

(2023) 06 DEL CK 0041

In the Delhi High Court

Case No : Civil Writ Petition No. 3643 Of 2003

State Bank Of India

APPELLANT

Vs

Presiding Officer & Anr.

RESPONDENT

Date of Decision : 02-06-2023

Acts Referred:

Constitution of India, 1950 — Section 226, 227
Industrial Disputes Act, 1947 — Section 17B
Evidence Act, 1872 — Section 45

Citation : (2023) 06 DEL CK 0041

Hon'ble Judges : Gaurang Kanth, J

Bench : Single Bench

Advocate : Rajiv Kapur, Akshit Kapur, Tushar Bagga, Harsh Narwal, Dinesh Kothari, B.S. Randhawa

Final Decision : Dismissed

Judgement

Gaurang Kanth, J

1. The present Writ Petition emanates from the judgment dated 04.02.2003 ("Impugned Award"), passed by the Presiding Officer, Central Government Industrial Tribunal Cum Labour Court, New Delhi, in I.D. No. 143/97 titled as Shri S.K. Taparia v. The Assistant General Manager. Vide the Impugned Award, the learned Labour Court allowed the petition filed by the Respondent No.2 and held that the punishment of discharge imposed by the, Disciplinary Authority and the Appellate Authority on the Respondent No.2 is illegal and cannot be sustained. The learned Tribunal further held that the Respondent No.2/Workman is entitled to reinstatement in service with the Petitioner/Bank w.e.f. the date of discharge i.e., 02.11.1994 with full backwages along with 9% interest with continuity in service and all other consequential benefits..

FACTS GERMANE TO THE PRESENT WRIT PETITION ARE AS FOLLOWS:

2. Respondent No.2 joined the services of the Petitioner Management at

Sadulsahar (Rajasthan) Branch on permanent basis on August 1974. Thereafter he was transferred to various other places from Sadulsahar branch. In March 1978 he was transferred to Hapur and therefrom in 1989 he was transferred to the main branch of Hapur.

3. Respondent No. 2 was the Unit Secretary of S.B.I Staff Association and in that capacity he had been challenging various corrupt malpractices of the then Branch Manager R.K. Rastogi and exposed corrupt practices of other officials , namely Shri R.N Sharma, the then A.G.M (Assistant General Manager) Region-II zonal Office, Shri K.K. Saxena, the then Deputy General Manager at Local Head Office.

4. The Petitioner Management suspended the Respondent Workman no. 2 with effect from 28.12.1989 in relation to certain charges. After a lapse of 18 months of suspension, the Petitioner served a chargesheet dated 12.09.1991 to the Respondent No. 2, with the following charges:

a) That you have been operating fictitious current accounts in the name of:-

i) M/s. Anubhav Khadi udyog after forging the signatures of Shri Rajandra Kumar Mittal. That firm the above current Account No. 617 encunts have been withdrawn after confirming fictitious credits of Rs. 10,000/-, Rs. 30,000/- and Rs. 8,000/- on 17.7.85, 25.7.85 and 7.8.85 respectively.

ii) Shri Yogesh Kumar Account No. 3/016.

b) That you have been engaging in trade/ business by maintaining different accounts in the name of firms at gandhi Ganj, Hapur Branch after forging the signatures of various individuals who are pertains of various firms.

c) That you were engaging in trade of business with the customers of the bank in that you were holding 70 equity shares of Bindal Agro as on 16.9.89 with Shri. Pankaj Agrawal.

d) That you were negotiating instruments beyond your known sources of income, in that you negotiated a D.U. for Rs. 20,050/-on 6.8.86 which was returned with the objection "refer to drawn".

e) That you received the monthly rent of generator of Gandhi Ganj Hapur Branch by forging the signature of Sh. chatan Prakash sharma.

f) That you took an advance of Rs. 3,500/- on 10.10.85 but did not avail the L.K.C. and the amount was recovered from you on 13.12.85. You again availed of an advance against I.T.C. on 2.11.85 you did not proceed on leave nor you returned the amount of advance. The amount again had to be recovered by debit to S.B. Account on 13.12.1989.

g) That you were having financial transactions with officers of the Bank, in that payment of your cheque NO. 947301 dated 26.6.85 for Rs. 10,000/- was received by Shri D.P.S. Verma , DMGS-II for a consideration known to you only.

h) That you had been having very heavy transactions in your Personal Current

Account in excess of your known sources of income.

