
(2023) 07 DEL CK 0214

In the Delhi High Court

Case No : Letter Patent Appeal No. 182, 303 Of 2023, Civil Miscellaneous
Application No. 12393-12394, 18734 Of 2023

Punjab National Bank

APPELLANT

Vs

Sneh Aggarwal

RESPONDENT

Date of Decision : 26-07-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 11A

Citation : (2023) 07 DEL CK 0214

Hon'ble Judges : Satish Chandra Sharma, CJ; Sanjeev Narula, J

Bench : Division Bench

Advocate : Rajat Arora, Niraj Kumar, Bharat Gupta

Final Decision : Allowed/Dismissed

Judgement

Satish Chandra Sharma, CJ

1. The present Appeals are arising out of an order dated 18.01.2023 passed by the learned Single Judge in W.P.(C.) No. 4852/2014 titled Smt Sneh Aggarwal Vs. Punjab National Bank.

2. The LPA 182/2023 is an Appeal preferred by the Punjab National Bank against the order dated 18.01.2023 to the extent the punishment of dismissal has been moderated to that of compulsory retirement.

3. The LPA 303/2023, which has been preferred by Smt. Sneh Aggarwal, is an appeal against the order dated 18.01.2023 claiming reinstatement and against the findings arrived at by the learned Single Judge by which the learned Single Judge has upheld the departmental enquiry proceedings and the consequential orders passed by Disciplinary Authority and Appellate Authority as well as by the Industrial Tribunal.

4. For deciding both the aforesaid Appeals, which are arising out of a common judgment, the facts as narrated in LPA 182/2023 titled Punjab National Bank Vs.

Smt Snbh Aggarwal, are being dealt with as under.

5. The facts of the case reveal that the Respondent herein was appointed as a Clerk-cum-Cashier in the Services of Punjab National Bank on 15.09.1978 and, at the relevant point of time, she was posted as Advanced Level Punching Machine Operator (ALPM) at Branch Office Parliament Street, New Delhi.

6. The facts further reveal that a Fixed Deposit Receipt (FDR) bearing NO. 20/91 dated 02.02.1991 for a sum of Rs. 60,000/- was deposited by the Respondent at Parliament Street Branch on 04.02.1991 and the Respondent Employee applied for loan of Rs. 60,000/- by pledging the FDR with the Bank. Loan of Rs. 60,000/- was sanctioned in her favour. However, in an audit report, it was brought to the notice of the authorities that the FDR which was deposited by the Respondent Employee, though reflected Rs. 60,000/-, was not a FDR in respect of the amount of Rs. 60,000/- and only a sum of Rs. 6,000/- deposited with the Bank on 03.02.1991. The fraud was detected by the Bank and the Respondent Employee refunded the loan amount of Rs. 60,000/- which she took against the FDR on 28.01.1992.

7. The matter was reported to the Central Bureau of Investigation (CBI) and the CBI lodged a case in respect of fraud committed at Kallirampur, Meerut Branch of the the Bank, where one Mr. P.S. Bedi, was the manager.

8. It is pertinent that Mr. P. S. Bedi has already been dismissed from the service. The CBI advised the Bank to proceed with disciplinary action in respect of the Respondent Employee and a charge-sheet was issued on 07.02.1994 to the Respondent Employee. The Respondent Employee did submit a reply to the charge-sheet and, thereafter, Enquiry Officer was appointed to hold an enquiry in the matter.

9. The Enquiry Officer after following due process of law, submitted an enquiry report holding the employee guilty of the misconduct. The Disciplinary Authority agreeing with the findings of the Enquiry Officer issued a show cause notice to the Respondent Employee and after hearing the Respondent Employee, finally passed an order of dismissal on 11.08.1995.

10. The Respondent Employee preferred an appeal in the matter and the Appellant Authority has dismissed the appeal. The Respondent Employee thereafter took shelter of the provisions of the Industrial Disputes Act, 1947 (ID Act) raising a industrial dispute and the appropriate Government vide order dated 30.09.1997 forwarded the reference to the Tribunal for adjudication. The reference forwarded by the Industrial Tribunal by the appropriate Government reads as under:

""Whether the action of the management of PNB in dismissing the Service of Sneh Lata Aggarwal Clerk-cum-Cashier w.e.f 11.8.95 Is just and fair. If not, to what relief the workman is entitled ?".

