

\$~

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

Reserved on: 2nd February, 2022

Date of Decision: 8th February, 2022

+ **W.P.(C) 10416/2020 & CM APPLs. 32993/2020, 13374/2021**

THE CHIEF MANAGER PUNJAB AND SIND BANK Petitioner

Through: Mr. Rajesh Kumar Gautam, Mr.
Anant Gautam, Mr. Nipun Sharma
and Mr. Ravi Solanki, Advocates.

versus

SHRI PARAMJIT SINGH NANDA Respondent

Through: Mr. Rajesh Kaushik, Advocate (M-
9810433853)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through video conferencing.
2. The present petition has been filed challenging the Award dated 9th October, 2019 passed by the *Central Government Industrial Tribunal cum Labour Court No.2, New Delhi* (hereinafter "CGIT") in *ID No.11/2008* titled *Shri Paramjit Singh Nanda v. The Chief Manager, Punjab and Sind Bank*. By the impugned Award, the CGIT held that the punishment of compulsory retirement imposed on the Respondent/Workman (hereinafter "Workman") was unjustified, unwarranted, and accordingly set aside the same. The Workman was held to be deemed in service with effect from 1st January, 2007 till 30th September, 2017. The Workman was also held to be entitled to 80% back wages. The operative portion of the impugned Award dated 9th October, 2019 reads as under:

“ORDER

The reference is answered on the contest in favour of the workman. The order passed by the Management regarding compulsorily retiring the workman/claimant from service on 31/1/2007 is held to be unjustified and unwarranted. It is ordered that the workman shall be deemed to be in service w.e.f. 1/1/2007 till 30/9/2017. It is also ordered that the claimant shall be entitled to 80 per cent back wages for the period from 1/2/2007 till 30/9/2017, however, subject to adjustment of amount of pension if any paid to the workman for the aforesaid period. Arrears shall be calculated and be paid by the Management to the claimant within four months from the date of publication of the Award, failing which the claimant/workman will be entitled to recover the same alongwith interest @ 6% from the date of publication of the Award till realization. Award is passed accordingly. Let copy of this Award be sent for publication as required under Section 17 of the Act.

The reference is accordingly answered.”

The Petitioner-Bank has challenged the impugned Award on the ground that the Workman was guilty of forgery and fabrication of bank statements as also other forms of misconduct.

3. The Workman worked with the Petitioner-Bank as a Clerk-cum-Cashier for around 27 years. The chronology of events leading up to the punishment of compulsory retirement being imposed against the Workman would show that the initial Show Cause Notice against the Workman was issued on 9th September, 2004, as to why disciplinary proceedings should not be initiated against him. Vide reply dated 13th October, 2004 to the Show

Cause Notice, the Workman specifically denied each of the allegations.

4. On 4th January, 2005, the Petitioner-Bank served a Charge Sheet on the Workman, wherein the stand of the Petitioner-Bank was that the Workman had forged the signature of the then Branch Manager of the Petitioner Bank- Mr. Vinod Kumar Gupta (*hereinafter*, "V. K. Gupta), in order to avail a housing loan from IDBI Bank. When the IDBI Bank asked for verification of the bank statement, the credit entries in the said statement were seen to have been entered wrongfully, to show an inflated salary and account balance.

5. The charges raised against the Workman in the charge sheet were as under:

- (i) That the Workman had availed of a housing loan of Rs.15 lakhs from the IDBI Bank, New Delhi, without taking any permission from the Competent Authority in the Punjab & Sind Bank.
- (ii) That the Workman had submitted a fabricated statement of his account being SB A/C 9337 to the IDBI Bank, and wrongfully incorporated credit entries in the account statement to show inflated salary and balance of the said account;
- (iii) That the Workman had committed forgery by forging the signatures of the then Branch Manager- Sh. V.K. Gupta by affixing the bank's rubber stamp on it;
- (iv) That the Workman submitted a re-casted Form No.16 to the IDBI Bank and wrongly incorporated designation as CCC Manager, Computers in it. Further, in the said form, the Workman showed his annual income as Rs.2,99,688/- as against the actual income of Rs.1,94,300/-.

- (v) That the Workman submitted a fabricated Salary Certificate and intentionally incorporated wrong entries for the purpose of showing inflated salary. It was alleged that he showed his basic salary as Rs. 14,120/-, against the actual basic salary of Rs.9740/-. Further, against his actual net salary of Rs.4674.77, he showed his salary to be Rs.24,211/- by re-casting the entries.
- (vi) That the Workman issued a cheque of Rs.7250/- in favour of IDBI Bank Ltd. from his SB Account No.9337.

