

**HIGH COURT OF JAMMU AND KASHMIR**  
**AT JAMMU**

LPASW No.210/2001  
MP No.269/2001

Date of order: 29.02.2016

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| 1. | Central Bank of India,<br>Chander Mukhi Nariman Bhawan,<br>Mumbai through its Chairman.                   |
| 2. | Divisional Manager (Disciplinary Authority)<br>Central Bank of India, 1-Queen Road,<br>Amritsar (Punjab). |
| 3. | Branch Manager, Central Bank of India,<br>Shalamar Road, Jammu.   |

.....Appellants

Versus

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|----|---|
| 1. | Sunita Gupta<br>W/o Gopal Krishan Gupta               |
| 2. | Shilpa Mahajan (Daughter)<br>D/o Gopal Krishan Gupta  |
| 3. | Nikita Mahajan (Daughter).<br>D/o Gopal Krishan Gupta |

All R/o House No.8, Ward No.8, Pabha Mohalla, Udhampur.

.....Respondents

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**Coram:**  
**Hon’ble Mr. Justice N. Paul Vasanthakumar, Chief Justice**  
**Hon’ble Mr. Justice Bansi Lal Bhat, Judge**

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**Appearing counsel:**  
For the appellant(s) : Mr. Sunil Sethi, Sr. Advocate with  
Mr. Ravi Abrol, Advocate.  
For the respondent(s) : Mr. M.P.Sharma, Advocate.

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| i/  | Whether to be reported in<br>Press/Media    | : | Yes |
| ii/ | Whether to be reported in<br>Digest/Journal | : | Yes |
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**N. Paul Vasanthakumar-CJ**

1. This appeal is preferred against the order made in SWP No.1123/1997 dated 31.05.2001 quashing order of dismissal of the writ petitioner granting liberty to the appellant-Bank to proceed further in the matter.

2. The case of the writ petitioner before the Writ Court was that he was employed in the appellant-Bank and while working as Cashier-cum-Clerk he was suspended by the Regional Manager, Central Bank of India on 04.02.1988 for an embezzlement of Rs.20,000/-. A criminal case was also registered under Section 409 RPC. According to the writ petitioner, some of the persons against whom also embezzlement allegations were made were transferred to other places. Insofar as writ petitioner was concerned, charge memo was issued on 20.03.1989. The charges framed against the writ petitioner are as under:-

“1. That Mr. Gupta on 31.10.86 while working at Jammu Branch on Cash Counter, received a sum of Rs.20,000/- from Sh. Satish Vaid holder of HSS Account No.10329 being the amount of cash deposited by the party vide HSS Pay-in-Slip A/c No.10329 dated 31.10.86 favouring Sh. Satish Vaid for Rs.20,000/-. He stamped and signed the aforesaid Pay-in-Slip and returned the stamped counter-foil bearing his initial to the depositor in token of having received the said amount of Rs.20,000/- and retained its other part (Cash Voucher) with him instead of sending it to HSS Department. Although the said Pay-in-Slip was not got scrolled by the depositor in the scroll book dated 31.10.86 of Jammu Branch, Mr. Gupta instead of getting it entered in the said scroll book as per laid down norms of the Bank, took advantage of it and with a mala fide intention did not record its entry in the cash receipt book dated 31.10.86 along with other cash vouchers of 31.10.86 entered by him and with an ulterior motive kept the said amount of Rs.20,000/- with him instead of handing it over to the Chief Cashier along with other cash received by him on 31.10.86.

2. That in order to give credit of the above entry to the beneficiary's Account and to cover up his misdeed, he made a fictitious credit entry of Rs.20,000/- on 02.01.87 in HSS A/c No.10329 of Sh. Satish Vaid in HSS Ledger No.13 without any supporting voucher thereof. Further to give cover to this fictitious credit entry of Rs.20,000/- dated 02.01.1987 and to avoid its reflection in the monthly balancing of books, he in a clandestine manner, made a number of fictitious credit and debt entries of Rs.20,000/- each in different accounts of HSS Ledger No.13 without any bona fide transaction or supporting vouchers.