11. The Respondent Employee filed a claim statement stating that prior to her

posting at Parliament Street Branch she was working under Sh. P. S. Bedi at Tilak Nagar Branch who was later on transferred to Kallirampur Branch, Meerut, and he approached the Respondent Employee to give her some deposit enabling him to achieve target. It was stated by her that she gave Rs 50,000/- and Rs. 10,000/- on 05.11.1990 and 21.11.1990 for issuance of FDR and a FDR bearing 20/91 was handed over to her on 02.02.1991.

12. The Respondent Employee further stated that as she was in need of money, she pledged the FDR and obtained Rs. 60,000/- and the moment it was brought to the notice of the authorities that only a sum of Rs. 6,000/- was deposited with the Bank as a fixed deposit, she returned the amount of Rs. 60,000/- which was obtained by her as loan against the FDR. She pleaded innocence before the Tribunal and also stated that findings arrived by the Enquiry Officer deserves to be set aside since the Enquiry Officer never allowed her to speak while the enquiry was going on and the fraud was not committed by her and, in fact, it was committed by Sh. P. S. Bedi.

13. The written statement was filed by the Bank and it was stated that it was the Respondent who was hand in gloves with Sh. P. S. Bedi, and only an amount of Rs. 6,000/- deposited at the Bank at Kallirampur Branch, against which a FDR of Rs. 60,000/- was obtained by the Respondent Employee. The Respondent Employee against the FDR by pledging the FDR took a loan of Rs. 60,000/- and immediately after it was brought to the notice of the authorities that only Rs. 6,000/- was deposited with the Kallirampur Branch, the amount was returned back by the Respondent Employee.

14. It was stated in the written statement that the Enquiry was conducted strictly in consonance with the by-partite settlement and principles of natural justice and fairplay was also observed by the Enquiry Officer. The Employee was granted opportunity of hearing, opportunity of cross-examination and all documents were given to the Employee and, therefore, there was no procedural irregularity in the enquiry conducted by the enquiry officer. A prayer was made to uphold the order of punishment.

15. The Central Industrial Tribunal vide award dated 10.08.2007 concluded that the enquiry conducted by the Bank was not just, fair and proper and the action of the bank in dismissing the claimant was also not fair and directed the reinstatement of the workmen with continuity in service with all consequential benefits.

16. The Appellant Bank immediately preferred a Writ Petition before this Court being W.P.(C.) No. 9083/2011, and this Court vide order dated 17.04.2013 allowed the Writ Petition. The award was set aside and the matter was remitted back to the Tribunal to grant opportunity to the Bank to lead evidence with the right to the claimant to rebut it. The Tribunal was granted a liberty to pass a fresh award on the basis of further evidence without being influenced with the earlier award.

17. After an order was passed by the High Court on 17.04.2013, the matter was remanded back to the Tribunal and the Bank produced Ms. Rimi Ray, Manager (HR), Mr. Pradeep Kumar Aggarwal to prove the misconduct. They were cross-examined by the Respondent. The Tribunal based upon the evidence on record passed a detailed award in the matter. The Paragraph Nos. 65 to 74 of the award passed by the Tribunal read as under:

"65. When claimant presented FDR QSC OO9015 to Parliament Street Branch of the bank for obtaining demand loan of Rs. 60,000.00, at that time she was well aware that the negotiable instrument was forged one. She presented that forged document and used it as a genuine one to obtain demand loan. Resultantly, it is crystal clear that the acts of the claimant in using a forged document as genuine one, knowing it will to be forged is a misconduct of culpable nature. The bank had been able to prove misconduct against the claimant beyond doubt, which is of grave nature.

66. What should be the appropriate punishment, which can be awarded to the claimant, is a proposition which would be addressed by this Tribunal. Right of an employer to inflict punishment of discharge or dismissal is not unfettered. The punishment imposed must commensurate with gravity of the misconduct, proved against the delinquent workman. Prior to enactment of section 11-A of the Industrial Disputes Act, 1947 (in short the Act), it was not open to the Industrial adjudicator to vary the order of punishment on finding that the order of dismissal was too severe and was not commensurate with the act of misconduct. In other words, the industrial adjudicator could not interfere with the punishment as it was not required to consider propriety or adequacy of punishment or whether it was excessive or too severe. Apex Court, in this connection, had however, laid down in *Bengal Shatdee Coal Company* (1963(1) LLJ 291) that where order of punishment was shockingly disproportionate with the act of the misconduct which no reasonable employer would impose in like circumstances, that itself would lead to the inference of victimization or unfair labour practice which would vitiate order of dismissal or discharge. But by enacting the provisions of section 11-A of the Act, the Legislature has transferred the discretion of the employer, in imposing punishment, to the industrial adjudicator. It is now the satisfaction of the industrial adjudicator to finally decide the quantum of punishment for proved acts of misconduct, in cases of discharge or dismissal. If the Tribunal is satisfied that the order of discharge or dismissal is not justified in any circumstances on the facts of a case, it has the power not only to set aside order of punishment and direct reinstatement with back wages, but it has also the power to impose certain conditions as it may deem fit and also to give relief to the workman, including award of lesser punishment in lieu of discharge or dismissal.