6. It was the case of the Petitioner-Bank that the abovementioned acts and omissions tantamount to 'gross misconduct' in terms of Clause 5(j) and 5(m) of the Memorandum of Settlement dated 10th April, 2002 with the Workers' Union, which reads as under:

“Doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss

AND

Knowingly making a false statement in any document pertaining to or in connection with his employment in the Bank.”

7. In response to the said Charge Sheet, a reply dated 1st February, 2005 was submitted by the Workman. In the said reply, the Workman denied the allegations and blamed the agent of IDBI Bank. The stand taken in the reply is as under:

“It is therefore, humbly submitted that I have never forged anybody's signatures nor submitted any fabricated papers/documents to any authority of IDBI. This is all the handwork of the agent/representative of IDBI, who in his enthusiasm to get business for IDBI, has carried out these acts on his own without my knowledge

and behind by back. I submit that I have not committed any act of misconduct and have not violated any provisions of the Bipartite Settlement and no loss has occurred to the Bank.”

8. The Disciplinary Authority found the said reply to be unsatisfactory, and decided to hold Departmental Enquiry in terms of the Bipartite Settlement. An Enquiry Officer was then appointed, who enquired into the matter, and submitted his Enquiry Report stating that the charges against the Workman were proved.

9. On 31st January, 2007, after considering the Enquiry Report as also the comments of the Workman thereto, the Disciplinary Authority arrived at the conclusion that the proven misconduct was serious in nature, an retaining the services of the Workman would be detrimental to the interests of the Petitioner-Bank. Accordingly, the Petitioner-Bank imposed the punishment of compulsory retirement in terms of Clause 6(c) of the Bipartite Settlement, as circulated by the Bank, vide Circular Letter No.2268 dated 25th July, 2002.

10. The Workman preferred a Departmental appeal against the said punishment before the Appellate Authority. However, the said appeal was rejected by the Appellate Authority, vide order dated 1st March, 2007. Thereafter, the Workman raised an Industrial Dispute against the Petitioner-Bank. Vide order dated 31st March, 2008, the Central Government referred the industrial dispute to the CGIT for adjudication. The following terms of reference were framed in the said dispute:

"Whether the action of the management of Punjab & Sind bank in compulsory retiring their workman Shri Paramjeet Singh Nanda w.e.f. 31.1.2007 is just, fair and legal? If not, to what relief the

workman is entitled?"

11. The Workman filed the statement of claim before the CGIT. Thereafter, in 2008, he filed a Criminal Complaint No.-1394/1/2008 before the CMM, Rohini Courts, New Delhi, alleging that the forgery and fabrication was done by one Mr. Sachin Kumar, Direct Selling Agent (*hereinafter, "DSA"*) of IDBI Bank. On the direction of the Court, an FIR was registered in this regard with P.S. Prashant Vihar, Delhi. Parallely, the proceedings before the CGIT also continued.

Details of FIR

12. ***FIR No.299/2008*** dated 21st May, 2008, was registered by the Workman at P.S. Prashant Vihar against one Mr. Sachin Kumar, DSA, IDBI Bank. The said FIR was registered pursuant to the complaint lodged by the Workman under Section 200 Cr.PC alleging offences under Sections 406/420/467/468/471 of IPC. The allegation of the Workman was that he was victimized by the accused who made a telephonic call to him, and claimed to be a Direct Settling Agent of IDBI Bank. The accused demanded various documents from the Workman for providing a housing loan. The Workman, claimed that, believing the representations made by the accused to be true, agreed to provide the said documents to the accused. The accused sent a representative to the Workman's house in order to collect the said documents. Thereafter, the accused demanded a commission of Rs.90,000/- for getting the loan of Rs.15 lakhs sanctioned. Since the said demand was not acceded to by the Workman, he hatched a conspiracy against the Workman leading to the issuance of the show cause notice.

13. In the complaint, the Workman has alleged that it was the accused who forged the signatures in the documents, and used the same for getting the housing loan sanctioned. The said documents were never signed by the Workman. The submission of all forged and fabricated documents was the result of the acts of the accused, which led to the disciplinary proceedings against the Workman.

