be quashed."

10.2. The learned counsel for the appellant/workman expressed the grievance that the CGIT only interfered with the punishment by invoking Section 11-A of I.D. Act, but failed to re-appreciate the evidence as an Appellate Authority/Court.

11. In *Workmen of Engine Valves Limited v. Engine Valves Limited* (supra), the Division Bench held in paragraph 32 that the District Judges and senior Judicial Officers are posted to function as Presiding Officers of Labour Courts and they could not in a haphazard or cursory manner touch upon the evidence on record in a general way and uphold the findings of the Enquiry Officer. The Presiding Officers of the Industrial Tribunals/Labour Courts shall scrutinize the evidence carefully and meticulously as an "Appellate Authority/Court", as they are duty bound to carry out the said exercise, in view of Section 11-A of I.D. Act. It is useful to extract paragraph 32 of the *Workmen of Engine Valves Limited v. Engine Valves Limited* (supra) as hereunder:

"32. These decisions can be of no assistance to management, because an Industrial Tribunal is duty bound to reappraise the evidence on record, and find out the correctness of the finding of misconduct. It cannot in a general manner touch upon the evidence without fully comprehending the evidence on record. No doubt a contention was raised resting upon the decision in *Girija Nandini v. Bijendra Narain*, , AIR 1967 SC 1124, that it is not the duty of the appellate Court, when it agrees with the view of the Trial Court on the evidence, either to restate the effect of the evidence or to reiterate the reasons given by the Trial Court, and that expression of general agreement with reasons given in the decision which is under appeal, would ordinarily suffice. Such an approach is no longer available to a Tribunal constituted under the Industrial Disputes Act, subsequent to 15th December, 1971. A reappraisal of evidence contemplates an elaborate and meticulous consideration of the evidence on record and reasons to be given for upholding the findings rendered in the domestic enquiry. It is to remove the menace of arbitrariness, unreasonable attitude in holding the enquiry, unfair approach made in the conduct of proceedings etc. Labour Courts, are now enjoined to scrutinise carefully and find out whether the misconduct alleged is established or not. It is to safeguard the vital interests of the weaker section of the society, District Judges and Senior Judicial Officers are posted to function as Presiding Officers of Labour Courts, and they cannot in a haphazard or cursory manner touch upon the evidence on record in a general way and uphold the findings of the enquiry officer. This would be an unsatisfactory manner of discharging duties cast upon such officers. Having been assigned, to

dispose of only cases pertaining to Industrial Disputes, they are duty bound to meticulously consider the evidence on record and devote their utmost attention and care in finding out whether the misconduct alleged had been made out on the materials adduced in the enquiry. If only there had been a reappraisal of the evidence on record, then the Tribunal would have given a valid reason, as to why the sole testimony of M.W. 1 alone should be acted upon in the instant matter, as against Ambalavanan."

12. Hence it is incumbent on this Court to find out as to whether the CGIT re-appreciated the evidence, while recording the guilt as to the charges in passing the Award dated 30.04.2012 in I.D. No. 90 of 2006, after remand.

13.1. We are of the considered view that the CGIT, in paragraph 18 of the Award dated 30.04.2012 alone, has considered the findings on the charges.

13.2. Paragraph 3 of the Award refers to the Claim Statement of the Workman. Paragraph 4 refers to the Counter Statement of the Bank. Paragraph 5 refers to the reply statement filed by the workman. In paragraph 6, the points for consideration were framed by the CGIT. Paragraph 7 states about the marking of documents and examination of witnesses. Paragraphs 8 to 10 speaks about the passing of the Award in an earlier occasion on 15.05.2009 dismissing the I.D. and the order of this Court dated 15.09.2011 in W.P. No. 21625 of 2009 setting aside of the said Award and remanding to CGIT. After paragraph 10, a heading was given as "points (i) and (ii)" that arise for consideration. Paragraph 11 states that the petitioner was given full opportunity in the enquiry and the findings of the Enquiry Report was not perverse. Paragraph 12 states that it was the case of the workman that extreme penalty of dismissal amounts to legal victimization and according to the management, they lost confidence in him. In paragraph 13, all the 11 charges are extracted and it stated that the Enquiry Officer held that Charge Nos. 1 to 6, 8 and 9 were held to be proved, while charge Nos. 10 and 11 were not proved and Charge No. 7 was partly proved. Paragraph 14 narrates the argument of the learned counsel for the workman. Paragraph 15 narrates about the judgments relied on by the workman. Paragraph 16 deals with the argument of the respondent Bank. Paragraph 17 deals with the judgments relied on by the respondent Bank. Thereafter, the actual consideration as to whether the charges were proved was made only in paragraph 18. Thereafter, the CGIT went into the issue as to whether the punishment was to be interfered by invoking Section 11-A of the I.D. Act.

13.3. Therefore, paragraph 18 of the Award is the only paragraph, wherein, the CGIT deals with the evidence and recorded its findings as to guilt. Therefore, it is useful to extract the entire paragraph 18 of the Award dated 30.04.2012 as hereunder:

"18. The question as to whether or not the charges have been proved is to be examined. Regarding Charge No. 1 that is leaving of bank premises at 0200 PM without permission and returning only at about 0300 PM, from the evidence of

P.W. 1 and P.W. 2 it could be found proved that the workman brought the outsiders to the branch on 15.07.2004 and that he was not inside the branch just before 0300 PM. Direct evidence though lacking, from circumstantial factors centering around the incident and spoken to by the witnesses it could be found to be so. Any material logically probative to a prudent mind which is reliable and credible can lead to such a conclusion. Regarding Charge No. 2, that is shouting and making false statements to the Security Guards, etc. there is the version of PW 2 which is furnishing sufficient material. That portrait was hung is virtually admitted by the petitioner. That the AGM had granted permission cannot be accepted because in that case he would not have proceeded against the Security Guard calling for explanation. Regarding Charge No. 3 that the workman arranged hitting of nails and caused damage to the bank's property is proved from the evidence though the extent of damage is not specified. Regarding Charge No. 4, that is hanging of portrait of Bharat Ratna Dr. Babasaheb Ambedkar without permission, the same evidence of PW 1 and PW 2 amply support the charge to have been true apart from the virtual admission of petitioner. Regarding Charge No. 5, that the workman having arranged to send 25 persons to the bank premises on 19.07.2004 whereof 2 persons alone have been permitted and they did threaten the AGM, is supported by the evidence of PW 5 and PW 7 where the link and causation for such persons to meet the AGM and have a talk with him about the action taken against the workman from being the workman alone cannot be lost sight of, the for the fact that the said act is not, and cannot be occasioned without the nexus and instigation from the part of the workman who is a member of SEWA whose grievance was then sought to be redressed. In order to appreciate the evidence it is pertinent to note that in any testimony given by a witness there would normally occur marginal or discrepancies or omissions or in the case of a number of witnesses inter se their versions which have to be ignored. In other words, in the appreciation of evidence, allowances have to be given to marginal discrepancies or omissions in their evidence which is trite in law. It is also possible to rely on statutory presumptions available under the Indian Evidence Act. Regard having had to the normal human conduct it is also only to be expected from the workman to have had recourse to such a method of arranging by instigating the collection union persons to approach the AGM to ventilate his grievances. So viewed also, the workman cannot be totally a stranger to the action. Regarding Charge No. 6, that is spoiling the image of the bank by spreading wrong information etc. and distorting the truth, it is explained by the Circle CGM in his letter dated 27.07.2004 addressed to SEWA that it is unintentional and not meant as disrespectful. The objection was to the act of hitting nails causing damage in a place not intended for the purpose. Defence witnesses have not alleged any such disrespectful comments couched by the AGM. The workman is proved to have distorted truth to the dismay of the Management. As to whether the workman instigated. In the pasting of posters it could well be presumed that he did it because for every action on behalf of the workman thwarted by the Union, his instigation is there which is lawful to presume. Lawful presumptions duly drawn