5. The Petitioner conducted departmental enquiry and the Inquiry Officer submitted his report holding that charges c, d, f and h, as proved and charges a (i) (ii), b, e, and g, as not proved. The Disciplinary Authority agreed with the inquiry officer qua the charges which are proved and disagreed qua the charges are not proved. In view of the same, the Disciplinary Authority issued a show cause notice to the Respondent No. 2 proposing the punishment of "discharge from service" and finally vide order dated 26.10.1994 confirmed the said punishment. The Appellate Authority, vide order dated 01.04.1995 rejected the Appeal preferred by the Respondent No. 2.

6. Aggrieved by the same, the Respondent No. 2 raised an Industrial dispute and the appropriate Government referred the said dispute to the learned Industrial Tribunal vide Order No. L-12012/210/96-L.R. (B) dated 18.09.1997, with the following terms of reference:

"Whether the action of the management of State Bank of India in discharging the services of Shri S.K Taparia, Ex- Clerk w.e.f 2.11.94 is just and legal? If not, to what relief he is entitled and from what date?"

7. Respondent No. 2 filed its Statement of Claims raising all his Claims. The Petitioner refuted all the allegations raised by the Respondent No. 2 by filing written statement. Respondent No. 2 filed rejoinder reiterating his case set up in the statement of claim.

8. Based on the pleadings of the parties, the learned Labour Court framed the following issues:

"i. whether the domestic enquiry conducted by the management against the workman is fair and proper?

ii. As in terms of reference."

9. Both the parties led their respective evidences to substantiate their cases. Respondent No. 2 stepped into the witness box as WW-1. On behalf of the Petitioner, enquiry officer Sh. Satnam Singh entered into the witness box as MW-1.

10. Learned Labour Court vide the Impugned Award dated 04.02.2003, allowed the petition filed by the Respondent No. 2 and held that punishment of discharge imposed by the Disciplinary Authority and the Appellate Authority on the Respondent No.2 is illegal and cannot be sustained. The learned Labour Court further held that the Respondent No.2 is entitled to reinstatement in service with the Petitioner w.e.f. the date of discharge i.e., 02.11.1994 with full backwages along with 9% interest with continuity in service and all other consequential benefits.

11. Aggrieved by the same, the Petitioner preferred the present Writ Petition challenging the Impugned Award.

12. This Court vide its order dated 26.09.2003 issued notice to Respondent No.2. It is also pertinent to mention here that Respondent No.2, during the pendency of this writ petition expired on 01.06.2018 at his residence in Hapur (U.P). Consequently, the legal heirs of Respondent No.2 were brought on record vide order dated 12.12.2018.

SUBMISSIONS ON BEHALF OF THE PETITIONER

13. Mr. Rajiv Kapur, learned counsel for the Petitioner initiated his arguments by submitting that the Impugned Award passed by the Respondent No.1 is bad, illegal, unjust and malafide.

14. It is the contention of learned counsel for the Petitioner that the learned Labour Court overlooked the prayer in the written statement filed by the Petitioner, wherein the Petitioner has specifically mentioned that in case the enquiry is held to be defective, the Petitioner/Bank be given an opportunity to prove the charges against the Respondent No.2.