Summary of order dated 19th September, 2016

14. Vide order dated 19th September, 2016, the CGIT decided the preliminary issue which was framed on 2nd March, 2009, in respect of legality and validity of the Departmental Enquiry conducted by the Petitioner-Bank. On this issue, after perusing the events in respect of enquiry proceedings, the CGIT noted that the original file of the enquiry was not produced before it as directed by the previous order of the CGIT. Hence, an adverse inference was drawn against the Petitioner-Bank on account of the non-production of the enquiry file. The CGIT held that the Departmental Enquiry conducted by the Petitioner-Bank was not legal, just and fair. The relevant extract of the CGIT's findings on this issue are set out below:

“Moreover he is neither Enquiry officer nor presenting officer nor remain present during enquiry. So his evidence cannot be treated as primary evidence on the point of enquiry. Moreover management in compliance of previous order passed by this Tribunal has not filed original file of enquiry. So this Tribunal could not peruse the file of enquiry. Although point raised on behalf of Ld. A/R for the workman could be best appreciated after perusal of original file of enquiry. So non-production of enquiry file by

management compel to this Tribunal to draw an adverse inference against the management. Which is accordingly drawn on the basis of provision of section 114 (g) of Indian Evidence Act.

On the basis of aforesaid discussion I am of considered view that preliminary issue which is relating to enquiry is liable to be decided in favour of workman and against management. Which is accordingly decided especially in the instant xxx no primary evidence adduced on behalf of management. Although burden to prove preliminary issue as enquiry issue lies on management.

Management in its written statement stated that in the case departmental enquiry is set-aside due to any reason by this Tribunal. Then management be given opportunity to prove the misconduct of workman in the court.

It is also relevant to mention here that settled law of Hon'ble Supreme Court is that when Enquiry Issue as Preliminary Issue has been decided in favour of workman and against management. Then management shall be afforded an opportunity to produce its evidence to prove the misconduct of workman in the court.”

15. In view of the above, the Petitioner-Bank was afforded an opportunity to lead its evidence. Accordingly, the evidence was adduced by the Petitioner-Bank, and the following three witnesses appeared on behalf of the Petitioner-Bank:

- (i) **MW-1** - Mr. Ashok Sachdeva, Chief Manager, Punjab & Sind Bank.
- (ii) **MW-2** - Mr. Satyavrat Arya, Senior Manager, Punjab & Sind Bank.
- (iii) **MW-3** - Mr. Vinod Kumar Gupta, Branch Manager, Punjab &

Sind Bank.

16. After perusing the evidence placed on record, the CGIT passed the impugned Award dated 9th October, 2019, extracted hereinabove, and set aside the compulsory retirement imposed upon the Workman.

Submissions of the Parties

17. Mr. Rajesh Kumar Gautam, Id. Counsel appearing for the Petitioner-Bank has made the following submissions:

- (i) The finding of the CGIT, in paragraph 13 of the impugned Award, holding that the misconduct of the Workman was not grave is completely untenable. He submits that the evidence of the witnesses produced on behalf of the Petitioner-Bank would show that the Workman was, in fact, guilty of manipulating the documents, forgery of signatures of the Bank Manager, as also fabrication of the bank statements. He submits that there was sufficient evidence on record in respect of the same. Thus, the finding of the CGIT in paragraph 13 of the impugned Award, to the effect that even though the misconduct had taken place, it was not grave, is put to question.
- (ii) Reliance is placed upon the affidavit of Mr. Vinod Kumar Gupta, the then Manager of the Petitioner-Bank, who has made a categorical statement that the signature on the bank statement was forged, and even the bank stamp was wrongly affixed on the incorrect and manipulated statement. In fact, in the cross-examination of the said witness, no suggestion was put to him regarding the forgery and fabrication.