can be based for discussing preponderance of probability. On a preponderance of probability also Charge No. 6 could be found proved. Charge No. 7 is not held proved by the Appellate Authority. Regarding Charge No. 8, that is early leaving of the office without permission of the bank, there is PEX. 24 letter issued by PW 6 to the effect that the workman used to leave the branch around 0130-0200 PM daily and not coming back after lunch which he did not choose to correct in spite of being pointed out. That being the case a disciplinary Register emerging from formation and being maintained because of the workman cannot be ruled out and there is nothing unusual in it. Thus Charge No. 8 is also only to be held as proved. Regarding Charge No. 9, that is making of alterations in the Attendance Register by overwriting, on this aspect the version of the witnesses, viz., PW 4, PW 6 and PW 6 (sic) of the management are only to be believed. The misconduct is only to be held as proved. There is no substance in the arguments of the petitioner. The complaint regarding the alleged irregularities discernibly is not against Sri Arun, AGM but was against another AGM. Giving no reply to the complaint denying the irregularities cannot be found material enough to hold that the action against the petitioner is mala fide. Charge No. 10 and 11 have not been held proved by the Enquiry Officer."

14.1. As rightly contended by the learned counsel for the appellant, we are of the view that the CGIT failed to act as an "Appellate Authority/Court" and failed to re-appreciate the evidence let-in in the domestic enquiry, while recording its findings as to guilt in paragraph 18 of the Award.

14.2. At this juncture, we are of the view that following the judgment of the Apex Court in *Workmen of Firestone Tyre and Rubber Company of India (Pvt.) Ltd. v. Management* (supra), a Division Bench of this Court in *Workmen of Engine Valves Limited v. Engine Valves Limited* (supra), held in paragraph 13 of its judgment that even in the absence of pleading by workman relating to Section 11-A of I.D. Act, statutory duty is cast upon the Industrial Tribunals/Labour Courts to exercise its appellate power under Section 11-A of I.D. Act. It is useful to extract paragraph 13 of the judgment of the Division Bench in *Workmen of Engine Valves Limited v. Engine Valves Limited* (supra):

"13. This Court considers that, when S. 11A had been incorporated with effect from 15th December, 1971, a Labour Court functioning under Act, is bound to apply such amendments which are carried out from time to time, irrespective of any plea raised pertaining to its jurisdiction. As pointed out in the decisions above referred subsequent to introduction of S. 11A when a jurisdiction had been conferred on the Tribunal to satisfy itself about the correctness of the finding of misconduct, the Labour Court failed to exercise the jurisdiction enjoined upon it under the provisions of the Act. It is not for a workman to plead an incidental and consequential relief, which is made available to him by statute, and no management can be heard to plead that a statutory benefit should not be extended to an affected workman. Unless, as pointed out in *Workmen of Firestone Tyre and Rubber Company v. Management* (supra), the Tribunal

satisfies itself about the correctness of the finding, its award would be illegal. Hence, this Court holds that a Labour Court suo motu has to apply S. 11A, irrespective of whether a workman had mentioned the said section or not, and pleaded for relief thereunder or not."

14.3. Therefore, we have no hesitation to come to the conclusion that the CGIT failed to exercise its appellate power by re-appreciating the evidence, particularly, when the evidence runs to 291 pages and in total 13 witnesses were examined by both the management and the workman and a voluminous documents were marked in the enquiry.

14.4. We are of the view that as an Appellate Authority, the CGIT has duty to act as an Appellate Court by meticulously scrutinizing the evidence to come to one conclusion or the other. But obviously, the said statutory duty was not discharged by the CGIT.

15.1. Therefore, the issue now arises for our consideration is as to what is the further course, that is open to this Court, i.e., whether this Court itself could look into the evidence as pleaded by the learned counsel for the appellant placing reliance on the judgment of the Apex Court in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha and Others (supra) and B.C. Chaturvedi v. Union of India, , AIR 1996 SC 484 : (1995) 6 SCC 749 : LNIND 1995 SC 1036 : 1996-I-LLJ-1231.

15.2. According to the learned counsel for the appellant, the workman has been agitating the issue relating to his non-employment from 2004 onwards for more than 11 years. It is submitted that already this Court on 15.09.2011 remanded the matter to the CGIT by setting aside the Award dated 15.05.2009 in I.D. No. 90 of 2006. The learned counsel submitted that even at that time, a request was made before the learned Single Judge of this Court to look into the evidence and mould the relief in the interest of justice, in the light of the judgment of the Apex Court in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha and Others (supra). The learned Single Judge declined such a request on the ground that the CGIT did not look in the evidence at all, as the entire evidence was recorded in Tamil, while the Presiding Officer of the CGIT does not know Tamil. Hence, the learned Single Judge, while setting aside the Award dated 15.05.2009 in I.D. No. 90 of 2006 by the order dated 15.09.2011 in W.P. No. 21625 of 2009 directed the CGIT to consider and pass Award afresh by exercising its appellate power under Section 11-A of I.D. Act and the Bank was directed to furnish the translated version of the enquiry proceedings in English. Even thereafter, the CGIT failed to exercise its appellate power.

15.3. It is also relevant to extract paragraphs 13 and 14 of the order dated 15.09.2011 of the learned Single Judge in W.P. No. 21625 of 2009 setting aside the Award dated 15.05.2009 and remanding back the matter to the CGIT:

"13. Mr. Balan Haridas, learned counsel appearing for the petitioner submitted that instead of remitting the matter for another round of litigation, this Court can

itself go into the evidence and render a finding. For this purpose, the learned counsel relied upon a judgment of the Supreme Court in *Gujarat Steel Tubes Limited v. Gujarat Steel Tubes Mazdoor Sabha*, , 1980-I-LLJ-137. Reliance was placed upon the following passage found in paragraphs (79) and (80), which are as follows:

"79. Dual jurisdictional issues arise here which have been argued at some length before us. The position taken up by Sri Sen was that the High Court could not, under Article 226, direct reinstatement, and even if it felt that the arbitrator had gone wrong in refusing reinstatement, the court could only demolish the order and direct the arbitrator to reconsider the issue. What belonged, as a discretionary power, to a tribunal or other adjudicatory body, could not be wrested by the writ court. To put it pithily, regarding the relief of reinstatement, the arbitrator could but would not and the High Court would but could not. (We will deal later with the point that the arbitrator had himself no power under Section 11-A of the Act but did have it in view of the vide terms of reference.)