67. It is established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. But where the

punishment is shockingly disproportionate, regard being had to the particular conduct and past record, or is such as no reasonable employer would ever impose in like circumstance, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice. Law to this effect was laid by the Apex Court in *Hind Construction and Engineering Company Ltd.* (1995 (1) LLJ 462). Likewise in *Management of the Federation of Indian Chambers of Commerce and Industry* (1971 (II) LLJ 630) the Apex Court ruled that the employer made a mountain out of a mole hill and had blown a trivial matter into one involving loss of prestige and reputation and as such punishment of dismissal was held to be unwarranted. In *Ram Kishan* (1996 (1) LLJ 982) the delinquent employee was dismissed from service for using abusive language against a superior officer. On the facts and in the circumstances of the case, the Apex Court held that the punishment of dismissal was harsh and disproportionate to the gravity of the charge imputed to the delinquent. It was ruled therein, "when abusive language is used by anybody against a superior, must be understood in the environment in whom that person is situated and the circumstances surrounding the event that led to the use of abusive language, straight-jacket formula could be evolved in adjudicating whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts.

68. In *B. M. Patil* (1996 (II) LLJ 536), Justice Mohan Kumar of Karnataka High Court observed that in exercise of discretion, the Disciplinary Authority should not act like a robot and justice should be moulded with humanism and understanding. It has to assess each case on its own merit and each set of facts should be decided with reference to the evidence recording the allegation, which should be basis of the decision. The past conduct of the worker may be a ground for assuming that he might have a propensity to commit the misconduct and to assess the quantum of punishment to be imposed. In that case a conductor of the bus was dismissed from service for causing revenue loss of 50p to the employer by irregular sale of tickets. It was held that the punishment was too harsh and disproportionate to the act of misconduct.

69. After insertion of section 11-A of the Act, the jurisdiction to interfere with the punishment is there with the Tribunal, who has to see whether punishment imposed by the employer commensurate with the gravity of the act of misconduct. If it comes to the conclusion that the misconduct is proved, it may, still hold that the punishment is not justified because misconduct alleged and proved is such as it does not warrant punishment of discharge or dismissal and where necessary, set aside the order of discharge or dismissal and direct reinstatement with or without any terms or conditions as it thinks fit or give any other relief, including the award of lesser punishment, in lieu of discharge or dismissal, as the circumstance of the case may warrant. Reference can be made to a precedent in *Sanatak Singh* (1984 Lab.I.C.817). The discretion to award punishment lesser than the punishment of discharge or dismissal has to be judiciously exercised and the Tribunal can interfere only when it is satisfied that

the punishment imposed by the management is highly disproportionate to the decree of the guilt of the workman. Reference can be made to the precedent in *Kachraji Motiji Parmar* (1994 (11) LLJ 332). Thus it is evident that the Tribunal has now jurisdiction and power of substituting its own measure of punishment in place of the managerial wisdom, once it is satisfied that the order of discharge or dismissal is not justified. On facts and in the circumstances of a case, section 11A of the Act specifically gives two folds powers to the Industrial Tribunal, first is virtually the power of appeal against findings of fact made by the Enquiry Officer in his report with regard to the adequacy of the evidence and the conclusion of facts and secondly of foremost importance, is the power of reappraisal of quantum of punishment.

70. In *Bharat Heavy Electricals Ltd.* (2005 (2) S.C.C. 481) the Apex Court was confronted with the proposition as to whether power available to the Industrial Tribunal the stole under section 11-A of the Act are unlimited. The Court opined that "there Is no such thing as unlimited jurisdiction vested with any judicial or quasi judicial forum and unfettered discretion is sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority, be it administrative or judicial, has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons thereof. The Apex Court relied its judgement in *C.M.C. Hospital Employees Union* (1987 (4) S.C.C. 691) wherein it was held that "section 11-A cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under section 11-A of the Act has to be exercised judiciously and the Industrial Tribunal or Labour Court is expected to interfere with the decision of a management under section 11-A of the Act only when it is satisfied that tie punishment imposed by the management is highly disproportionate to the degree of guilt of the workmen concerned. The Industrial Tribunal or Labour Court has to give reasons for its decision*. In *Hombe Gowda Educational Trust* (2006 (t) S.C.C. 430) the Apex Court announced that he Tribunal would not normally interfere with the quantum of punishment imposed by the employer unless an appropriate case is made out therefore.