- (iii) Reliance is also placed upon the Letter addressed to the Workman by the IDBI Bank, wherein when the application for loan of the Workman was received, the IDBI Bank sought a clarification and confirmation of the bank statement. It was then that the knowledge in respect of forgery and fabrication was acquired by the Petitioner-Bank, which then took action in respect of the same. Reference is also made to the statements attached therewith, which would show that the correct statements showed lesser credit entries and the manipulated and fabricated statements showed higher credit entries. On a comparison of the signatures, it can be noticed that at pages 345 and 347, there is a visible difference between the original and the forged signatures of Mr. Vinod Gupta. Similarly, there is a visible difference between the original and forged signature of Mr. Vinod Gupta at pages 348 and 349.
- (iv) The CGIT has wrongly proceeded on the basis that, since the handwriting expert was not produced, the forgery cannot be said to have been established. Reliance is placed upon *Indian Overseas Bank v. Om Prakash Lal Srivastava [Civil Appeal No.267/2022 decided on 19th January, 2022]* to argue that in the said judgment the Supreme Court has held that in case of bankers, they do have the expertise to deal with and compare the signatures of the parties.
- (v) In view of the above grounds, he submits that the impugned Award is not tenable in law, and is liable to be set aside.
- (vi) Without prejudice to the above submissions, he submits that

80% back wages could not have been awarded, inasmuch as there was no affidavit placed on record by the Workman stating that he was not gainfully employed elsewhere, and there was also no pleading to that effect. Reliance is placed upon the claim, the rejoinder and the affidavit in evidence. He submits that the award of back wages is not automatic. Reliance is also placed upon *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) & Ors.* [(2013) 10 SCC 324] as also on *Reetu Marbles v. Prabhakant Shukla* [AIR 2010 SC 397]. The judgment in *Bholanath Lal & Ors. v. Shree Om Enterprises (P) Ltd.* [(2018) III LLJ 579 Del] is sought to be distinguished to argue that in the said case, there was a specific affidavit stating that the Workman was not gainfully employed elsewhere. The recent judgment of the Supreme Court in *National Gandhi Museum v. Sudhir Sharma* [Civil Appeal Nos.8215-8216 of 2011 decided on 24th September, 2021] is finally relied upon to argue that even if it is found that some amounts would be payable, a lump sum amount ought to be awarded to the Workman, and not the entire back wages.

18. On a query from the Court, Mr. Gautam, Id. Counsel clarifies that the FIR, which was filed by the Workman against Mr. Sachin Kumar, DSA of IDBI Bank has also been closed. The final report is also stated to have been placed on record before the CGIT. As per the said final report, the accused in the said FIR was found to be untraceable.

19. On the other hand, Mr. Rajesh Kaushik, Id. Counsel on behalf of the Respondent-Workman, relies upon the counter affidavit to argue that the

Workman was not employed at all after his compulsory retirement. He submits that in paragraph 11 of the counter affidavit clearly states that he was not employed, and was only living on his pension. Insofar as the allegations are concerned, it is his submission that the then Bank Manager was also not produced for proving the forgery. Reliance is also placed upon the written statement filed before the CGIT, and the counter affidavit filed before this Court to argue that there are contradictory statements as to what was the amount of loan, which was availed of from the IDBI Bank i.e., Rs.15 lakhs or Rs.16 lakhs. In view of all of the above, he submits that the finding of the CGIT that the Workman was not guilty of misconduct, deserves to be upheld.

Analysis and Findings

20. The two questions that arise in the present petition are as under:

- (i) Whether the Workman is guilty of misconduct, and if so, of what nature?
- (ii) Whether the Workman is entitled to reinstatement in service, along with back wages and other consequential benefits?

21. Before proceeding to decide the above two questions, it would be relevant to note the evidence which has been adduced before the CGIT in this case.

Evidence on behalf of Management

22. The Management produced Sh. Ashok Sachdeva, Chief Manager, Punjab & Sind Bank as MW-1. He was the main witness on behalf of the Management who deposed that the Workman, being an employee of the bank, was well-conversant with all the procedures of the bank, the

hierarchical status, his seniors, his competent authority, signatures of the bank, and usage of the stamp of the bank. As regards the Departmental Enquiry, he deposed that the charges stood proved against the Workman. He further deposed that PSB and IDBI Bank, being nationalized banks, work on analogous principles, and that the findings of the enquiry officer as also the appellate authority are legal and justified. Even prior to the said Departmental Enquiry, vide order dated 4th December, 2004, the penalty of lowering down of the pay scale by two stages was imposed upon the Workman, under Clause 6(e) of the Bipartite Settlement owing to proven misconduct of misrepresentation and concealment of vital information from the Bank. Deductions exceeding 60% of his gross salary were effected for misusing his official position, and the same reflects the Workman's attitude towards his work. Thus, he stated that the Workman has a chequered service record. Considering the gravity of the charges, the penalty of compulsory retirement was imposed upon the Workman. He further deposed that the factum of issuance of a cheque for the processing amount of the loan itself shows that he had deliberately intended to avail of a housing loan from IDBI by concealing these facts from the parent Bank i.e., PSB. The loan amount from IDBI Bank was beyond his means and capacity to repay. As per the rules of the bank, he could not have applied for this loan without permission. Thus, he was not merely jeopardising the interest of PSB, but was also playing a fraud on the IDBI Bank.