80. The basis of this submission, as we conceive it, is the traditional limitations woven around high prerogative writs. Without examining the correctness of this limitation, we disregard it because while Article 226 has been inspired by the royal writs its sweep and scope exceed hidebound British processes of yore. We are what we are because our Constitution-framers have felt the need for a pervasive reserve power in the higher judiciary to right wrongs under our conditions. Heritage cannot hamstring nor custom constrict where the language used is wisely wide. The British paradigms are not necessarily models in the Indian Republic. So broad are the expressive expressions designedly used in Article 226 that any order which should have been made by the lower authority could be made by the High Court. The very width of the power and the disinclination to meddle, except where gross injustice or fatal illegality and the like are present, inhibit the exercise but do not abolish the power."

14. But, in the present case, this Court is not inclined to accept the said submission because the CGIT never recorded any finding on the specific misconduct alleged against the workman. In case the CGIT has dis-charged its duty to some extent, the question of reconsidering or looking into other evidence omitted by the CGIT is possible, but for the first time to plead the entire issue on merits and going into the satisfaction of the materials would amount to this Court usurping the powers of the CGIT and hence, this Court is not inclined to accept the stand of the counsel for the workman."

15.4. Therefore, as rightly contended by the learned counsel for the appellant, had the CGIT recorded its findings on guilt, after going into the evidence, the learned Single Judge would have looked into the evidence and came to one conclusion or the other, by putting an end to the litigation.

15.5. Further, the Apex Court in *B.C. Chaturvedi v. Union of India* (supra), held that in order to shorten the litigation in exceptional and rare cases, this Court

could mould the relief, by imposing appropriate punishment with cogent reasons. It is useful to extract the following passage in paragraph 18 of the said judgment:

"18. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

16.1. In the light of the judgment of the Apex Court in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha and Others (supra) and more particularly, paragraphs 79 and 80 of that judgment and also the judgment of the Apex Court in B.C. Chaturvedi v. Union of India (supra), we are inclined to look into the evidence and put an end to this litigation.

16.2. We have come to the aforesaid conclusion taking into account the fact that (i) the I appellant is a last grade servant; that (ii) he has been agitating the issue relating to non-employment for more than a decade; that (iii) he is aged about 58 years and he is at the verge of retirement; that (iv) in an earlier occasion the Award was passed without looking into evidence and this Court by an order dated 15.09.2011 in W.P. No. 21625 of 2009 remanded back the industrial dispute to CGIT for fresh consideration; that (v) this Court declined the request of the learned counsel for the workman to look into evidence itself instead of remanding the matter in the order dated 15.09.2011 in W.P. No. 21625 of 2009, while setting aside the Award of the CGIT dated 30.04.2012 in I.D. No. 90 of 2006 and remanded back the matter for fresh consideration, on the ground that the CGIT did not look into the evidence, as the same is in Tamil, while the Presiding Officer does not know Tamil, and now the CGIT recorded its findings without re-appreciating the evidence in accordance with Section 11-A of I.D. Act; that (vi) if we remand the matter to the CGIT again, the same would cause serious mental agony to the appellant, the last grade servant; and that (vii) it is an exceptional and rare case, in view of the facts and circumstances of this case and in order to shorten the litigation, we are inclined to look into the evidence to mould the relief accordingly.

17. At this juncture, we would like to extract all the 11 charges, that were the subject matter of the disciplinary enquiry against the appellant pursuant to the charge sheet dated 21.09.2004, as hereunder:

i). "On 15.07.2004, you had left the Bank premises at 02.00 PM without obtaining prior permission from the Manager (Accounts) under whose control you were working and you returned back to the branch only at about 03.00 PM along with an outsider.

ii). When you returned to the Bank's premises alongwith on outsider, Shri S. Maheswaran and Shri M. Chandran, Bank's Armed Guards, resisted the entry of the outsider into the premises on security reasons, you shouted at them as

follows:

To Shri S. Maheswaran:

"Vernacular matter omitted""

To Shri M. Chandran:

"Vernacular matter omitted"

iii). You had questioned the authority of the Armed Guards and thus prevented them from performing their duty. You had also made a false statement to the Armed Guards that you had obtained prior permission from the Assistant General Manager of the Branch and managed the entry of the outsider into the branch premises.

iv). You had, with the help of the outsider, arranged hitting of nails on the wall panels at the entrance of the Banking Hall in the Ground Floor, thereby willfully caused damage to the Bank's property.

v). You had hung a portrait of Bharatratna Dr. Babasaheb Ambedkar without obtaining prior permission and when the Armed Guards tried to resist the hanging of the portrait, you had made a false statement to them that you had already obtained the prior permission of the Asst. General Manager of the branch.

vi). When a memo dated 16.07.2004 calling for explanation was issued by the Chief Manager to you on the above acts of yours, you had arranged for sending about 25 persons to the Bank's premises on 19.07.2004 around 03.00 PM. Apprehending the trouble within the premises, two persons in the group namely, Shri Kumari Arun and another were allowed by Shri K.L. Easwar, Officer, Adyar Branch to meet the Asst. General Manager of the Branch. The aforesaid two persons threatened the Asst. General Manager that "if you are acting at the behest of the higher official, name them, whether in Mumbai, Delhi, Calcutta, Bangalore or Chennai, we will ensure that they do not go back home". While leaving, they further stated that at no place they had left simply talking to the persons without resorting to action. Thus you brought pressure from outsiders to threaten the Asst. General Manager of the branch who was also the Disciplinary Authority, to prevent taking action against you.

vii). You had instigated the SC/ST Employees Welfare Association and arranged for pasting (Tamil) posters, placing Tamil placards at Adyar Branch, Chennai Main Branch, Zonal Office at Chennai, Tiruchirapalli, Coimbatore and Madurai, Local Head Office and many other branches in Chennai and in other places demanding

"Government of Tamil Nadu

Arrest DGM of SBI, Chennai Module, Mr. Chanti Babu and AGM, Adyar Branch Mr. Arun under SC/ST Oppression Prevention Act for having insulted our National Leader by stating that:

SBI, Adyar Branch's ambience has been spoiled by display of

Dr. Ambedkar's photo.