71. Power to set aside order of discharge or dismissal and grant relief of reinstatement or lesser punishment is not untramaled power. This power has to be exercised only when Tribunal is satisfied that the order of discharge or dismissal was not justified. This satisfaction of the Tribunal is objective satisfaction and not subjective one. It involves application of the mind by the Tribunal to various circumstances like nature of delinquency committed by the workman, his past conduct, impact of delinquency on employer's business, besides length of service rendered by him. Furthermore. the Tribunal has to consider whether the decision taken by the employer is just or not. Only after taking into consideration these aspects, the Tribunal can upset the punishment imposed by the employer. The quantum of punishment cannot be interfered with without recording specific findings on points referred above. No indulgence is to

be granted to a person, who is guilty of grave misconduct like cheating, fraud, misappropriation of employers fund, theft of public property etc. A reference can be made to the precedent in Bhagirath Mal Rajnwa (1995 (I) LLJ 960).

72. Question for consideration comes as to whether punishment awarded to the claimant was shockingly disproportionate to his misconduct, justifying interference by this Tribunal. In Firestone Tyre and Rubber Company of India (Pt.) Ltd. (1973 (1) S.C.C. 813), the Apex Court ruled that once misconduct is proved, the Tribunal had to sustain order of punishment unless it was harsh indicating victimisation. It has been further laid therein that if a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though now empowered to differ from the conclusion arrived at by the management, will have to give very cogent reasons for not accepting the view of the employer. Again in Divisional Controller K.S.R.T.C. (N.W.K.R.T.C) (2005 (3) S.C.C. 254) It was laid that question of quantum of, punishment would not be weighed on amount of money misappropriated but it should be based on loss of confidence, which is a primary factor to be taken into account. Once a person is found guilty of misappropriating his employer's fund, there is nothing wrong for the employer to lose confidence or faith in such a person, awarding punishment of dismissal.

73. What would be the quantum of punishment that would commensurate to her misconduct? As detailed above, claimant entered into a conspiracy with Shri P.S. Bed and in furtherance to that conspiracy FOR No.QSC 009015, issued for a sum of Rs.6000.00 only. was inflated to a sum of Rs.60,000.00 and handed over to the claimant for obtaining demand loan against it. She obtained a demand loan on the said FDR and used it as a genuine one, knowing it fully well to be a forged one. She obtained letter Ex.MW3/1 from Shri Bedi, which was also a forged document, with a view to hide the fact that demand loan was obtained against a forged negotiable instrument. Not only this, she repaid full amount of loan a few days prior to maturity of FOR No.QSC 009015, with a view to restrain the bank authorities in sending the FDR to Kallirampur branch for obtaining its maturity value/vacation of lien. Had his document been sent to Kallrampur branch of the bank; the claimant would have been exposed.

These circumstances make it apparent that with a view to conceal the melodrama, she cleared the loan a few days prior to maturity date of the FDR. Thus, it is obvious that the claimant had been acting against the interest of the bank. An employee who dupes his employer cannot be said to be worthy of credence. No confidence can be maintained in such an employee. The bank is a financial institution where confidence and faith are of prime importance. The bank cannot retain such an employee in its services. Therefore, punishment of dismissal from service is appropriate punishment for such a misconduct I find that punishment awarded to the claimant commensurate to her misconduct.

Resultantly, on factual matrix too, I do not find a case for intervention.

74. In view of the facts detailed above, claim put forth by Ms. Aggarwal merits dismissal. Relief of reinstatement in service with continuity is not available to her. Her claim is brushed aside. An award is, accordingly, passed in favour of the bank and against the claimant. It be sent to the appropriate Government for publication..”

18. The Respondent Employee being aggrieved by the award again came up before this Court by filing a Writ Petition being W.P.(C.) No. 4852/2014, and the followings reliefs were prayed by the Respondent Employee before the learned Single Judge.

“(i) Call for the record of the case being LD . no. 108 of 2013 from Central Government Industrial Tribunal No. 1;

(ii) Issue a writ , order or direction quashing the award dt. 30.12.2013 passed by the Central Government Industrial Tribunal No. 1.