23. In his cross-examination, Mr. Sachdeva deposed that he was working in the Bank since 18th December, 1976. He candidly stated that the representative or agent of IDBI Bank was not examined in the Departmental Enquiry. He further stated that even if the loan is applied for jointly,

permission would be required in respect of the same.

24. MW2-Mr. Satyavrat Arya, Senior Manager of PSB, Gurgaon reiterated the allegations made in the charge-sheet relating to forgery and fabrication of the bank statements, recasting of Form No.16, and the salary certificate. All the questions in the cross-examination to Mr. Arya were relating to the Departmental Enquiry. He deposed that the Workman had already availed of loans to the tune of Rs.7,04,772/- as on 10th January, 2004. He was not aware if the Workman had repaid the loans.

25. The Management also produced MW3-Sh. Vinod Kumar Gupta who specifically stated in his affidavit as under:

“xxx xxx xxx

3. He submitted fabricated statement of his SB a/c 9337 to IDBI and wrongfully incorporated credit entries in the a/c statement to show inflated salary and balance of the said account. These entries are not reflected in his a/c. He further verified the said a/c statement and also **forged my signatures and affixing a Bank's rubber stamp on it.**

4. He submitted a recasted Form No.16 to IDBI and wrongfully incorporated his designation as CCC, Manager Computer in it. He further **forged my signatures and affixed a bank rubber stamp on it.** He had deliberately shown his annual income as Rs.299688/- in the fabricated Form No.16 against his actual income of Rs.194300/-.

5. He submitted a fabricated salary certificate to IDBI and intentionally incorporated fictitious and incorrect entries for inflating his salary. Against the actual basic salary of Rs. 9740/-, he showed his basic salary as Rs. 14120/- and against the actual net salary of Rs. 4674.77 he showed it to be 4211/- by recasting the entries. **The fabricated statement has been duly verified by him and also**

forged my signatures and affixed Bank's rubber stamp on it.

26. In his cross-examination, no suggestion was put to MW3-Sh. Vinod Kumar Gupta in respect of the forgery and fabrication which he had clearly stated in his affidavit. Insofar as the contradiction between the loan amount from IDBI Bank of Rs.15 lakhs and Rs.16 lakhs is concerned, he stated that the quantum of loan applied by the Workman would be as per the bank records of IDBI Bank.

Evidence on behalf of the Workman

27. In his affidavit, the Workman claimed that the charge-sheet issued against him was false and frivolous. He made bare denials *qua* the submissions of the alleged fabricated documents. In his affidavit, in paragraph 9, he stated as under:

“I say that the Disciplinary Authority had ignored that overzealous agent had fabricated the documents and not me. I further say that it has further been wrongly assumed by Disciplinary Authority that I had fabricated the signatures of Mr. V.K. Gupta on the basis that I had given a cheque of Rs.7,250/- from his saving account no.9337. I further say that only from the issuance of a cheque of Rs.7,250/- from the saving account no assumption can be drawn that I am the author of the fabricated documents.”

28. He claimed that the findings of the Disciplinary Authority and Enquiry Officer were perverse in nature. No opportunity was afforded to him to be properly heard in the matter. He also deposed that he filed a criminal complaint against the agent of IDBI Bank.

29. In his cross-examination, he relied upon the final report under Section 173 of Cr.PC in the **FIR No.299/2008** registered with P.S. Prashant Vihar, Delhi. He stated that he, along with his wife, had applied for a loan from IDBI Bank for Rs.15 lakhs, and that he already availed of a loan from PSB. The Workman could not point out any extrapolation as alleged by him in the affidavit. Curiously, on Question No.2, he answers that he has not taken any loan from any bank:

“Q.1. Being a banker at the time of applying loan from IDBI for Rs.15, Lakh, within your income Rs.15,000-19,000 and the fact you were already having deduction from your income toward Punjab and Sind Bank housing loan, xxx were that you could not avail any loan from any bank in your present income?”

Ans. I have not taken any loan from any bank.”