..... SBI SC/ST Employees" Welfare Association You have thus spoiled the image of the Bank by spreading the wrong information and distorting the truth.

viii). On 02.08.2004, during the office hours, you had in your possession a bunch of pamphlets (in Tamil) demanding the arrest of Deputy General Manager of Zonal Office, Chennai and Assistant General Manager of the branch as issued by Shri A.K. Gopalasamy and shown the same to the employees of the branch.

ix). You had left the branch premises earlier than your regular working hours without prior permission on various occasions, particularly on the following days:-

x). The Manager (Accounts) of the branch marked your leaving the branch earlier than the regular hours, without obtaining prior permission, but you had made alterations in the Bank's Attendance Register by overwriting the official's notings and made false entries, thus tampering official records. A few such false entries made by you on the Attendance Register on specific dates are furnished below:-

xi). You have often entered the cabin of Shri Jayaprakash, Manager (Accounts) during the business hours and threatened him about his actions about the marking of Attendance Register regarding your early departure from the office hours.

xii). You have also arranged threatening phone calls from Shri Gunasekaran, Shri Masilamani and Shri Arasakumar, Office bearers of SBI SC/ST Employees" Welfare Associations, to Shri Jayaprakash, Manager (Accounts), threatening him with dire consequences for having marked Attendance Register about your leaving branch before closing hours, which caused mental agony, stress to the above official affecting his health and performance of his duties."

18. It is admitted that the appellant was removed from service on the basis of the conclusion of the Bank that the charge Nos. 1 to 6, 8 and 9 were proved. The same has to be decided in the light of the materials (enquiry proceedings) and the exhibits placed before the CGIT. It is also an admitted fact that the respondent bank came to the conclusion that the charge Nos. 7, 10 and 11 were not proved.

Charge Nos. 1 to 4:

19.1. In our view, charge Nos. 1 to 4 relate to putting up of the portrait of Dr. Ambedkar with the help of two outsiders on 15.07.2004 at 3.00 p.m. in the Adyar Branch of the respondent Bank, without permission from the Assistant General Manager (shortly AGM) of the Branch and thereby caused damage to the Bank's property. It was also alleged that he shouted at the Bank's Armed Guards and falsely stated to them that he already took permission from the Assistant General Manager for putting up the portrait. It was also alleged that for the purpose of putting up of the portrait, he left at 2.00 p.m. from the Branch.

19.2. The crux of the allegations are that (i) he left the Branch at 2.00 p.m. and

he was not available in the Branch between 2.00 p.m. and 3.00 p.m.; that (ii) he put up the portrait of Dr. Ambedkar on 15.07.2004 without permission of the AGM; that (iii) he brought two outsiders to put up the portrait of Dr. Ambedkar; that (iv) he shouted at the Armed Guards; that (v) he falsely stated to the Armed Guards that he obtained permission from the AGM of the Bank, and that (vi) he caused damage to the properties of the Bank, by putting up of the portrait of Dr. Ambedkar.

19.3. The learned Senior Counsel for the respondent Bank submitted that except the portrait of Mahatma Gandhi, Father of the Nation, no photographs are hung up in the Bank's premises and therefore, if anybody wants to put up other portraits, there should be a proper permission. The Bank normally would not permit to put up the portrait of other leaders. Otherwise, it would lead to so many demands from various sections of the employees.

19.4. According to the workman, he obtained permission from the Assistant General Manager orally.

19.5. The Assistant General Manager was examined as P.W. 5 in the enquiry. He did not state in the chief examination that the workman failed to get permission. In fact, the chief examination of P.W. 5 is only to mark the documents, while the other witnesses spoke on the contents of the documents, for which, they are authors.

19.6. On the other hand, the workman, who examined himself as D.W. 5, has categorically deposed that he obtained oral permission. It is useful to extract the following passage in the chief examination of D.W. 5 (English translated version, which was provided by the Bank to the CGIT):

"DR to DW 5: An enquiry is being conducted on you regarding hanging of a portrait of Dr. Ambedkar in Adyar Branch. When you were handing the portrait of Dr. Ambedkar what did you tell the Armed Guards Mr. S. Maheswaran and Mr. M. Chandran regarding permission for hanging the picture?

DW 5 to DR: I told them that I had already obtained permission for hanging the portrait from the AGM two days back.

DR to DW 5: Please say whether you had actually obtained permission.

DW 5 to DR: Two days before, at around 3:00 PM, I went to the AGM Mr. Arun and told him, "Sir, I am going to hang the portrait of Dr. Ambedkar." For this he replied "consider and do."

DR to DW 5: After this, did you request the AGM again regarding permission? What did the AGM say for it?

DW 5 to DR: I obtained oral permission from the AGM.

DR to DW 5: Please tell about whether you had brought any outsiders to help hang that portrait.

DW 5 to DR: I did not bring in any outsiders.

DR to DW 5: How was the nail fixed for hanging the portrait of Dr. Ambedkar?

DW 5 to DR: I did not fix the nail. The nail was already fixed."

19.7. The workman was cross-examined in the enquiry by the Presenting Officer on this aspect. The workman stuck to his stand. It is relevant to extract the following question put to D.W. 5 by the Presenting Officer and the answer given by D.W. 5 during enquiry proceedings:

"PO to DW 5: When AGM Mr. Aran testified, he has stated that when you asked for permission to hang the portrait of Dr. Ambedkar, he told you that as it was an important issue, it may be discussed later. Whereas in your testimony, you have mentioned him as saying "consider and do." If it is said that you have taken what the AGM told you as permission, will it be right or wrong?

DW 5 to PO: I insist on whatever I said earlier regarding this."

19.8. Even according to the Bank, the workman sought permission to put up the portrait of Dr. Ambedkar from P.W. 5 and P.W. 5 told the workman that the matter could be discussed later.

19.9. Furthermore, even in the letter, dated 20.07.2004, which was marked as PEX. 10 before the enquiry, it is stated by P.W. 5 that the appellant sought permission orally and that he told him that the same had to be discussed. The following passage in paragraph (v) of the letter dated 20.07.2004 of P.W. 5, PEX. 10 is extracted hereunder:

"v) In the evening of 19/7/04, three persons from SBI Ambedkar Union came viz., Mr. Gunasekar, Mr. Masilamani and another. They told that no permission is necessary for hanging the photo and I responded that when Mr. Gowrishankar orally stated that he proposes to hang a photograph, I had already mentioned that it needs to be discussed and not in haste and abruptly the conversation had ended."

19.10. The aforesaid vital piece of evidence was not at all discussed by the CGIT.

19.11. Therefore, it could not be taken that there was no permission obtained from P.W. 5 in the said circumstances. Further, D.W. 1 has deposed that the portraits of Dr. Ambedkar are put up in many branches of the respondent bank. The same was not disputed by controverting D.W. 1. Further, D.Ws. 2, 3 and 4 also stated that the pictures of various gods are hung in all the branches. It is useful to extract the following portion from the evidence of D.W. 3 (English translated version) in this regard:

"DW 3 to DR: As far as Trichy Zone is concerned, pictures of deities like Vinayaka, Murugan, Lakshmi, Saraswati etc. are hung in all the branches. Moreover, pujas are performed for them on days like Fridays, Tuesdays etc. The statue of Nataraja is kept at the entrance of the Trichy Zonal Office. Next, a small

statue of Tirupathi Venkatachalapathi is kept in the room (room No. 1) of Region-I AGM, in the first floor. In the room (room No. 119) of Region-I AOG, the picture of Pillayarpatti Vinayagar is hung."

