IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2065 OF 2011

ZONAL MANAGER AND DISCIPLINARY AUTHORITY BANK OF INDIA **Appellant(s)**

VERSUS

SANTOSH KUMAR SAHOO & ORS. **Respondent(s)**

O R D E R

1. The challenge in the present appeal is to an order passed by the High Court of Orissa on 19.02.2010, whereby the order of compulsory retirement dated 28.09.2001, affirmed by the appellate authority on 16.02.2002, was set aside. The respondent-delinquent was thus, found entitled to all the service benefits consequent to quashing of the punishment of compulsory retirement.

2. The delinquent was working as a Cash-cum-Accounts Clerk with the Appellant Bank. He was served with a chargesheet on 13.09.2000 in respect of the following two charges: -

> "I) On 12.11.1999, you had received as excess cash of Rs. 25,000/-. However, you had accounted for the (illegible) excess cash and not reported the same to your superiors on the same date. You had unauthorisedly credited the said amount to the account of M/s Singh Kero Distributors on 13.11.1999 and thus misappropriated the said amount.
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> II) On 29.12.1999 you had received an amount of Rs. 30,000/- from the receiving Cashier of the branch and made the necessary entries of receipt of the said amount in the records kept by yourself as well as the Receiving Cashier. You had subsequently altered the said amount from Rs. 30,000/- to Rs.

20,000/- and thereby misappropriated the amount of Rs. 10,000/-"

3. An Inquiry Officer was appointed to conduct inquiry into the charges which were conveyed to the delinquent. The delinquent was also provided with the help of a Staff Clerk– Special Assistant to defend himself. A perusal of the report of the Inquiry Officer shows that the Management has produced six witnesses on 11th, 15th and 16th December, 2000, but the delinquent boycotted the hearing on 15th and 16th December, 2000. The five Management witnesses were produced during those two days. Thereafter, on an application filed by the delinquent, the inquiry officer asked the appellant to produce these witnesses for the purpose of cross-examination. Two witnesses, MW3 D. Mohanta and MW5 H.K. Sahoo appeared and were cross-examined by the delinquent. MW2 S.C. Singh - Complainant and MW6 Julius Singh did not appear for the cross-examination. MW1 B.L. Sharma was not available for cross-examination. However, the delinquent produced defence witnesses.

4. After considering the evidence led by the parties, the Inquiry Officer returned a finding that both the charges stood proven in his report dated 21.04.2001. A Show Cause Notice was thus issued by the appellant, along with a copy of inquiry report on 19.06.2001. The delinquent submitted his reply on 28.06.2001 and on 04.07.2001. After considering the reply submitted by the delinquent, an order of compulsory retirement was passed by the disciplinary authority in terms of Clause 21(iv)(b) of the Bipartite Settlement dated 14.02.1995. An

appeal against the said order was dismissed by the appellate authority on 16.2.2002.

5. In a writ petition preferred under Article 226 of the Constitution of India, the High Court held that Charge No. 1 is not proved. The High Court appreciated the evidence of MW 6 in respect of deposit of the amount of Rs. 25000/- tendered by the witness and held as under:

> "8. From the statement of M.W.-6 which has been extracted by us and finds place in the enquiry report, it would appear that M.W.-6 himself had stated in the deposit slip about 500 pieces of 50 rupee note and there is no material on record to show that M.W.-6 had tendered an excess amount of Rs.25,000/- and what was transpired between the petitioner and M.W.-6 is not available on record. This evidence of M.W.-6 completely belies the allegations contained in charge no.1. There is also no material on record to show that on the next day, it is the petitioner who personally deposited Rs.25,000/- with the Bank which was stated to be the excess amount tendered by M.W.-6. In such circumstances, the irresistible conclusion is that the allegation made in charge no.1 is absolutely untenable. Moreover, the Enquiry Officer has not recorded any finding with regard to each of the charges although from the enquiry report it appears that the Enquiry Officer has made assessment of evidence separately for charge nos. 1 & 2. The Enquiry Officer having made assessment of the evidence as indicated above separately came to the abrupt conclusion that charge nos. 1 & 2 were proved. Such method adopted by the Enquiry Officer is absolutely perverse and contrary to law. The Enquiry Officer was required to record reasons in support of his finding, but a close look at the enquiry report would show that no reason, howsoever brief it may be, has been recorded by the Enquiry Officer in support of the findings. Therefore, we are of the considered view that charge no.1 is unsustainable and the findings recorded there under are untenable and consequently the findings so far charge no.1 are concerned are set aside."