30. A conjoint reading of the evidence on record, along with the statements made by the Workman himself in his cross-examination, as also in **FIR No. 299/2018** registered against the agent of IDBI Bank shows that the forgery and fabrication of the documents is not seriously disputed. Thus, the only question that arises is whether the forgery and fabrication of documents was done by the Workman, or even at his behest, and if so, to what effect.

31. In the opinion of this Court, the nature of the documents which have been forged, fabricated and manipulated are in the nature of bank account statements of the Workman’s bank account, Form-16, Salary Certificate and other documents, which are official in nature. The said documents bear the signatures of Mr. V.K. Gupta at places, as also the rubber stamp of the bank at several places. The initial deposit of Rs.7,250/- for availing of the loan

from the IDBI was made by the Workman. The availing of the loan from IDBI is thus not disputed by the Workman. The person who would have derived benefit of all these documents is the Workman, and no one else. The said computerized print outs of the bank statements could not have been taken out by any third party without the knowledge and deliberate connivance of the Workman. MW3-Mr. V.K. Gupta has appeared before the CGIT and has clearly deposed that the signatures on the bank statement and the salary certificate do not belong to him. Even a naked eye examination of the actual signatures of Mr. Gupta in comparison to the signatures on the documents which have presented to IDBI Bank shows that the same have been manipulated and fabricated shows that the signatures are not genuine.

32. The Supreme Court in *Indian Overseas Bank v. Om Prakash Lal Srivastava* [Civil Appeal No.267/2022 decided on 19th January, 2022] held:

“14. On having considered the rival submissions of the learned counsel for the parties, we are of the view that the High Court has fallen into an error in coming to the conclusion in the impugned judgment and directing, once again, the matter to be remitted to the Industrial Tribunal to now seek opinion of a hand writing expert.

*15. We would like to emphasise at the threshold that there are certain inherent legal limitations to the scrutiny of an award of a Tribunal by the High Court while exercising jurisdiction under Article 226 of the Constitution of India. We may refer to the judgment of this Court in **GE Power India Ltd. (Formerly Known as M/s. Alstom Projects Ltd.) v. A. Aziz**. If there is no jurisdictional error or violation of natural justice or error of law apparent on the face of the record, there is no occasion for the High Court to get into the merits of the controversy as an appellate court. That too,*

on the aspect of an opinion formed in respect of two sets of signatures where the inquiry was held by an officer of the bank who came to an opinion on a bare comparison of the signatures that there is a difference in the same. It has been looked at from the perspective of a “banker’s eye”. This is, of course, apart from the testimony of the sister-in-law of the respondent.

xxx xxx xxx

*17. The High Court appears to have applied the test of criminal proceedings to departmental proceedings while traversing the path of requirement of a hand writing expert to be called for the said purpose. This would go contrary to the settled legal position enunciated by this Court. It would suffice for us to refer to a recent judgment in **Ashoo Surendranath Tewari v. Deputy Superintendent of Police, EOW, CBI** where it has been observed while referring to earlier judicial precedents, that the standard of proof in departmental proceedings, being based on preponderance of probability, is somewhat lower than the standard of proof in criminal proceedings where the case has to be proved beyond reasonable doubt.”*

Thus, the Supreme Court recognises that in Departmental proceedings, the test to be applied for looking at signatures or their forgery is different from that in criminal proceedings. The Supreme Court recognises the ‘banker’s eye’ as a sufficient standard for comparison of signatures, and that the evidence of a handwriting expert need not be produced in each and every case. The CGIT’s reliance on the CFSL’s report that the Workman’s signature of the loan application and accompanying documents do not match

his standard signatures is misplaced. The Workman does not deny having applied for the loan. Hence, comparison with his signatures has no meaning. The question was whether the signatures of MW3-Mr. V.K. Gupta were forged and whether the other documents were fabricated or manipulated. The evidence on record shows that the documents were clearly manipulated.

33. Moreover, upon being approached by the Workman for the sanction of a loan, the IDBI Bank wrote a Letter dated 30th August, 2003 seeking verification of the documents submitted by the Workman. A comparison of the bank statements submitted by the Workman with the actual bank statements shows that the credit entries are highly exaggerated. It is also noticed that the seal of PSB has been affixed on the manipulated bank statement. Form No.16 also bears the signatures of MW3-Mr. V.K. Gupta, which have been denied by him. The salary has also been inflated in the salary certificate. Thus, there is clear forgery of a bank official's signatures, and there has also been a clear misuse of the seal of the bank. The only beneficiary of the same is the Workman.