19.12. More importantly, as rightly contended by the learned counsel for the appellant, the Banking Division, Department of Economic Affairs, Ministry of Finance, Government of India, issued a Circular in F. No. 5/7/2006-SCT (B) dated 08.09.2006, to the Chairman of the State Bank of India, besides other heads of nationalised banks and other financial institutions directing to display the portraits of Dr. Ambedkar in all the offices of the Banks/Financial Institutions. The said circular is enclosed in the typed-set of papers. The same is not disputed by the learned Senior Counsel for the Bank. Hence, the Bank could not take a technical plea that the portrait was sought to be put up by the appellant without permission. It is useful to extract the circular of the Government of India dated 08.09.2006 in this regard:

"A reference has been received from the National Commission for Scheduled Castes wherein it has been demanded that the portrait of Dr. B.R. Ambedkar may be displayed in the premises of all Administrative Offices including Head Office in all Banks/Financial Institutions as per Central Government guidelines issued in the year 1991, during the birth centenary year. Public Sector Banks/Financial Institutions are, therefore, requested to kindly note the instructions for appropriate action please."

19.13. It was alleged in the above charges that he shouted at the security guards. Though the Armed Guards were examined as P.W. 1 and P.W. 2, they did not state so in the enquiry proceeding. Further, P.W. 1 stated that he does not know English and he wrote a complaint only in Tamil, but the complaint produced in the enquiry, which is marked as PEX. 4, is in English. Same is the case in respect of P.W. 2, another Armed Guard.

19.14. The other limb of the charge is that the workman made false statement to the Armed Guards that he obtained permission from the Assistant General Manager. The issue as to the obtaining of prior permission was dealt with in detail hereinabove.

19.15. Further, as per the evidence of P.W. 1, one Jeyakumar, an employee from the Service Branch of the respondent Bank, brought the portrait of Dr. Ambedkar and along with Thiru. Jeyakumar two outsiders came. But nowhere in his evidence P.W. 1 stated that the appellant/workman went outside the Branch in working hours between 2 to 3 and brought the portrait and outsiders. In fact, the Enquiry Officer held, while dealing with charge No. 1, that no direct evidence was let-in to show that the workman left the Branch at 2.00 p.m.

19.16. The submission of the learned counsel for the appellant that above said Jeyakumar, who is an employee of Service Branch, came to Adyar Branch with the portrait of Dr. Ambedkar and no action was taken against him cannot be brushed aside.

19.17. The next limb of the charge is that the workman caused damage to the properties of the Bank by putting up the portrait of Dr. Ambedkar. We are of the view that there is not an iota of evidence as to the alleged damage caused to the properties of the respondent Bank, as none of the witnesses spoke about the damage caused to the properties of the Bank and there is no document produced by the Bank in this regard.

19.18. For all the aforesaid reasons, we are of the view that the charge Nos. 1 to 4 are not established, as alleged in the charge memo, in the enquiry.

Charge No. 5:

20.1. The learned Senior Counsel for the Bank has contended that the allegation made in charge No. 5 is serious and the same was proved in the enquiry and based on the same, the removal has to be sustained.

20.2. The crux of the allegation is that the appellant brought 25 outsiders on 19.07.2004 and when two of them were permitted by one Mr. K.L. Eashwar, P.W. 7, to meet AGM, those two persons threatened the AGM.

20.3. After the hanging of the portrait of Dr. Ambedkar on 15.07.2004, a memo dated 16.07.2004 was issued by the Bank to the appellant, wherein, it is stated that the "ambience of the hall has been spoiled" by putting up the portrait of Dr. Ambedkar. It is useful to extract the controversial memo dated 16.07.2004, which was marked as PEX. 1 in the enquiry:

"M. Gowri Shankar

Duftry @ branch

Dear Sir,

It has been reported that yesterday i.e., on 15/07/2004 afternoon around 3.00 P.M. you had brought outsiders into the ground floor of the Banking hall and hit nails and hung the photo of Dr. Ambedkar, without the permission of the Bank. You had reportedly told the Bank guards, who objected to your action that permission from the AGM of the Branch has been obtained, which is an untruth. The ambience of the hall has been spoiled and your above action is unacceptable to us.

2. Please explain your above action immediately and the Bank reserves its right to take any action as it deems fit/warrant."

The same was served on the workman on 17.07.2004.

20.4. Immediately, the workman responded in his letter dated 21.07.2004, which was marked as PEX. 5 in the enquiry, stating that the wordings found in the memo that the "ambience of the hall has been spoiled" by putting up of the portrait of Dr. Ambedkar, hurt the feelings of Crores of SC people. He has also stated that Dr. Ambedkar is the God for the SC people and that Dr. Ambedkar was awarded Bharat Ratna by the Central Government.

20.5. In view of the aforesaid remarks in the memo dated 16.07.2004, the said memo dated 16.07.2004 was objected to by various SC/ST employees associations and SC/ST Forums.

20.6. Hence, on 19.07.2004 the employees/persons belonging to SC/ST Associations/Forums came to the Branch and two of their representatives held discussions with the AGM and he expressed "Sorry" for using the word "ambience of the hall has been spoiled" in the memo dated 16.07.2004. The "expression of Sorry", that was conveyed to them, was recorded in the letter dated 20.07.2004 by the AGM and the same is marked as PEX. 10 in the enquiry.

20.7. The Chief General Manager (shortly "CGM") also wrote a letter dated 27.07.2004 to the General Secretary of SEWA stating that the remarks in the memo dated 16.07.2004 that the "ambience of the hall has been spoiled" is unintentional.

20.8. We have perused the evidence of P.W. 5, the AGM. P.W. 5 did not state in the enquiry that he was threatened on 19.07.2004 by two persons, as alleged in the charge No. 5. In the enquiry, during chief examination, his letter dated 20.07.2004 was marked as PEX. 10. He did not speak about the contents of the letter. In fact, a perusal of the contents of the letter shows that nowhere it is mentioned that P.W. 5 was threatened by those two persons, who held talks with him on 19.07.2004. Those two persons mentioned in the letter dated 20.07.2004 of AGM belong to Dalit Makkal Munnani, a SC/ST Forum. It is useful to extract the relevant passage from paragraph (iv) of the letter dated 20.07.2004, PEX. 10, in this regard:

"iv) In the afternoon of 19/7/04, 25 persons had come along with one Mr. Kumari Arun, State General Secretary, Dalit Makkal Munnani. Two including Mr. Kumari Arun were permitted inside the cabin and I had another official with me when they enquired about the memo issued. They stated that as per GO and Gazette Notification no permission needs to be obtained for displaying the photo. I mentioned that the action in displaying the photo, in a surprise manner using outside person to hit nails in the Bank, without prior notice/approval attracted widespread feelings and we had no alternative but to issue memo. He replied that no outsider was involved. The other official with me mentioned that the watchman confirmed that it is an outsider who hit the nails. Let the employee reply to the memo stating so, if a Government Order is there Ii told. The wordings of the letter "ambience spoiled" hurt them they mentioned. It was replied by me that the general feeling of the bank was that the hall was devoid of any other photo or poster and it has been affected and if any ill will is mistakenly conveyed by that we are sorry for those words."