6. A perusal of the conduct of the proceedings before the Inquiry Officer shows that the delinquent was playing 'hide and seek' with the Inquiry Officer. He voluntarily boycotted the proceedings, but later on

asked the witnesses to be recalled for cross-examination. Two witnesses have been produced for the purpose of cross-examination but MW2, the complainant and MW6, the father of the complainant, did not appear again. Another witness was not available for the purpose of cross-examination.

7. The evidence has been led by the management in respect of misconduct before the Inquiry Officer. Such evidence is based on the official record. The inference drawn by the Inquiry Officer of the misconduct was the possible finding. It may be noticed that in terms of Section 1 of the Evidence Act, 1872, the rules of evidence are not applicable in the Departmental proceedings. Reference may be made to the judgment of this Court in ***State of Haryana & Anr.*** *v.* ***Rattan Singh***[1], wherein it was held that all materials which are logically probative for a prudent mind are permissible in the departmental proceedings. The hearsay evidence can also be produced, provided it has reasonable nexus and credibility. It was held as under:

> "4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. *The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even*

1 (1977) 2 SCC 491

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

8. Recently, another three judge Bench in a judgment reported as ***Deputy General Manager (Appellate Authority) and Ors***. *v.* ***Ajai Kumar Srivastava***[2] held that the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact, and that in banking business, absolute devotion, integrity and honesty is a *sine qua non* for every bank employee. It requires the employee to maintain good conduct and discipline as he deals with money of the depositors and the customers, and if the same is not observed, the confidence of the public/depositors would be impaired. This Court held as under:

> "24. It is thus settled that the power of judicial review, of the constitutional courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The court/tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules

2 (2021) 2 SCC 612

> of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority are perverse or suffer from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.
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> 27. It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.
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> 28. The constitutional court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of 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 those findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained."
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> 42. Before we conclude, we need to emphasise that in banking business absolute devotion, integrity and honesty is a sine qua non for every bank employee. It requires the employee to maintain good conduct and discipline and he deals with money of the depositors and the customers and if it is not observed, the confidence of the public/depositors would be impaired. ....."

9. The High Court has examined the evidence led before the Inquiry Officer as an appellate authority. In exercise of the powers of judicial review, the High Court does not act as a Court of Appeal. The High Court

had to examine whether the decision-making process is in conformity with the rules of natural justice. This Court in ***B.C. Chaturvedi*** v. ***Union of India***[3], held that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the Court. It was held as under:

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

10. A perusal of the findings recorded shows that the High Court has done exactly which has been prohibited in law. The High Court assumed

3 (1995) 6 SCC 749

the jurisdiction of an appellate authority to re-appreciate the evidence led by the management. We find that the findings recorded by the Inquiry Officer are not based on “no evidence”. The witnesses have been examined by the management, and on the basis of such evidence led, finding of proof of charges was returned. The inference can be drawn on the basis of the conduct of the proceedings before the Inquiry Officer. The rules of natural justice have been complied with. The delinquent chose to abstain from proceedings but then moved an application for recall of the witnesses. The Inquiry Officer then permitted the appellant to produce the witnesses for the purpose of cross examination. But if the complainant and his father do not appear, it cannot be said that the appellants had failed to prove misconduct. A copy of the Inquiry Report was supplied to the delinquent whereafter he submitted his reply, which was considered while ordering punishment of compulsory retirement.

11. Thus, we find that the order of the High Court is not in accordance with the principles of law laid down by this Court. In view of the said fact, the appeal is allowed. The order passed by the High Court is set aside and the writ petition is dismissed.

.....J.
[HEMANT GUPTA]

.....J.
[VIKRAM NATH]

New Delhi;
AUGUST 10, 2022.

ITEM NO.103 COURT NO.8 SECTION XI-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 2065/2011

ZONAL MANAGER AND DISCIPLINARY AUTHORITY
BANK OF INDIA **Appellant(s)**

VERSUS

SANTOSH KUMAR SAHOO & ORS. **Respondent(s)**

Date : 10-08-2022 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE VIKRAM NATH

For Appellant(s) Ms. Ruchika Joshi, Adv.
Ms. Aditi Gupta, Adv.
Mrs. Bina Gupta, AOR

For Respondent(s) Mr. Anurag Pandey, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

Pending interlocutory application(s), if any, is/are disposed of.

(JAYANT KUMAR ARORA) **(RENU BALA GAMBHIR)**
ASST. REGISTRAR-CUM-PS **COURT MASTER**

(Signed order is placed on the file)