



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 25 November 2024**
Judgment pronounced on : 03 December 2024

+ LPA 901/2013

MAHESH CHANDER KALRAAppellant
Through: Mr. Rajeev Sharma, Sr. Adv.
with Mr. Nishant Kandpal,
Adv.

versus

BANK OF INDIA & ORSRespondents
Through: Mr. Krishan Kumar, Ms.
Seemant K Garg & Mr. Nitin
Pal, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. This Letters Patent Appeal is directed against the judgment rendered by the learned Single Judge dated 22 April 2013 in terms of which the writ petition preferred by the appellant came to be dismissed.
2. The brief facts leading to the filing of this appeal are that the appellant was charge-sheeted while posted as the Deputy Manager (Administration), Paharganj Branch of the Bank of India, on the allegation that he created a credit note purported to be that of Nariman Point Branch and based on that certain amounts were credited to the joint account maintained by him with his wife and son. An investigation was initiated by



the Bank on 25 May 1993 and on 27 May 1993 the appellant was suspended and a charge sheet was issued to him. The charges against the appellant dated 02 July 1993 were of taking fraudulent credits totalling to Rs. 22,571.83/- on the basis of a false credit note. The amount of Rs. 22,571.83/- comprised of three amounts of Rs. 6117.91/-, Rs. 6700/- and Rs. 9753.92/- were credited in the savings bank account maintained by the appellant, his son and his wife as also one Sh. Manish whose account was introduced by the appellant.

3. The Inquiry Officer thereafter gave his report dated 27 April 1994 giving a finding of guilt against the appellant with respect to all the charges. The Disciplinary Authority after hearing the appellant passed the penalty order dated 30 August 1994 dismissing the appellant from services. The order of Disciplinary Authority was upheld by the Appellate Authority *vide* order dated 4 October 1995.

4. The Appellant submits that in the exercise of powers under Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, the Board of Directors of Bank of India had made Regulations governing the conduct of its employees, namely the Bank of India Officer Employees' (Discipline & Appeal) Regulations 1976. The said Regulations specified that the Competent Authority acts as Disciplinary, Appellate and Reviewing Authority for officers who are the Zonal Manager of the concerned zone, Deputy General Manager and General Manager respectively. It is stated that the appellant was a Scale II Officer, and was therefore, working under the control of the Zonal Office. Therefore, the appellant's Disciplinary Authority was the Zonal Manager of the concerned zone. However, the order of



suspension in the appellant's case was issued by a person who was a Deputy General Manager (DGM). Similarly, the charge sheet was also issued by the person who was holding a substantive post of DGM.

5. Aggrieved by the dismissal, the appellant filed a writ petition on 20 March 1996. In the proceedings before the Learned Single Judge of this Court it was submitted by the appellant that the Inquiring Authority had itself recorded that no evidence against the appellant had been produced regarding the creation of credit note and yet a finding of guilt had been recorded against him. The appellant contends that the inquiry officer failed to comply with the mandatory provisions of the Regulation 6 (17) and failed to examine the appellant on the circumstances appearing against him thereby violating principles of natural justice. The relevant regulation is reproduced herein:

“6(17) The Inquiring Authority may, after the officer employee closes his evidence, and shall, if the officer employee has not got himself examined, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the officer employee to explain any circumstances appearing in the evidence against him.”

6. Additionally, the appellant relied on the case of **Ministry of Finance v. S.V. Ramesh**¹, whereby the Supreme Court held that the provisions of the Rule 14 (18) of the CCS (CCA) Rules (which require the Inquiry Officer to question the charge sheeted officer on the circumstances appearing against him if the charge sheeted employee has not examined himself) are mandatory and failure to comply with the same would vitiate the inquiry. The identical provision which is Regulation 6 (17) is incorporated in the Bank of India Officer

¹ 1998 (3) SCC 227



Employees (Discipline & Appeal) Regulations), 1976 whereunder an inquiry was purported to be held against the appellant.

7. Further, the appellant contends that even though there was no evidence whatsoever whether oral or written, linking the appellant to the creation and destruction of the alleged credit note, the Inquiry Officer, the Disciplinary Authority and the Appellate Authority Disciplinary Authority have all proceeded on the assumption that the credit note was created by the appellant and was destroyed by him. In fact, the Inquiry Officer even after recording the finding that no evidence was produced to show that the appellant had created the credit note, has held that the credit note was created and destroyed by the appellant.

8. The writ petition was dismissed by the Learned Single Judge *vide* order dated 22 April, 2013, thereby holding that there were no grounds to interfere with the orders passed by the Disciplinary Authority and Appellate Authority. The gist of the observations made by the learned Single Judge in different paragraphs of the judgment are summarized as under:

“5...while hearing a petition under Article 226 of the Constitution of India, this Court does not sit as an appellate Court against the orders of the Disciplinary Authority and the Appellate Authority. This Court is not entitled to re-apprise the evidence led in the enquiry proceedings and which falls in the realm of functions of the Enquiry Officer.