15. It is averred by the learned counsel for the Petitioner that the allegation of Bias as alleged by the learned counsel for Respondent No.2 was without any evidence and further no specific allegation was mentioned in the Statement of Claims filed by Respondent No.2 before the learned Labour Court. With regard to the alleged Bias committed by the Petitioner, learned counsel for the Petitioner while relying on the judgment of the Hon"ble Supreme Court in the matter of State Bank of Punjab v. V.K. Khanna & Ors. reported as (2001) 2 SCC 330 submitted that if the Inquiry Officer was biased then he wouldn't hold the charges in favor of Respondent No.2 as not proved.

16. With regard to the issue of Handwriting expert, learned counsel for the Petitioner submitted that the charges levelled against the Respondent No.2 with regard to forgery was proved in the enquiry proceedings and there were convincing reasons, circumstantial evidence in addition to the expert opinion of the Handwriting expert. While relying on the judgment of the Hon"ble Supreme Court in the matter of Lalit Popli v. Canara Bank & Ors. reported in (2003) 3 SCC 583, learned counsel submitted that strict rules of evidence are not required in departmental proceedings.

17. It is the contention of the learned counsel for the Petitioner that the findings of the Inquiry Officer are not binding on the Disciplinary Authority. The findings of the Inquiry Officer are only his opinion on the materials, but such findings are not binding on Disciplinary Authority as the decision making authority is the punishing authority and, therefore, that authority can come to its own conclusion, of course bearing in mind the views expressed by the Inquiry officer. But it is not necessary that the Disciplinary Authority should discuss materials in detail and contest the conclusions of the Inquiry Officer. Otherwise the position of the Disciplinary Authority would get relegated to a subordinate level. With regard to the aforesaid contention, learned counsel for the Petitioner relied on the judgment of the Hon"ble Supreme court in B.C. Chaturvedi v. Union of India &

Ors. reported as (1995) 6 SCC 749.

18. He also relied on the judgment of the U.P. State Transport Corp & Ors. v. A.K Parul reported as (1999) 1 Scale 138 and contended that the imposition of proper punishment is within the discretion of the judgment of the Disciplinary Authority. He further contended that the learned Labour Court failed to appreciate that four charges had been fully proved against Respondent No.2 which as per the Appellate Authority's order dated 01.04.1995 had sufficient reason to impose penalty on the Respondent No.2.

19. Learned counsel for the Petitioner while relying on the judgement of the Hon'ble Supreme Court in the matter of State of A.P. v. S. Sree Rama Rao reported as AIR (1963) SC 1723 submitted that 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.

20. It is the contention of Mr. Kapur that the Disciplinary Authority has very well followed the principles of Natural Justice while assessing the case of Respondent No.2 as per the judgment of the Hon'ble Supreme Court in the matter of Syndicate Bank v. The General Secretary, Syndicate Bank Staff Association reported as (2000) 5 SCC 65. It is his contention that the entire premise of the Impugned Award is based on the erroneous presumption that the Enquiry Officer's report containing its findings were not conveyed to the Respondent No.2 and no opportunity was given to him to persuade the Disciplinary Authority to accept the favorable conclusion of the Inquiry Officer. He submitted that, admittedly the copy of enquiry proceeding, inquiry officer's report as well as the tentative reasons for disagreement with the Enquiry Officer were duly recorded by the Disciplinary Authority on 18.04.1994 and was further forwarded to Respondent No.2 on the same day itself to represent. Further, Respondent No.2 submitted its reply to the tentative reasons dated 18.04.1994 to the Disciplinary Authority. It is also pertinent to note that an opportunity of personal hearing was also accorded to Respondent No.2 on 13.08.1994 before the well-reasoned final decision was taken by the Disciplinary Authority on 25.10.1994. Hence, the finding of the learned Labour Court is erroneous wherein it observed that the Disciplinary Authority while differing with the findings of Enquiry officer, did not record tentative reasons for disagreement and sent the same to the workman to explain before recording his own findings and issuing show cause notice of proposed punishment.