34. The question that now arises is whether this could be considered as being grave misconduct, or not. The CGIT has proceeded on the basis that the Bank's witness could not depose as to who specifically from IDBI informed PSB about the loan by the Workman. No official from IDBI was examined. In the enquiry proceedings, original documents filed with IDBI were not produced. Hence, there is no misconduct. The observation in the impugned Award reads:

“It was incumbent upon the workman/claimant who was already in service for the last over 25 years to seek necessary permission/approval of the Competent Authority for availing loan of building

home. The workman/claimant has neither pleaded nor proved that he had sought permission/approval of the Management Bank for seeking housing loan from IDBI. As such, it can be concluded that there was misconduct on the part of the workman/claimant, in not seeking permission of the Management Bank while applying for a housing loan. **But the said misconduct of the workman was/is not too grave to impose major punishment like compulsorily retiring him from service, rather same warrants a minor penalty.** There would be unnecessary delay if the matter is remanded back to the Management for imposing penalty upon the workman/claimant keeping in view the aforesaid act of misconduct proved against the workman. Needless to mention here that Section 11-A of the Act empowers this Tribunal not only to interfere with the quantum of punishment in appropriate cases & to direct reinstatement of the workman on such terms & conditions if any, as it thinks fit in lieu of discharge or dismissal, but also to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. Reference in this regard may be made to the decisions of the Hon'ble Apex Court in the case of Pepsu Road Transport Corporation Versus Rawet Singh, 2008 AIR (SCW) 2099; B.C. Chaturvedi Versus Union of India and other, 1996(1) SCT 617; of Punjab & Haryana High Court in the case/s of Punjab National Bank Vs. The presiding Officer, CGIT & another 2012 (2) SLR 631; Harnek Singh Versus State of Haryana & others 2010(3) SLR 276 and Joginder Lal Versus The Presiding Officer, Labour Court, Ambala & another 1996() SCT 436. As such, the impugned order dated 31/1/2007 passed by the Management on the basis of report of the Enquiry Officer, cannot be legally sustained.

Resultantly, the action of the Management in compulsorily retiring the workman/claimant w.e.f. 31/7/2017 is held to be quite harsh and disproportionate to the act of his proved misconduct.”

35. The IDBI having raised queries from PSB is not disputed. The receipt of the queries is confirmed by the officials of PSB. The non-examination of an official from IDBI could not have led to the inference that the fabrication of documents is not proved, as that would in effect mean that the entire evidence led on behalf of PSB has to be ignored. Such an approach of the CGIT is erroneous. Three officers of the PSB have deposed and confirmed the various facts which could not have been ignored and ought to have been given weight to by the CGIT. This Court is of the opinion that the CGIT has completely erred in holding that such manipulation, forgery and fabrication of bank statements cannot be construed to be grave misconduct on the part of the Workman.

36. In the present case, the Workman who is a bank employee, has not merely forged, fabricated and manipulated documents on record but has also issued his own cheque as a deposit for sanctioning of the loan with the IDBI Bank. The Workman was the only person who benefitted from availing the loan. He admits to the forgery and fabrication but seeks to place the blame on the agent of IDBI against whom he filed a criminal complaint. The said complaint was also closed without any punishment. The final report was also before the CGIT. The fabrication and forgery being admitted, the question in a disciplinary enquiry would not be merely as to whether the Workman did the forgery himself. It was extremely relevant that he was the beneficiary of the same. The Workman also had a past record of misconduct,

owing to which his salary was reduced by two levels. The witnesses on behalf of the Bank have brought a large number of facts on record which have not been adequately controverted in the cross-examination. In fact, in the cross examination of MW3-Mr. V.K. Gupta, there is not even a suggestion that his allegation of forgery is wrong. An employee of a Bank having gone to such an extent to get a loan sanctioned, and having submitted a cheque from his own cheque book for an amount of Rs.7,250/- for the purposes of release of the loan, that too drawn on his own bank account with PSB, shows that the Workman had deliberately and consciously indulged in such misconduct. Such conduct on behalf of a bank employee cannot by any stretch of imagination be called as misconduct not deserving punishment.