The details of such fictitious entries made by him in different accounts are given hereunder:-

Date	Mode	Nature of Entry	Amount	Account No.	Ledger No.
01.01.87	By cash	Credit	Rs.20,000/-	10329	13
22.01.87	To Self	Debit	Rs.20,000/-	10213	13
02.02.87	By Cash	Credit	Rs.20,000/-	10213	13
27.02.87	To Self	Debit	Rs.20,000/-	10395	13
28.02.87	By Cash	Credit	Rs.20,000/-	10395	13
11.03.87	To Self	Debit	Rs.20,000/-	10480	13
11.04.87	By Cash	Credit	Rs.20,000/-	10480	13

Further Mr. Gupta after jotting down and tallying the balance of HSS Ledger No.13 as on 27.02.87 and 27.03.87 with fictitious debit entry of Rs.20,000/- which he made in HSS A/c No.10395 and 10480 of HSS Ledger No.13 on 27.02.87 and 11.03.87 respectively, struck off fictitious entries dated 27.02.87, 28.02.87, 11.03.87 and 11.04.87, thereby he committed material alternations in the Bank's record.

3. That while taking down the monthly balance of HSS Ledger No.13 as on 30.04.87 and 30.05.87, he intentionally jotted down the balance of HSS a/c No.10481 of HSS Ledger No.13 as Rs.25,289.05 instead of Rs.45,289.05 on 30.04.87 and Rs.54,984.85 instead of Rs.74,984.85 on 30.05.87 which is less by Rs.20,000/- and was aimed to give cover to the fictitious entry of Rs.20,000/- which he made on 01.01.87 in HSS A/c No.10329 of Sh. Satish Vaid. Thus he tallied the balance of HSS Ledger No.13 as on 30.04.87 and 30.05.87 fictitiously.

4. That Mr. Gupta after making number of fictitious credit and debit entries and jotting down fictitious balance of HSS A/c No.10481 finally on 10.06.87 made a false debit entry of Rs.20,000/- in HSS A/c No.10395 of Sh Sita Ram gupta (deceased) under the pretext that being dormant account of deceased person, the entry might not come in the notice of Bank. Thus Mr. Gupta in a calculated way and with a dishonest motive defrauded the Bank by misappropriating the said amount of Rs.20,000/-."

In criminal case also after investigation challan before a Special Municipal Mobile Magistrate 1<sup>st</sup> Class Jammu was presented on 06.06.1988 and the writ petitioner was acquitted by order dated 16.12.1994. After acquittal, Enquiry Officer was appointed on 31.12.1994 to hold enquiry into the above said charges framed against the writ petitioner and the writ petitioner was asked to appear before the Enquiry Officer on 10.01.1995

at 11 a.m. The writ petitioner failed to appear allegedly on the ground of advice of Doctor. The Enquiry Officer postponed the enquiry on 24.01.1995, 09.02.1995 and on 23.02.1995 sent a communication to the writ petitioner for examination by a Medical Officer with regard to his alleged sickness on 06.03.1995 failing which the enquiry will be conducted ex-parte. The writ petitioner failed to get himself examined from the Medical Officer on 06.03.1995. Again the enquiry proceedings were adjourned to 02.05.1995 and then to 19.05.1995. Lastly on 19.05.1995 the writ petitioner was set ex-parte after giving seven chances. On 20.05.1995 evidence of management witnesses were examined. The writ petitioner was given an opportunity to cross-examine the witnesses on 01.06.1995 and the said intimation was acknowledged by the writ petitioner and he refused to avail the said opportunity and lastly he was asked to file written statement of defence within 15 days and again gave time to appear on 01.07.1995, 21.08.1995 and 06.09.1995. The writ petitioner came to the bank on 06.09.1995 but did not choose to cross-examine and he finally submitted his written brief on 29.09.1995 wherein he has not refuted the charges. The Enquiry Officer submitted his report on 11.09.1998 holding the writ petitioner guilty. Thereafter Disciplinary Authority issued notice on 16.09.1995 and called

upon the writ petitioner to submit his remarks regarding the Enquiry Officer's report as well as proposed punishment.

3. The writ petitioner requested appellant No.2 for extending personal hearing which was also granted on 18.04.1997. The writ petitioner appeared on 18.04.1997 and filed written submissions. The defence of the writ petitioner was that after earning acquittal in the criminal case on 16.12.1994, he submitted joining report along with copy of acquittal order on 17.01.1995 and requested to release the full salary from the date of suspension i.e. 04.02.1988 followed by reminder dated 23.03.1995 and prayed for re-instatement. The disciplinary authority on the basis of proved charges by order dated 27.05.1997, dismissed the writ petitioner from service with effect from 03.06.1997, which order was challenged with a prayer for re-instatement w.e.f. 04.02.1988 i.e. from the date of suspension.

4. Learned Single Judge allowed the writ petition on the ground that the criminal court having acquitted the writ petitioner in respect of the very same allegation and the writ petitioner having not been given proper opportunity to defend the departmental proceedings set aside the order of dismissal and gave liberty to the appellants to proceed further in the matter.