21. The learned counsel while relying on the judgment of the Hon'ble Supreme Court in the matter of U.P. SRTC v. Hoti Lal reported as (2003) 3 SCC 605 and Bank of India v. Degala Suryanarayana reported as (1999) 5 SCC 762 held that the court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a

case of mala fides or perversity i.e. where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding.

22. Lastly, with regard to Backwages, it is the contention of the learned counsel for the Petitioner that the learned Labour Court while awarding backwages and directing reinstatement did not apply its mind to the question of entitlement to backwages and there was no rational basis whatsoever for awarding full backwages with interest. With regard to that he relied on the judgment of the Hon"ble Supreme Court in the matter of Haryana Urban Development Authority v. Devi Dayal reported as (2002) 3 SCC 473.

23. Further, he submitted that as per the Petitioner/Bank Rules, Respondent No.2 in case of discharge was entitled to all the retirement benefits, which was duly accepted by the Respondent No.2 without reserving any right to challenge. Respondent No.2 has accordingly been paid viz;

a. During suspension- Rs. 3,41,385/-

b. Paid u/s 17 B- Rs. 5.39 Lacs.

c. Provident fund- Rs.94,330/-.

d. Gratuity - forfeited as there was loss to the Bank.

e. Pension - not eligible as per rules i.e. not completed 20 years pensionable service i.e. 14 years and 10 months.

24. The Petitioner concluded its submissions by submitting that Respondent No.2 has already received subsistence allowance of Rs.8,79,859/- without doing any work. However, in alternative the Petitioner submitted that the Respondent No.2 can be awarded compensation instead of reinstatement.

SUBMISSIONS OF RESPONDENT NO.2

25. Per Contra, Mr. Dinesh Kothari, learned counsel for Respondent No.2 while relying on the Impugned Award vehemently argued that the present petition is bereft of any merits and should be dismissed in toto. 26. The first contention raised by the learned counsel for Respondent No.2 was that as per catena of judgments of the Hon"ble Apex Court, this Hon"ble Court in judicial review under Articles 226 and 227 of the Constitution of India should not interfere with the Impugned Award. He further submitted that this Hon"ble Court can only interfere with the Award, if it is satisfied that Impugned Award is vitiated by any fundamental flaw. For the above contention, he relied on the judgment of the Hon"ble Supreme Court in KVS Ram v. Bangalore Metropolitan Transport Corporation reported as (2015) 12 SCC 39 and submitted that the present writ petition is not maintainable under the writ of Certiorari. He further submitted that, it will only be maintainable if the learned Labour Court has exceeded its jurisdiction or any illegality has been committed or it has exercised jurisdiction not vested with or if there is error apparent on the face of it.

27. The main premise on which Respondent No.2's case is based was that he was the Unit Secretary of S.B.I Staff Association and in that capacity he had been challenging the various corrupt malpractices of the then Branch Manager R.K. Rastogi and other officials as well. Hence, the officers together hatched conspiracy to remove him from his services. He further averred that after the Inquiry Officer submitted its findings to the Disciplinary Authority and acquitted the Workman of all the major charges, the Disciplinary Authority much before issuing the show cause notice to Respondent No.2, recommended to the Chief Vigilance Officer ("CVO") for his approval that one increment of the Workman be reduced for two years but later told the representative of the Workman that the CVO did not agree to his proposal and directed him to remove the Workman from his service. However, when the workman's representative met the CVO and talked to him in this respect, he informed that the Disciplinary Authority had recommended for reduction of one increment for two years and that they have not suggested him for any higher punishment. Further, when the Workman's representative again met the Disciplinary Authority, he told that he cannot divulge any information in detail as there was a lot of pressure from the CVO on him to remove Respondent No.2 from his services.

28. In light of the afore-mentioned premise, learned counsel for Respondent no.2 submitted that the Disciplinary Authority discharged the findings of his own appointed officer who exonerated the Workman of all the major charges. Hence, the Disciplinary Authority did not apply his mind judiciously and followed the dictates of his superiors for malafide considerations.