37. This Court has had the occasion to consider the question of misconduct by a bank employee in *Asstt. General Manager, State Bank of India vs. Ashok Kumar Bhatia [W.P. (C) 7584/2017 decided on 17th December, 2021]*. In the said judgment, while relying upon a catena of judgments by the Supreme Court on the said proposition, this Court reiterated that bank employees must fulfil a higher standard of integrity, owing to their fiduciary capacity as also the nature of their work. The relevant observations from the said judgment are extracted below:

*“The Supreme Court, in multiple decisions, has clearly recognized the fact that bank officials are held to a higher standard of integrity in respect of their conduct, as they directly deal with the financial interests of the customers. In **Chairman and Managing Director, United Commercial Bank and Ors. v. P.C. Kakkar, MANU/SC/0110/2003 : (2003) 4 SCC 364, the***

Supreme Court held as under:

*"12. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to project the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion, and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in **Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik MANU/SC/1578/1996: (1996) ILL J379 SC**. It is no defense available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. These aspects do not appear to have been kept in view by the High Court."*

*62. Even in **Union Bank of India v. Vishwa Mohan, MANU/SC/0272/1998: (1998) 4 SCC 310**, the Supreme Court held:*

11. After hearing the rival contentions, we are of the firm view that all the four charge sheets which were inquired into relate to serious misconduct. The respondent was unable to demonstrate before us how prejudice was caused to him due to non supply of the Inquiry Authority's report/findings in

the present case. It needs to be emphasized that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non furnishing of the inquiry report/findings to him."

63. Recently, in **Deputy General Manager (Appellate Authority and ors.) v. Ajai Kumar Srivastava** [(2021) 2 SCC 612], the Supreme Court held:

"28. 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.

xxx xxx xxx

43. Before we conclude, we need to emphasize 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. It is for this

additional reason, we are of the opinion that the High Court has committed an apparent error in setting aside the order of dismissal of the respondent dated 24th July, 1999 confirmed in departmental appeal by order dated 15th November, 1999."

38. The Workman in this case, has not only filed completely manipulated documents with the IDBI Bank but has sought to, shift the blame upon a third party merely to escape the consequences. After registering an FIR against the agent of the IDBI Bank, no follow up was done. The ultimate beneficiary of the loan from IDBI bank were the Workman and his wife. Thus, it has to be inferred that the forgery and/or fabrication was done by them or at their behest. The Workman cannot escape the consequences of filing such documents simply by stating that the said acts of forgery were committed by an agent of IDBI. The criminal case against the said third party has also been closed. Thus, the Workman's allegations in that respect do not deserve to be given any credence.

39. The CGIT has proceeded on the basis that merely because permission was not sought for availing the loan from IDBI Bank, the same cannot constitute misconduct. This reasoning tends to dilute the improper acts of the Workman. Due consideration not being accorded to the evidence of the PSB, especially the evidence of Mr. V.K. Gupta, who deposed that his signatures were forged and the bank's seal was forged, the CGIT's order would be untenable and perverse. The Workman cannot argue that his serious acts deserve to be either ignored or condoned. A bank employee is aware of the procedures and rules. The use of a bank's seal unauthorisedly is a matter of enormous gravity which cannot be simply brushed under the

carpet. Forging the signatures of a colleague or even turning a blind eye to such forgery by a third party, and reaping benefits from the same is wholly impermissible. The finding of the CGIT that the acts and omissions committed by the Workman would not constitute grave misconduct, and would at best, attract a penalty is completely erroneous and untenable in these facts.

40. Accordingly, this Court is of the opinion that the Petitioner-Bank succeeds in the present writ petition. The petition is liable to be allowed. In the facts and circumstances of this case, the Workman does not deserve the indulgence of this Court, and the punishment of compulsory retirement imposed by the Petitioner-Bank is completely justified. In view of the fact that this Court upholds the punishment of compulsory retirement imposed upon the Workman, the issue of award of back wages no longer arises. However, considering that this is the case of a Workman, the amounts already paid by way of pension or otherwise by the Petitioner-Bank, pursuant to the order of the CGIT, would not be liable to be refunded. This order shall operate henceforth.

41. The present petition is allowed and the impugned order dated 9th October, 2019 passed by the CGIT-cum-Labour Court is set aside. The Workman would henceforth be entitled to only such benefits as per the order dated 31st January, 2007 passed by the Disciplinary Authority awarding compulsory retirement which is upheld. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 8, 2022/Rahul/AD