(iii) Issue a writ , order or direction thereby setting aside the dismissal order dt .08/ 11.08-1995 issued by Disciplinary Authority against the Petitioner and consequently allow the claim of the Petitioner for reinstatement with back wages, promotion, seniority, consequential benefits,;.....”

19. The learned Single Judge after taking into account the award passed by the Tribunal, in paragraph Nos. 46 to 62, has held as under:

“46. The Learned Tribunal has adjudicated the issues framed by it in favour of the respondent/bank. Learned Tribunal has categorically held that the services of the workman have been legally and justifiably terminated based on oral submissions and documentary evidence produced by the parties before it.

47. The Learned Tribunal examined the facts as testified by the Shri. P.C. Jain, Manager (Ex. MW1/1). Shri P.C Jain testified in his affidavit that on the first date of enquiry, the charge was read over to the Petitioner/workman, who denied all the allegations. Thereafter, a list of documents and witnesses, relied upon by the bank to substantiate the charges were supplied her. During the course of cross-examination, he denied the fact that the defence assistance as well as the opportunity for adducing evidence was not given to her.

48. The Learned Tribunal also examined the facts testified by the Petitioner/workman in her affidavit (Ex. WW1/1) wherein she stated thatshe had no role in the functioning of the Kallirampur Branch of the bank. She stated that the enquiry was conducted in an illegal manner and the Enquiry Officer was illegally changed on 27.10.1994. She also deposed that the confessional statement was obtained under duress on 29.01.2002. She further claimed that the enquiry officer did not take into consideration the confessional statement made by Shri P.S. Bedi and the original FDR, alleged to have been inflated, was not produced before the Enquiry Officer.

49. Further, the Learned Tribunal to ascertain whether the enquiry conducted was

in consonance with the principles of natural justice examined the enquiry proceedings placed on record before it.

50. A plain reading of the chargesheet makes it clear that there was no ambiguity in it. It was observed by the Learned Tribunal that the proceedings dated 28.11.1994 and the testimony of Mr. P.C Jain makes it clear that the Petitioner/workman appeared before the enquiry officer and the charge was duly explained to her. The Petitioner/workman was clearly told that she was free to take assistance from a defence assistant, in terms of provisions of Bipartite Settlement.

51. A bare perusal of the enquiry proceedings also crystallises that due and reasonable opportunities were given to the Petitioner/workman to defend herself. It is pertinent to note that on 01.02.1995, a request was made to the enquiry officer to record the statement of Mr. P.S. Bedi in the defence of the Petitioner/workman and the enquiry officer recorded the statement of Mr. P.S. Bedi.

52. The Learned Tribunal has also considered the contention of the Petitioner/workman that the cash book dated 02.02.1991 relating to FDR No.20/91 prepared at the Kallirampur branch, cashier's long book dated 02.02.1991, photocopy of FDR register, counterfoil of FDR and copy of AOF pertaining to FDR No. 20/91 were not supplied to her and by nonsupply of the documents, she was not allowed to defend herself. The Learned Tribunal observed that these documents were duly inspected by her at the Kallirampur branch on 23.12.1994. It was held that in the banking business absolute devotion, diligence, integrity and honesty need to be preserved by every bank employee. If this were not to be observed, then the confidence of the public/depositors would be impaired. Since the inspection of the documents was duly granted, it cannot be held that any prejudice had been caused to him on account of the non-furnishing of the inquiry report/findings to him.

53. Furthermore, the Learned Tribunal observed that the documents that were sought by the Petitioner/workman were required to show that the FDR in question was issued for a sum of Rs. 60,0000/- and not for a sum of Rs. 6,000/-. However, the said dispute can be put to quietus in view of the facts as unfolded by Mr. P.S. Bedi which were wholeheartedly relied on by the Petitioner/workman. In his testimony, he admitted the issuance of FDR for Rs. 6,000/- and inflation of the amount to Rs. 60,0000/-. It was held that whatever the Petitioner/workman testified before the Enquiry Officer was in contrast to the evidence unfolded by Shri Bedi.

54. Learned Tribunal held that the Enquiry Officer did not ignore any material while recording his conclusion. It cannot be said that he ignored the version projected by the Petitioner/workman and Shri Bedi. Accordingly, it was held that the enquiry conducted by the bank was just and proper, the findings recorded by the Enquiry Officer were held to be based on evidence and his report cannot be vitiated at all.