29. Further, it was also submitted by the learned counsel that as the top management was biased towards the workman, therefore the biasness flowed to all channels of administration including the Enquiry Officer and the Disciplinary Authority. Hence, all of them acted arbitrarily against all ethics and cannons of natural justice.

30. Further, Mr. Kothari with regard to the Expert Opinion given by the Handwriting expert, Shri Ashok Kashyap, contended that the Disciplinary Authority blindly accepted the bogus reports of Shri Kashyap for malafide considerations despite the Enquiry Officer questioning the credibility and reliability of the handwriting expert. Further, the Handwriting expert of the Petitioner/Bank repeatedly confirmed that the writing of A-38 is that of the Workman, However, Shri B.K. Jain, officer MMGS-II, during the course of the enquiry proceedings on 29.06.1993, specifically admitted his writings on A-38, but the biased Disciplinary Authority for malafide reasons accepted the concocted purchased report of the Handwriting expert and punished the Workman. Furthermore, it was proved beyond doubt in the Enquiry proceedings that the Handwriting expert compared all the documents with the so called admitted handwritings of Shri S.K.Taparia/Workman which was not his handwriting. The Branch Manager erroneously sent four office orders to the Handwriting expert which were in the hand writing of Shri Gopal Krishnan Atrey, Head clerk at the

branch presuming it to be in the handwriting of Shri S.K.Taparia/Respondent No.2. The Handwriting expert compared the disputed documents with the handwriting of somebody else than that of Shri Taparia and the Disciplinary Authority for malafide reasons still accepted his report. Hence, while relying on the Impugned Award, learned counsel for Respondent No.2 submitted that it has been held in catena of judgments that expert opinion is a weak evidence, and it should be further corroborated. In the present case when the Inquiry Officer has also questioned its credibility, the Disciplinary Authority should have considered this crucial fact while discharging Respondent No.2 from its services.

31. The next contention raised by the learned counsel for Respondent No.2 is that despite the Inquiry Officer exonerating Respondent No.2 of all the major charges, the Disciplinary Authority for malafide reasons differed with the Enquiry Officer without writing any detailed findings for the same and without according Respondent No.2 any opportunity and discharged the Workman from his services. It is also the contention of the learned counsel for Respondent No.2 that the Disciplinary Authority did not pass speaking orders on various points and issues raised by the Workman in his letter dated 29.06.1994. Further, even though the Disciplinary Authority disagreed with the findings of the Inquiry Officer in respect of the charges (a-i) (a-ii), (b), (e) (g), it should have given its own findings on the basis of the available record for the Respondent No.2 to reply to it in detail. Hence, the Disciplinary Authority acted in complete violation of the principles of Natural Justice and this has also resulted in miscarriage of justice. It is also pertinent to note that the Inquiry Officer categorically observed in its report that the evidence produced by the defence i.e., Respondent No.2 outweighs that of the Petitioner's side.

32. Lastly, learned counsel for Respondent No.2 submitted that Respondent No.2/ Workman had put in more than 20 years of service with a good service track record, he was very active in the union being office bearer/secretary and exposed various malpractices and malafide of the Petitioner/Bank due to which the management was annoyed. Hence, the present petition preferred by the Petitioner is without any merits and should be dismissed.

LEGAL ANALYSIS

33. This Court had heard the rival contentions of both the parties and perused the documents placed on record and judgments relied upon by the parties.

34. To examine whether the Petitioner resorted to "bias" against Respondent No. 2, it is necessary to see whether the Inquiry officer and the Disciplinary Authority acted arbitrarily to impose the punishment of discharge from service on Respondent No. 2.

35. From the perusal of the record, it reveals that the Inquiry Officer held that charges a(i) & (ii), b, e, g, as not proved. The findings of the Enquiry Officer on these charges are based on evidence excluding the evidence of the handwriting expert. The Inquiry Officer even went to the extent and observed that the

opinion of the Handwriting Expert considerably lacks reliability and credibility on account of certain blunders committed by him during examination. Further, it was also observed that the Handwriting Expert, Mr. Kashyap has done his job hopelessly and his report lacks professional integrity. Pertinently, the Enquiry Officer also observed that the opinion of the Handwriting Expert should only be treated as a secondary evidence and reliance can only be placed if it is corroborated by some concrete evidence which is not there in this case.