Mere marking of document, PEX. 10, is not suffice. P.W. 5, AGM, is the relevant and direct witness. But he did not speak during the chief examination anything about the alleged threat. The contents of the letter dated 20.07.2004 of P.W. 5, AGM, is not proved in the manner known to law. Since P.W. 5 did not utter a

word about the incident on 19.07.2004 in the chief examination, the same shall be taken note of by the CGIT, while exercising its power under Section 11-A of I.D. Act. In this regards, reference can be add to the judgments of the Apex Court in *Khardah and Co. v. The Workmen*, , AIR 1964 SC 719 : LNIND 1963 SC 138 : 1963-II-LLJ-452 and *Life Insurance Corporation of India v. Ram Pal Singh Bisen*, , (2010) 4 SCC 491 : LNIND 2010 SC 244 : (2010) 3 MLJ 1370 : 2010-III-LLJ-57.

20.9. Furthermore, there is no iota of evidence that those two persons, who came to the Branch on 19.07.2004 and who held discussion with AGM, were arranged by the appellant. No one stated that those persons were brought by the appellant. There is no evidence that the visit of 25 persons on 19.07.2004 was arranged by the workman. We are of the view that when the Bank issued the memo dated 16.07.2004 making remarks that the "ambience of the hall has been spoiled" by putting up of the portrait of Dr. Ambedkar, the same became a debating issue among the SC/ST employees and the SC/ST Forums. Hence, according to the evidence of P.W. 5, a representation was made and P.W. 5 expressed sorry and the matter could have ended there itself. But the alleged incident on 19.07.2004 is cited as a reason for the removal of the appellant from service. In our view, the entire issue was not properly handled by the Bank and the entire blame is on the Bank for irresponsibly using the remark in a sensitive matter.

20.10. Furthermore, 25 persons allegedly came to Adyar Branch of the respondent Bank on 19.07.2004 after the business hours. Hence, the Armed Guards are the relevant witnesses to speak about the incident. But, no Armed Guard complained about the visit of a large number of people after the business hours of the Bank. While the Armed Guards, who were examined as P.W. 1 and P.W. 2 spoke about the visit of two outsiders on 15.07.2004 to put up the portrait of Dr. Ambedkar, they did not speak about the alleged incident on 19.07.2004.

20.11. Further, there is no allegation that the appellant used abusive language at the AGM (P.W. 5) or threatened him or attempted to assault him.

20.12. In fact, the CGM, in his letter dated 27.07.2004, which was marked as PEX. 8, reiterated that the portrait of Mahatma Gandhi, the Father of the Nation, alone is displayed in the Banking Halls/Public spaces. The statement made by the CGM in the letter dated 27.07.2004 that the putting up of the portrait of Dr. Ambedkar without permission cannot be taken leniently, in the said circumstances, cannot be appreciated, more particularly, when there is sufficient evidence to show that the portrait of Dr. Ambedkar was put up in various Branches of the Bank as borne out in the evidence and subsequently, the Government of India, Ministry of Finance, issued a circular dated 08.09.2006 directing the Bank to display the portrait of Dr. Ambedkar in the offices of the Bank. Hence, at least after the Circular dated 08.09.2006 of the Government of India, the Bank could have reversed its decision for not taking a lenient view on the matter.

20.13. Hence, we are of the considered view that the charge No. 5 could not be relied on by the Bank for removal of the appellant from service.

Charge No. 6:

21.1. Pursuant to the memo dated 16.07.2004, referred to above, in charge No. 5, there was a protest by SC/ST Employees Welfare Associations and SC/ST Forums and posters and placards were put up by the SC/ST Employees Welfare Associations and Forums protesting the remarks made in the memo dated 16.07.2004 that putting up of the portrait of Dr. Ambedkar "spoiled the ambience of the hall". There is absolutely no evidence that the appellant instigated the associations/forums to put up the posters and placards.

21.2. Even the Enquiry Officer held that by applying the principles of preponderance of probabilities, he came to the conclusion that the appellant instigated the association. In our view, there should be some evidence to suggest that the appellant instigated the SC/ST employees associations/forums to put up the posters and placards. The CGIT, while exercising its appellate power under Section 11-A of I.D. Act, is duty bound to see as to whether there is any legal and acceptable evidence available against the workman.

21.3. In any event, the SC/ST Employees cannot be faulted with for putting up the posters and placards against the remarks made in the memo dated 16.07.2004 that the "ambience of the hall has been spoiled" due to the putting up of portrait of Dr. Ambedkar. Our view is strengthened, more particularly, in view of the admission of the Bank that such remarks was made unintentionally and also the AGM expressed sorry, if it hurt the feelings of SC/ST Employees.

21.4. The learned Senior Counsel also expressed that the remarks made in the memo are not correct and if it hurt the feelings of the SC/ST Employees, such a remark should have been avoided.

21.5. In these circumstances, the bank cannot place reliance on the charge No. 6 to remove the appellant from service.

Charge No. 7:

23. The Bank came to the conclusion that the charge No. 7 was not proved. Hence, we are of the view that we need not look into this charge and the evidence recorded to this charge.

Charge Nos. 8 and 9:

24.1. The crux of the allegation is that on certain dates, the appellant left the Branch premises earlier than his working hours without prior permission. Further, he had made alterations in the Bank's Attendance Register by overwriting the official notings.

24.2. The dates mentioned in the charge Nos. 8 and 9 fall after the crucial date, i.e., on 15.07.2004, the date of putting up the portrait of Dr. Ambedkar. The

same cannot be lost sight of.

24.3. P.W. 5, AGM, admitted during cross-examination that the disciplinary register relating to earlier period was missing.

24.4. More importantly, the workman put up a defence that the Bank kept quiet, by closing its eyes, in the case of one Mr. Babu, who is an office-bearer in the recognized State Bank Staff Union, when he leaves the Branch at any time he wishes.

24.5. When a question was put, in this regard, to P.W. 8, the question was disallowed by the Enquiry Officer. (at p. 99 of the English version of disciplinary proceedings). This took place in the enquiry on 16.03.2005. This important aspect shall also be taken into account, while deciding this issue.

24.6. The Bank has also not explained as to why the Bank did not issue any memo to the appellant immediately on the next day, when he reported duty about his alleged conduct of leaving the Bank premises of the Branch during working hours and also allegedly altering of the Attendance Register. No explanation was given by the Bank in this regard.