55. The Learned Tribunal relied on a plethora of cases including the case of Firestone Tyre and Rubber Company (1973 (1) LLJ 278) and the case of Delhi Cloth and General Mills Company (1972 (1) LLJ 180) and observed that when enquiry is found to be fair and proper, the Tribunal should proceed to appreciate evidence adduced before It by the bank as well as the workman on the merits of the charge. However, in view of the directions issued by this Court in the order dated 17.04.2013, the Learned Tribunal proceeded further to appreciate evidence brought over the record and to record findings on the count as to whether charges stood proved against the claimant or not and whether the services of the Petitioner/workman were illegally and unjustifiably terminated.

56. Learned Tribunal scanned the evidence adduced by the respondent/bank to prove the misconduct along with the evidence brought over the record in rebuttal by the Petitioner/workman.

57. Even at the cost of brevity it may be reiterated that the High Court can only interfere with the order of the Tribunal if it is manifest on the record that the proceedings against the employee were conducted in a manner inconsistent with the principles of natural justice. The Learned Tribunal in the present case, pursuant to the order of this court has examined the issue of adherence to principles of natural justice while conducting the enquiry. It is also a settled proposition that if the enquiry is properly held the departmental authorities are the sole judge of facts. The employee cannot challenge the findings on the grounds of adequacy or reliability in a proceeding under Article 226 of the Constitution.

58. The High Court in the writ jurisdiction cannot review the evidence to arrive at an independent finding of the evidence. Thus this court cannot re-appreciate the evidence. Hence the discussion of evidence in the present proceedings would be an exercise in futility. Particularly, in view of the fact that the petitioner has not been able to demonstrate any perversity, illegality or error of law in the appreciation of evidence. The finding of facts arrived at on by the Tribunal after due appreciation of evidence cannot be re-opened or questioned in writ proceedings.

59. After examining the impugned order as well as the material on record, it is clear that the charges against the Petitioner/workman were duly proved by the respondent/bank. The Learned Tribunal has passed a detailed order after considering all the material and evidence on record before it.

60. In the instant case, the Petitioner/workman has only raised disputed questions of facts which were examined by the Learned Tribunal as the fact-finding court. The Tribunal and before that the departmental authorities i.e; the disciplinary authority and appellate authority have all concluded that the Petitioner/workman misconducted herself and was not a reliable person to be kept in the employment of the bank. In the banking business absolute devotion, integrity and honesty are a sine qua non for every bank employee. It requires

that the employees maintain good conduct and discipline as they deal with the money of the depositors and the customers and if it is not observed, the confidence of the public/depositors would be impaired. The banking system is the backbone of the Indian economy. An officer who is found to have been involved in financial irregularities while performing his duty as a bank officer, cannot be let off even if there is a minor infraction in the inquiry report. This court considers that there is no material to interfere with the order of the Learned Tribunal.

CONCLUSION

61. This court does not find any infirmity, perversity, illegality, or jurisdictional error in the impugned order and thus does not deem fit to interfere with the finding of fact as returned by the Learned Tribunal to the extent of the finding of the Tribunal holding the petitioner guilty for misconduct. However, it is a matter of record that the petitioner had served the Bank for 13 years and there was no complaint during this period. It is also a matter of record that no criminal proceedings were initiated against the petitioner. Recently Hon'ble Supreme Court in Umesh Kumar Pahwa Vs. Board of Directors Uttarakhand Gramin Bank and Others (2022) 4 SCC 385 taking into account attendant facts reduced the punishment of removal from service to compulsory retirement.

62. Thus in view of the peculiar facts and circumstances, the quantum of punishment is modified to the extent of substituting the punishment of removal from service to that of compulsory retirement. The petitioner thus shall be entitled to all benefits which may be available to her by correcting the punishment from that of removal from service to that of compulsory retirement. The present petition is thus allowed to the aforesaid extent."

20. The learned Single Judge has upheld the award passed by the Tribunal, however, has interfered with the quantum of punishment only.

21. This Court has carefully gone through the documents on records relating to departmental enquiry including the charge-sheet, order of punishment dated 11.08.1995, the appellate order passed by the Appellate Authority, the award passed by the Tribunal as well as the judgment delivered by the learned Single Judge.