36. After examining the documents on records, this Court is of the opinion that Respondent No. 2 has proved beyond reasonable doubt that some of the admitted/standard writing which were claimed by the Handwriting Expert to be in the writing of Respondent No. 2 were not in the hands of Respondent No.2. Following are some of the instances wherein the handwriting expert, Mr. Kashyap has claimed the documents to be in the handwriting of the Respondent/Workman, but in reality, it was of someone else:

(a) The Petitioner brought on record office orders dated 28.10.1988, 29.10.1988, 14.09.1988 and 15.09.1988, all of the above orders were deemed as admitted writings of Respondent No.2 by Mr.Kashyap/handwriting expert. However, after perusing the examination-in-chief and cross-examination of Shri Gopal Krishnan Atriya, who has been working as head clerk with the Petitioner since 01.09.1987, he admitted that all the four office orders are in his handwriting except the lower portion of the office order dated 29.10.1988, which consists of two parts.

(b) Further, the voucher marked as A-38 which is a credit voucher relating to the Account No. 6/2200 dated 01.03.1989 for Rs. 9500/-The handwriting expert treated the voucher as a standard/admitted writing of Respondent No.2. However, the examination-in-chief of Shri B.K. Jain, Officer, MMGS—II, who has admitted to preparing the voucher.

(c) Pertinently, the Respondent No.2 produced 15 witnesses, who have appeared in the enquiry proceedings and owned up almost all the accounts/transaction alleged to have been opened/prepared by the Respondent/Workman .

37. It is also pertinent to note here that despite the Inquiry Officer passing very serious strictures against the handwriting expert, the Disciplinary Authority differed with him and stated as under:

"I have perused the proceedings as well as cross examination of PW-4 Handwriting Expert and do not find him lacking confidence faltering or drifting from his written opinion anywhere and therefore, I do not agree with the view of Enquiry Officer that the report of Sh. Ashok Kashyap is unreliable and contain several distortions and have lost total creditability."

38. The main piece of evidence relied by the Disciplinary Authority was the opinion of the Handwriting Expert which is not a sterling piece of evidence as it is evident from the documents on record. It is true that rules of evidence do not apply to disciplinary proceedings but if prudence requires under Section 45 of the

Evidence Act that expert opinion should be corroborated: then it is more so in disciplinary proceedings. The charge of forgery in the records is serious charge. The Disciplinary Authority should have taken every care to establish it by relevant material. When the evidence of the Handwriting Expert was shaky, the Disciplinary Authority shouldn't have gone ahead with a weak piece of evidence. There can be no doubt about the proposition that the evidence of an Expert is a weak type of evidence, in the sense that, in itself, it is not clinching. Further, in absence of its corroboration, it could not be relied to hold that the charges on the basis of the shaky evidence of the Handwriting Expert was proved.

39. It is true that strict rules of evidence are not applicable to departmental proceedings. Howbeit, the only requirement of law is that the allegations against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at the finding upholding the gravity of the charge against the delinquent employee. Further, it is settled principle of law that mere conjectures and surmises cannot sustain the finding of guilt in departmental enquiry proceedings as well.

40. With regard to charge "g", it has been held by the Inquiry Officer that no evidence has been led to prove the financial nature of the transactions between Respondent No.2 and Shri D.P.S Verma. However, the Disciplinary Authority on the contrary without proving the financial nature of the transaction between the parties held as follows:

"As regards charge (g) the defence has neither denied nor has been in a position to establish that the payment of Rs.10,000/-was received without consideration. Sh.D.P.S. Verma (presently under suspension) posted at the branch during the material time remained in need of funds and resorted to unfair means to fulfil his requirements. The facts that most of the forged instruments have been passed for payment by Sh.Verma leads to the conclusion that Sh. Taparia was using him as a pawn or puppet and he was an active accomplice of Sh. Taparia. The disciplinary proceedings against Sh.D.P.S. Verma and other officers who were in collusion with Sh.Taparia has already been started by the Bank."