24.7. The submission of the learned counsel for the appellant that even the absence without leave or overstaying sanctioned leave without sufficient grounds is termed only as a minor misconduct under the conditions of service of the Bank as per the Settlement dated 10.04.2002. The same is enclosed in the typed-set of papers. The relevant portion of Clause 7 of the Settlement reads as follows:

"7. By the expression "minor conduct" shall be meant any of the following acts and omissions on the part of an employee:

(a) absence without leave or overstaying sanctioned leave without sufficient grounds;

(b) unpunctual or irregular attendance;

....."

24.8. The punishment for the minor misconduct is prescribed in Clause 8 of the settlement and clause 8 reads as follows:

"8. An employee found guilty of minor misconduct may:

(a) be warned or censured; or

(b) have an adverse remark entered against him; or

(c) have his increment stopped for a period not longer than six months."

24.9. Further, as per Clause 5 of the settlement, if a workman was punished on three previous occasions for minor misconduct by way of censure or warning, then the same could constitute a gross misconduct. It is useful to extract Clause 5(f) of the Settlement in this regard:

"5. By the expression "gross misconduct" shall be meant any of the following acts and omissions on the part of an employee:

...

(f) habitual doing of any act which amounts to "minor misconduct" as defined below, "habitual" meaning a course of action taken or persisted in, notwithstanding that at least on three previous occasions censure or warnings have been administered or an adverse remark has been entered against him;

....."

In this case, admittedly, hitherto he was not administered with any punishment of censure or warning for leaving the workplace earlier treating the same as minor misconduct.

24.10. As far as the alteration is concerned, the same is seriously disputed by both sides. While the learned counsel for the appellant submitted that there is no overwriting, by taking us through the Attendance Register marked as PEX. 2, the learned Senior Counsel for the Bank submitted that this Court could not go into those details and only the matter has to be referred to the hand-writing expert. Hence, it is admitted that there is some controversy over this issue.

24.11. Taking cumulatively all these facts, we are of the view that the charge Nos. 8 and 9 could not be the basis for removing the appellant from service.

Charge Nos. 10 and 11:

25. The Bank came to the conclusion that the charge Nos. 10 and 11 were not proved. Hence, we are of the view that we need not look into these charges and the evidence recorded to these charges.

26. In any event, after analysing the evidence on record, we are of the view that deprivation of backwages from 2004, till passing of the Award dated 30.04.2012 itself for a period of eight years would be more than sufficient punishment, in the facts and circumstances of the case.

27. The learned counsel for the appellant also submitted that though the appellant has rendered 19 years and 6 months of service and though the punishment order states that his removal was with superannuation benefits, he is not entitled to superannuation benefits, unless he completed 20 years of service as on the date of removal from service.

28. In view of the aforesaid detailed discussion of the entire materials, we are inclined to restore the Award dated 30.04.2012 in I.D. No. 90 of 2006 and we are inclined to reverse the common order of the learned Single Judge dated 17.10.2014 in this regard.

29. Further, we are of the view that the Tribunal also cannot be found fault with for interfering with the punishment by exercising its power under Section 11-A of I.D. Act by reinstating the workman without backwages thereby depriving the

wages for about eight years.

30.1. The learned Single Judge proceeded in the order dated 17.10.2014 that the award of reinstatement is based on sympathetic consideration and relied on the judgment of the Apex Court in Kerala Sovent Extractions Ltd. v. A. Unnikrishnan (supra). In our view, the same has no basis, as the CGIT recorded a categorical finding that the appellant did not face the charge of a heinous misconduct and based on such a findings, the CGIT interfered with the punishment of removal. A categorical finding is made in paragraph 27 of the Award dated 30.04.2012. It is useful to reproduce the following passage from paragraph 27 in this regard:

"27. As argued by the learned counsel for the petitioner the workman is not charged of a heinous misconduct."

30.2. The CGIT relied on the following passage in the judgment of the Apex Court in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha and Others (supra), while interfering with the punishment in paragraph 26 of the Award. The relevant portion from paragraph 26 of the Award of the CGIT dated 30.04.2012 reads thus:

"26. I am fortified in being led to such a stand because of the magnanimous approach adopted by the Supreme Court in its decisions cited supra , 1980-I-LLJ 137 wherein it has emphasized "but from the jural resolution of labour disputes must be sought in the law life complex beyond the factual blinkers of desired cases, beneath the lexical littleness or statutory texts, in the economic basis of industrial justice which must enliven consciousness of the Court and corpus juris, ..."

30.3. The CGIT also, in our view, correctly relied on the decision of the Andhra Pradesh High Court in 1981-LAB-IC-651 and extracted the following passage from that judgment in paragraph 26 of the Award dated 30.04.2015 and the relevant portion from paragraph 26 of the Award of the CGIT dated 30.04.2012 reads thus:

"... in our case the management cannot award to its employees the extreme penalty of dismissal without reference to the gravity and nature of the misconduct and the circumstances under which the misconduct was found to have been committed and without examining the desirability and the appropriateness of offering a chance to the workman to repent his past and reopen a new life."

30.4. These factors are all relevant factors in the exercise of the power under Section 11-A of I.D. Act.

30.5. The CGIT also correctly rejected the submission of the management that they lost confidence on the workman, by placing reliance on the judgment of the Apex Court in Kanhaiyalal Aggarwal and Others v. Factory Manager, Gwalior Sugar Co. Ltd., 2001-II-LLJ-111. The CGIT correctly held that the principle of loss of confidence could be invoked only when the workman holds the position of

trust and confidence.

30.6. Admittedly, the workman is a last grade servant and there is no allegation of misappropriation of funds. Therefore, the question of loss of confidence, as pleaded by the management before the CGIT, has no substance.

30.7. But the learned Single Judge erroneously proceeded as if the order is based on sympathetic consideration. Furthermore, the learned Single Judge placed reliance on the judgments of the Apex Court in *Chairman and Managing Director, United Commercial Bank v. P.C. Kakkar* (supra) and *Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain* (supra). In our considered view, those two judgments cannot be applied to the facts of this case, as those two cases do not arise out of the I.D. Act and persons concerned in those two cases are Officers of the Bank and they are not workmen under Section 2(s) of I.D. Act and that they directly approached the High Court questioning the dismissal order. In those cases, Section 11-A of I.D. Act was not available to the persons and further, the allegations are very serious as they involved in misappropriation of funds.

30.8. Hence, in our view, the Award of the CGIT ordering reinstatement cannot be faulted with, since the CGIT exercised its power under Section 11-A of I.D. Act in interfering with the punishment of removal and the same is in term of the judgment of the Apex Court in *Workmen of Firestone Tyre and Rubber Company of India (Pvt.) Ltd. v. Management* (supra) and the judgment of the Division Bench of this Court in *Workmen of Engine Valves Limited v. Engine Valves Limited* (supra). While interfering with the punishment by exercising the power under Section 11-A of I.D. Act, the CGIT is bound to give reasons. In our view, the CGIT gave adequate reasons for interference in the punishment. Hence, we are inclined to sustain the Award of the CGIT agreeing with the reasons given by the CGIT, besides our reasons, as stated above.