22. The facts of the case reveal that it was the Respondent who while working as ALPM at Branch office Parliament Street, New Delhi submitted a FDR dated 02.02.1991 for a sum of Rs. 60,000/- and by pledging the same obtained a loan of Rs. 60,000/- from the branch where she was posted. The FDR was prepared at Kallirampur Branch, Meerut where Sh. P. S. Bedi was the Manager, and it was on an audit objection, it was revealed that only a sum of Rs. 6,000/- was deposited at Kallirampur Branch, Meerut of the same Bank and the FDR was prepared for a sum of Rs. 60,000/-. The Respondent Employee was the beneficiary of the FDR and in those circumstances, the matter was reported to CBI.

23. The CBI advised the bank to proceed with disciplinary action in respect of

Respondent Employee and charge-sheet was issued on 07.04.1994.

24. This Court has carefully gone through the report submitted by the Enquiry Officer and the Enquiry Officer has certainly followed the principles of natural justice and fairplay. The evidence on record has established the misconduct committed by the Employee based upon oral as well as documentary evidence and it is an open and shut case. No procedural irregularity of any kind has been established by the Appellant before the learned Single Judge nor before this Court.

25. The Respondent Employee was dismissed from service on 11.08.1995 and the dismissal has been affirmed by the Industrial Tribunal, and the findings arrived at by the Enquiry Officer have been formed by the Tribunal as well as by the High Court.

26. The learned Single Judge has declined to interfere with the findings arrived at by the Enquiry Officer by placing reliance upon *Sadhu Ram v. Delhi Transport Corpn.*, (1983) 4 SCC 156 and *Sanjay Kumar Jha vs. Prakash Chandra Chaudhary*, (2019) 2 SCC 499.

27. This Court has also gone through the aforesaid judgments, and it is a well settled proposition of law that it is not for the High Court to constitute itself into an Appellate Court over Tribunals constituted under special legislations to resolve dispute of a kind, qualitatively different from ordinary civil dispute, and to re-adjudicate upon questions of fact decided by those Tribunals.

28. In the considered opinion of this Court, the learned Single Judge was justified in not interfering with the findings arrived at by the Enquiry Officer.

29. Learned Single Judge has also taken into account the judgment delivered in the case of *Bharat Bank Ltd. vs. Employees of the Bharat Bank Ltd. Delhi*, AIR 1950 SC 188 and *Bidi, Bidi Leaves vs. The State of Bombay*, AIR 1962 SC 4, and has held that the ID Act has conferred wide powers and jurisdiction to the Labour Courts/Tribunals to make appropriate awards in determining the industrial disputes presented before it.

30. In the present case, after the matter was remanded back to the Industrial Tribunal, the misconduct was proved before the Industrial Tribunal by producing evidence by the Management, and, therefore, findings of fact arrived at by the Tribunal, which is a specialized forum to decide labour disputes, cannot be interfered in the absence of violation of statutory provision or principles of natural justice and fairplay. Therefore, the learned Single Judge has rightly declined to interfere with the findings arrived at by the Tribunal.

31. The learned Single Judge has also taken into account the judgments delivered in the case of *Management of Madurantakam Coop. Sugar Mills Limited v. S. Viswanathan* (2005) 3 SCC 193, *Indian Overseas Bank v. LO.B. Staff Canteen Workers' Union*, (2000) 4 SCC 245 and *Dharangadhara Chemical Works Ltd. v. State of Saurashtra* (1957) SCR.

32. In light of the aforesaid judgments, it is a well settled proposition of law that the High Courts in exercise of jurisdiction under Article 226/227 of the Constitution of India, are precluded to re-appreciate the evidence and substitute its view with that of the Labour Court/ Tribunals. In the aforesaid cases, it has been further held that the High Court should refrain from re-entertaining pure questions of facts, which have been already adjudicated by the Courts/ Tribunals having the jurisdiction to do so unless the same is found to be perverse, patently illegal, contrary to law or there is an error apparent on the face of the record.

33. In the present case, the learned Single Judge has interfered with the quantum of punishment by holding it to be disproportionate to the guilt of the delinquent and the order of Disciplinary Authority has been modified by awarding punishment of compulsory retirement in place of dismissal.

34. The present case relates to a fraud committed by a banker and fraud/ embezzlement by a Banker, who is custodian of the public money, is the most serious offence in the banking sector and has to be dealt with iron hands. Therefore, to the extent the learned Single Judge has interfered in respect of quantum of punishment, the order passed by the learned Single Judge deserved to be set aside. [See: United Commercial Bank and Others Vs. P C. Kakkar, (2003) 4 SCC 364].

35. Learned Counsel for the Respondent Employee has vehemently argued before this Court that the Employee in question is innocent, and it was P. S. Bedi who was the Bank Manager at Kallirampur Branch, who had committed the fraud.