It is seen that no forged/fictitious instruments have been passed relating to Respondent No.2 which has also been held by the Enquiry Officer as well based on the evidence on record. Hence, This Court is in full agreement with the findings of the learned Labour Court with regard to the charges a (i) & (ii), b, e, g.

41. With regard to the issue of principles of Natural Justice, learned Labour Court held that "...it was obligatory on his part to record tentative reasons for disagreement and send the same to the workman to explain before him, before recording his own findings and issuing show cause notice of punishment. But it was not done in clear violation of principles of natural justice..."

42. At this juncture, it is relevant to mention that a close reading of the tentative findings of the Disciplinary Authority suggests that even though the Disciplinary

Authority recorded its conclusions in respect of the charges which the Inquiry Officer held as not proved, however, the Disciplinary Authority has not recorded proper reasoning based on the evidence on record to justify its conclusions. Further, the Disciplinary Authority neither appears to have properly appreciated the evidence nor recorded reasons in support of his conclusion. To add insult to injury, the Appellate Authority instead of recording its own reasons and independently appreciating the material on record, simply reproduced the findings of the Disciplinary Authority.

43. The Inquiry Officer as well as the Disciplinary Authority held charges c, d, f and h, as proved. With regard to charge "c", the views of the Inquiry Officer have also been concurred by the Disciplinary Authority. The Inquiry Officer has relied on the evidence of PW1 and Shri Pankaj Agarwal/DW4. The Inquiry Officer himself while disbelieving the statement of DW4 presumed and observed that he is not a "good omen" but a simple businessman and seldom do not act without any interest or consideration. Shri Pankaj Kumar himself has stated that he has nothing to do with the shares and further has also stated that he did sign the allotment application without any contribution or interest. It is also interesting to note that the charge is with respect to the Respondent/Workman being engaged in trade/business with various "customers" of the Petitioner Management. However, when the question was put to PW1/RK Rastogi, if he is aware about any of the bank customers with whom Respondent No.2 was engaged in trade/business. His answer to this was in negative. The evidence on which the Enquiry Officer and the Disciplinary Authority relied cannot by any stretch of imagination say that Respondent No.2 was engaged in trade/business with other "customers" of the bank. Even otherwise, it has been held in catena of judgments that merely holding of investment would not by itself lead to the inference that the person holding the business carries on business. Therefore, apart from showing investment, it is essential to establish that the transactions have been named out in relation to the investment in the normal course of business and in case of shares held as investments it is essential to prove that the holder of the shares has been carrying on business in respect of those shares as otherwise the profit or loss on sale of the shares cannot be claimed as falling under the category of "business" nor can expenses, computing the income.

44. With regard to charges d, f, and h, the learned Labour Court held as follows:

"Similarly while recording his findings on charge 'D' Inquiry Officer did not consider the explanation of the workman that "in fact that cheque was given to him by M/s. varun Trading Co. Hapur in lieu of the sale proceeds of some shares sold by him". Again while recording his findings on charge No. 'F', inquiry Officer did not consider the contradictory statement of PW2 Shri S.K.Gupta that "the witness has however, added that as per his memory E.P.A has submitted a bill for going to Gaziabad or Delhi." Further on charge 'H' the inquiry Officer mentioned that PW1 Shri R.K.Rastogi has deposed that " I do not know the source of S.K. Taparia's income. However, it is not proportionate to his salary income". Even

then the inquiry officer presumed and held that "I, therefore, treat the charge as proved." Thus I find that the evidence on the record was not sufficient to prove even charges C,D,P and H which were found proved by the inquiry officer."