6... I may note that even if the credit note was not available, yet the Enquiry Officer has considered various other documents including the statements of various savings bank accounts and other documents which were relied upon when the Article of Charges were served upon the petitioner. The argument of the petitioner of enquiry being vitiated on account of non-availability of the original credit note is therefore accordingly rejected.



8... Since in the present case the Appellate Authority admittedly was of the rank of the General Manager i.e. higher to the rank of the DGM who was the Disciplinary Authority, though there may be overlooking of the regulations by the respondent no.1, however, I do not find that results in prejudice to the petitioner or violation of service law jurisprudence or violation of principles of natural justice.

9... Therefore, considering the fact that neither requisite pleadings have been made in the writ petition and also the fact that petitioner has taken inspection of the original documents as recorded on 13.10.1993, I reject the argument that petitioner has been prejudiced and principles of natural justice have been violated.

11... I therefore reject the argument as it is not the law that copies of the preliminary enquiry report as also the statements of the witnesses in the preliminary enquiry report have to be given to the charged official when the same are not relied upon, in the actual disciplinary proceedings.

12...I do not think that the Enquiry Officer has, in any manner, committed an illegality or perversity in not allowing the petitioner any further opportunity to call Mr. Wadhwa.

15... In the present case, I do not find any complicated legal issues, and admittedly it is not as if the presenting officer on behalf of the department was a lawyer. Therefore, in my opinion, petitioner cannot urge that the principles of natural justice were, violated by not allowing him to be represented through lawyer.

16... In the present case it is not disputed that the petitioner not only addressed the Enquiry Officer, but also filed detailed written submissions dated 26.2.1994. In my opinion, therefore in substance Regulation 6(17) shall stand complied with, and since the petitioner has been completely heard in this case, I do not think that there is any violation of Regulation 6(17).”

ANALYSIS & DECISION:

9. Upon hearing the learned counsels for the parties and on perusal of the record, we have no hesitation in holding that the present appeal is devoid of any merits.

10. First things first, it is well ordained in law that a writ Court is not to act as an appellate Court and it can neither re-assess the evidence led in a domestic inquiry nor it can interfere on the ground



that another view was possible on the basis of material on the record. The whole position of law was recently summarized in the decision of the Supreme Court on examining a plethora of case law in the case of **State of Rajasthan v. Bhupinder Singh**², and it has been reiterated that writ Court should not interfere with the administrative decisions unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards. In essence, the power of judicial review is focused on the decision-making process, not the decision itself. The Court cannot re-evaluate the evidence presented before the Inquiry Officer or reassess the findings as if it were a court of appeal, and then draw its own conclusions.

11. In light of the aforementioned legal proposition, reverting to the instant matter, we observe that the appellant failed to demonstrate before the learned Single Judge that certain documents, including those accompanying the charge-sheet, were not furnished to him. Furthermore, the appellant was unable to show that the statements of witnesses, whose evidence was recorded during the disciplinary proceedings, were not provided to him. It is evident from the Inquiry Officer's records that the appellant was given ample opportunity to present his evidence. However, he failed to produce a key witness, Mr. Wadhwa, and deliberately chose not to testify himself. Moreover, the appellant had no inherent right to legal representation, as there was no specific statute or standing order granting such a right. Additionally, the appellant does not claim that the Presenting Officer was a lawyer

² 2024 SCC OnLine SC 1908



or that he was represented by one.

12. Having failed to demonstrate a violation of the principles of natural justice in the inquiry against him, the appellant attempted to argue that the foundation of the case was compromised due to the absence of the credit notes evidencing the entries. These notes would have provided evidence regarding the credit entries made in the bank accounts of the appellant, his wife, son, and Mr. Manish, a fourth person whose account was introduced by the appellant. The learned Single Judge rightly held that such a plea cannot be entertained by the writ Court, as the Inquiry Officer carefully evaluated the entire oral evidence alongside the documentary evidence on the charges leveled against the appellant, relying on the preponderance of probabilities. These findings cannot be said to defy logic, common sense, or be unconscionable in any manner.

13. Regarding the non-examination of the appellant by the Inquiring Officer under Regulation 6(17), in the face of the fact that verbal submissions were made by the appellant besides filing written submissions, he has been unable to demonstrate from the record of the Inquiry Officer that any prejudice was caused to him. There is no iota of whisper that the charge-sheeted officer was not fully aware of the allegations against him and had not dealt with all the aspects in his defence statement.

14. In taking the aforesaid view, reference can be invited to decision by the Supreme Court in the case of **Sunil Kumar Banerjee**



v. State of West Bengal³, wherein a similar grievance was made with reference to an identically worded Rule. The Supreme Court observed that the provision was akin to Section 313 of the Code of Criminal Procedure. Taking clue from the ratio applicable to Section 313 of the Code, it was held that failure to comply with the requirement of examination of the charge-sheeted officer would not vitiate the inquiry unless the said officer is able to establish prejudice. Eventually, in the factual matrix of the said case, it was held that no prejudice had been caused by the failure to observe the requirements of the rule in question and the plea was rejected.

15. In view of the foregoing discussion, the present appeal is dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

DECEMBER 03, 2024

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³ (1980) 3 SCC 304