36. This Court fails to understand that the Respondent Employee was posted at Parliament Street Branch, New Delhi and what was the necessity of getting an FDR prepared in her name from a different Branch of the same Bank that too outside Delhi.

37. The Respondent Employee was the beneficiary of FDR. She obtained a loan of Rs. 60,000/- in respect of FDR which was, in fact, for sum of Rs. 6,000/-. Therefore, it cannot be said that she was not responsible in committing the fraud with the Bank.

38. In the considered opinion of this Court, merely some other person was also involved in the matter in respect of the fraud committed, the question of exonerating the appellant does not arise. Otherwise also, Sh. P. S. Bedi has been dismissed from service. The factum of fraud has been established in the departmental enquiry and, once the evidence on record establish the guilt of the Respondent Employee, the question of interference with the departmental enquiry in the peculiar facts and circumstances of the case does not arise.

39. The present case is an open and shut case where the Respondent Employee has been held guilty based upon the evidence and the Respondent Employee is trying to shift her guilt upon some other person and the same does not help the Respondent Employee in any manner.

40. The Hon'ble Supreme Court in the case of R. Mahalingam v. T.N. Public Service Commission, (2013) 14 SCC 379, has provided guidance on the scope of judicial interference in matters challenging disciplinary action. The Hon'ble Supreme Court in the aforesaid case, in paragraph 11 has held as under: -

"11. We have heard the learned counsel for the parties. The scope of judicial review in matters involving challenge to the disciplinary action taken by the employer is very limited. The courts are primarily concerned with the question whether the enquiry has been held by the competent authority in accordance with the prescribed procedure and whether the rules of natural justice have been followed. The court can also consider whether there was some tangible evidence for proving the charge against the delinquent and such evidence reasonably supports the conclusions recorded by the competent authority. If the court comes to the conclusion that the enquiry was held in consonance with the prescribed procedure and the rules of natural justice and the conclusion recorded by the disciplinary authority is supported by some tangible evidence, then there is no scope for interference with the discretion exercised by the disciplinary authority to impose the particular punishment except when the same is found to be wholly disproportionate to the misconduct found proved or shocks the conscience of the court."

41. The Hon'ble Supreme Court in the case of Apparel Export Promotion Council Vs. A.K. Chopra, (1999) 1 SCC 759, in paragraphs 16 & 17 has held as under:

"16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappraise the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the

power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in *Chief Constable of the North Wales Police v. Evans* [(1982) 3 All ER 141 HL] observed:

"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court."

17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

42. The Hon'ble Supreme Court has held that in exercise of review jurisdiction, normally, there should be no interference with the factual findings in a departmental enquiry unless the Court finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/ or legally untenable.

43. The Hon'ble Supreme Court in the case of *State of A.P. Vs. S. Sree Rama Rao*, (1964) 3 SCR 25, in paragraph 7 has held as under:

"7. There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition I ... under Article 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not

the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

44. In the aforesaid case, the scope of judicial scrutiny has been looked into by the Hon'ble Supreme Court in exercise of writ jurisdiction under Article 226 of the Constitution of India.

45. The Hon'ble Supreme Court in the case of Union of India Vs. P. Gunasekaran, (2015) 2 SCC 610, in paragraphs 12 & 13 has held as under:

"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappraise the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

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

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

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

46. The Hon’ble Supreme Court in the case of State of Karnataka Vs. N. Gangaraj, (2020) 3 SCC 423, has taken into account the earlier judgments delivered on the subject and has reiterated that the scope of interference in departmental enquiry is quite limited. Interference in disciplinary proceedings can be done in case there is violation of principles of natural justice and fairplay or if the findings arrived at are based on no evidence/ perverse findings.

47. In light of the aforesaid judgments and in absence of any procedural irregularity or violation of principles of natural justice and fair play, this Court does not find any reason to interfere with the order passed by the Disciplinary Authority, the Appellate Authority and the Industrial Tribunal.

48. The present case is a case of a Banker and in light of the judgment delivered in the case of United Commercial Bank (Supra), the learned Single Judge was not at all justified in interfering with the quantum of punishment. Therefore, the order passed by the learned Single Judge, to the extent he has interfered with the quantum of punishment, is hereby set aside.

49. With the aforesaid, the LPA 182/2023 titled Punjab National Bank Vs. Smt Sneh Aggarwal stands allowed.

50. LPA 303/2023 titled Smt. Sneh aggarwal Vs. Punjab National Bank stands dismissed.

51. No order as to costs.