31. The learned Senior Counsel for the Bank relied on a few judgments before this Court and sought to sustain the order of the learned Single Judge.

I. *Bharat Heavy Electrical Limited v. M.C. Reddy* (supra):

(i) In the said case, the respondent workman was dismissed from service for a grave misconduct of taking away the original title deed, that was deposited by him with the management stealthily and he sought to dispose the properties, when he obtained loan by mortgaging the title deed with the management.

(ii) When he took up the matter relating to dismissal before the Labour Court, the Labour Court interfered with the punishment and reinstated him in service.

(iii) The learned Single Judge and the Division Bench upheld the Award of the Labour Court.

(iv) On appeal, the Apex Court framed the following question in paragraph 11:

"11. Question then is whether the misconduct alleged against the respondent is so serious or grave as to create a genuine lack of confidence in respondent by

the appellant."

(v) The Apex Court found that the charge is so serious and grave and the respondent workman, who was in possession of the title deeds, stealthily took away his title deed and sought to sell the properties. Hence, the confidence reposed by the employer on him was lost.

(vi) In those circumstances, the Apex Court felt that the Award of reinstatement was on sympathetic consideration and the same has to be interfered with. It is useful to extract the allegations, based on which he was dismissed, and the same is found in paragraph 2 of the said judgment:

"2. He borrowed house building advance by depositing title deeds of his properties as securities, creating an equitable mortgage in favour of the appellant. As per the terms of the said title deeds of the property belonging to the respondent was to be in custody of the appellant till the entire amount of the loan with interest was discharged. While the mortgage was still subsisting and an amount of Rs. 1,34,951/- was due from the respondent, the appellant's officers came to know that certain public notices were published in the local Newspaper calling upon the intending purchasers to make their offers for the purchase of the property belonging to the respondent which was mortgaged to the appellant by deposit of title deeds. On the appellants coming to know of the same, its officers approached the advocate who on behalf of the respondent had issued the publication. Then they came to know that the original title deeds which were supposed to be in deposit of the company was in his custody. Obviously, because it was stealthily taken away from the custody of the appellant. Based on said facts a departmental enquiry was instituted and on the reports submitted by the Enquiry Officer holding the appellant guilty of the misconduct charged and taking into consideration the seriousness of the charge the services of the respondent were terminated."

(vii) Hence, in our view, the said judgment could have no application to the facts, as no allegation of misappropriation is made against the appellant and in our view, no serious allegations are made/proved warranting removal from service.

II. Uttar Pradesh State Road Transport Corporation v. Mohan Lal Gupta and others (supra):

(i) That case also relates to misappropriation. In fact, the said case was considered by the Apex Court in Bharat Heavy Electrical Limited v. M.C. Reddy (supra), in paragraph 22 and the said paragraph 22 in Bharat Heavy Electrical Limited v. M.C. Reddy (supra) reads as hereunder:

"22. In Uttar Pradesh State Road Transport Corporation, 2000 (3) L.L.N. 707 (vide supra), this Court held, in Para 8, at page 709:

".... The employee has been found to be guilty of misappropriation and in such as event if the appellant corporation loses its confidence vis-a-vis the employee, it will be neither proper nor fair on the part of the court to substitute the finding

and confidence of the employer with that of its own by allowing reinstatement. The misconduct stands proved and in such a situation, by reason of the gravity of the offence, the Labour Court cannot exercise its discretion and alter the punishment."

(ii) In our view, for the aforesaid reasons, the said judgment is also not applicable to the facts of this case, as it is not the case of misappropriation and the charges made against the appellant and the circumstances of this case, in our considered view, do not call for imposition of extreme penalty of removal.

III. Life Insurance Corporation of India v. R. Dhandapani (supra):

(i) In that case, the workman was employed as Assistant in the Life Insurance Corporation (shortly "LIC"). He remained absent for 233 days. When the LIC directed him to appear before the Doctor, he refused to appear and he was stubborn and adamant. In those circumstances, he was removed from service, taking into account that he was issued with charge sheets on seven earlier occasions in a span of six years and that he was penalised, pursuant to charge sheets on more than one occasion.

(ii) The Industrial Tribunal interfered with the punishment of dismissal and directed to reinstate him with 25% backwages.

(iii) A learned Single Judge of this Court confirmed the said Award. But the Division bench set aside the award by giving reasons. While setting aside the award, the Division Bench directed the LIC to pay pension, after having set aside the Award.

(iv) The Apex Court held that the same was on sympathetic consideration and the same cannot withstand the scrutiny of law, particularly, when the Division Bench set aside the award of the Labour Court ordering reinstatement.

(v) We fail to understand as to how that case is applicable to the facts of the case on hand.

IV. Amrit Vanaspati Co. Ltd. v. Khem Chand (supra):

(i) In that case, the respondent/workman was charge sheeted for asking the other employees to stop the work and threatening to kill the senior officers and other co-employees, who were not willing to stop the work, by throwing them in the boiler.

(ii) An enquiry was held on the said charge. The Enquiry Officer held that the charges were proved. The respondent was dismissed from service, based on such findings.

(iii) The matter was taken before the Labour Court. The Labour Court set aside enquiry, as the same was conducted in violation of principles of natural justice. Thereafter, both sides let-in evidence. The Labour Court found that the charges were proved and upheld the dismissal.

(iv) But the High Court interfered with the factual findings and ordered 75% of backwages.

(v) In those circumstances, when the employer approached the Apex Court, it was held that the High Court cannot interfere with the factual finding recorded by the Labour Court, based on the evidence let in before the Labour, while exercising its extraordinary jurisdiction under Article 226 of the Constitution.

(vi) The issue herein is the non-exercise of the appellate power of CGIT vested under Section 11-A of I.D. Act and also as to whether the interference made by the CGIT in the punishment is correct. These aspects were discussed in detail in this judgment earlier.

(vi) In our considered view, this judgment is not applicable to the facts of this case.

For all the aforesaid reasons, we are inclined to allow W.A. Nos. 884 of 2015 and 116 of 2016. Accordingly, W.A. No. 884 of 2015 and W.A. No. 116 of 2016 are allowed and the common order of the learned Single Judge is set aside and the Award of the CGIT dated 30.04.2012 in I.D. No. 90 of 2006 is restored and the Bank is directed to reinstate the appellant/workman in service with continuity of service and all other attendant benefits, but without backwages, as ordered by the Tribunal in the Award dated 30.04.2012 in I.D. No. 90 of 2006, within a period of 30 days from the date of receipt of a copy of this judgment. Consequently, W.A. No. 885 of 2015 and W.A. No. 117 of 2016 are dismissed. There will be no orders as to costs. Consequently, connected miscellaneous petitions are closed.