45. Learned Labour Court analysed the evidence adduced by the parties meticulously and came to the conclusion that "the inquiry proceedings conducted against the workman were neither fair nor proper and just, it was in clear violation of law and principles of natural justice. The punishment order therefore alongwith the appellate order suffers from various illegalities and cannot be legally sustained and it is liable to be quashed, issue no.1 is, therefore, decided in negative". The learned Labour Court further recorded that there was no request from the Petitioner for adducing any additional evidence to prove the misconduct before the learned Labour Court. In view of the same, the learned Labour Court proceeded to answer the reference and opined that the workman is entitled to be reinstated in the bank service w.e.f. the date of discharge i.e. 02.11.1994 with full back wages along with 9% interest thereon, with continuity of service and all other consequential benefits.

46. At this stage, it is expedient to refer to the celebrated judgment of the Hon'ble Supreme Court in the matter of Syed Yakoob v. K.S. Radhakrishnan, reported as AIR 1964 SC 477 wherein it was categorically held that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. The relevant portion of the said judgment is reproduced hereinbelow:

"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can

be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmad Ishaque* [(1955) 1 SCR 1104] *Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam* [(1958) SCR 1240] and *Kaushalya Devi v. Bachittar Singh* [AIR 1960 SC 1168])

47. In light of the above observations of the Hon'ble Apex Court, it is quintessential to state here that once learned Tribunal/Labour Court has exercised the discretion judicially, this Court can interfere with the award passed by the learned Labour Court, only if it is satisfied that the award of the learned Tribunal/Labour Court is vitiated by any fundamental flaws.

48. This Court is in full agreement with the findings of the learned Labour Court with regard to charges d, f and h. Even though Respondent No.2 has not brought on record any specific evidence to prove the biasness of the Officials of the Petitioner towards Respondent No.2. However, the conduct of the Petitioner towards Respondent No.2 with respect to dealing with the above charges levied on Respondent No.2 has spoken volumes.

49. Further, the learned Labour Court has also pointed out a very crucial point which is reiterated hereunder:

"Besides, the Disciplinary Authority has passed the order of discharge under sub para (5)(e) sub para (10) (e) of para 521 of the Shastri Award which shows that the misconduct was condoned and the workman was merely discharged" without notice. But at the same time he did not record any reason as to why it was not found expedient to retain the workman any longer in service, as required in the said para of the Shastri Award. It also go to show that there was no evidence to prove the charges against the workman and the disciplinary authority arbitrarily held him guilty of the charge and punished and discharged him, illegally. I also find that the disciplinary authority also did not consider previous records/conduct of the workman and any other aggravating and extenuating circumstance which might exist before passing the punishment order. Hence it was in clear violation of the mandatory provisions of para 19.12(C) of the 1st Bipartite Settlement which is similar to that of the provisions of para 521(10)(C) of the Shastri Award

and provides "In awarding punishment by way of disciplinary action the authority concerned shall take into account gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances that may exist."

50. The legal position is fairly well settled that the exercise of discretion in imposition of punishment by the Disciplinary Authority or Appellate Authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. The Disciplinary Authority clearly did not take into consideration any of the factors before discharging Respondent No.2 of its services. Hence, the punishment imposed by the Disciplinary Authority of discharging the Respondent No.2 from its services was illegal and bad in law.

51. In view of the discussions herein above, this Court is not inclined to interfere with the impugned Award. It is noted that Respondent No.2 expired on 01.06.2018 and his legal representatives were impleaded vide order dated 12.12.2018. In view of the same, the financial benefits of Respondent No.2 are to be calculated as if he was in continuous service of the Petitioner from 02.11.1994 till his date of death/date of superannuation whichever is earlier. The Petitioner is entitled to adjust the payment made to Respondent No.2 under Section 17-B of the I.D. Act, 1947 while calculating his financial benefits.

52. With these observations, the present writ petition is dismissed. No orders as to cost.