5. Learned senior counsel for the appellants contended that acquittal order passed by the criminal court is only on benefit of doubt and not on merits, thus there is no bar to conduct departmental proceedings and proceeding were initiated and the writ petitioner was given several opportunities, still he delayed the proceedings. Therefore, the Enquiry Officer submitted his findings holding that the charges are proved. The Writ Court has erroneously interfered with the said order as if proper opportunity was not given and set aside the order of punishment with liberty.

6. The said order was stayed by this Court during the pendency of LPA. Therefore, no enquiry could be conducted and during pendency of the appeal, the writ petitioner also died and his LRs were brought on record.

7. Learned counsel for the respondents submitted that since writ petitioner is no more, conducting of fresh enquiry is not possible and the order of dismissal having been set aside, legal heirs are entitled to get monetary benefits.

7. The point, which arises for consideration in this appeal is as to whether the writ petitioner in the appeal having embezzled a sum of Rs.20,000/-, who faced criminal proceedings, which were ended in acquittal on benefit of doubt, is entitled to seek re-instatement, particularly when departmental enquiry was conducted separately and finding of guilt was recorded after

affording opportunities to participate in enquiry for seven times, opportunities to cross-examine three times and he chose to submit only written brief without denying the charges.

9. It is well settled proposition of law that acquittal in criminal case has no bearing on the department proceedings. The Hon'ble Supreme Court in the decision reported in (2013) 1 SCC 598 [**Deputy Inspector General of Police v. S. Samuthiram**] considered the very issue regarding the effect of acquittal in a criminal case with respect to the punishment imposed in the departmental proceedings. In the said decision it is held that even if the Delinquent Officer is acquitted honourably, he is not entitled to claim reinstatement, unless the service rules provides so. In paragraphs 23, 26 & 28 the Hon'ble Apex Court held thus:-

"23. We are of the view that the mere acquittal of an employee by a criminal court has no impact on the disciplinary proceedings initiated by the department.....

26.....in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile etc.....

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(b) In the decision reported in (2008) 5 SCC 554 (*Usha Breco Mazdoor Sangh v. Management of Usha Breco Limited*) in paragraph 22 of the Supreme Court held thus:-

“33. Before a departmental proceedings, the standard of proof is not that the misconduct must be proved beyond all reasonable doubt but the standard of proof is as to whether the test of preponderance of probability has been met.....”

The said decision has been followed by the Hon'ble Supreme Court in its decision reported as (2013) 7 SCC 685 [*Commr. of Police v. Mehar Singh*] and recently in (2016) 1 SCC 670 *K. Mallesh v. K.Narender and ors.* Thus, the writ petitioner rely on the acquittal on benefit of doubt rendered in criminal case.

10. The scope of judicial review in disciplinary matters is very limited. If there is some evidence available and based on such evidence the disciplinary authority comes to a conclusion, the Courts are not expected to over turn the said decision on the ground of insufficiency of materials. The grounds on which the Disciplinary Authority's decision can be set aside are, on no evidence or for any violation of procedural safeguards to the delinquent officer, including the principles of natural justice. The Supreme Court in the decision reported in (2006) 6 SCC 794 (*Union of India v. K.G. Soni*) in paragraphs 14 and 15 held thus:-

“14.....the court should not interfere with the administrators decision 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 view of what has been stated in *Wednesbury* case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision making process and not the decision.



15. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or Appellate Authority to reconsider the penalty imposed.”

Again in (2006) 1 SCC 63 (**Karnataka Bank Ltd. v. A.L.Mohan Rao**) and in several other decisions the Apex Court held that it is not for the courts to interfere in cases of gross misconduct if the Disciplinary Authority’s decision is based on Enquiry Officer’s report, which has been conducted in a fair and proper manner and a misconduct is proved.

11. The question once the Banking establishment has lost confidence on its staff in the clerical cadre, whether reinstatement can be ordered to such staff, who is dealing with public money, was considered by the Supreme Court in the decision reported in 2007 AIR SCW 4136 :JT 2007 (8) SC 588 (**Ramesh Chandra Sharma v. Punjab National Bank & another**) in paragraph No.20 it is held thus;

“..... Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity. A necessary implication which must be engrafted on the contract of service is that the servant must undertake to serve his master with good faith and fidelity. In a case of loss of confidence, reinstatement cannot be directed. Granting such an employee the relief of reinstatement would be “an act of misplaced sympathy which can find no foundation in law or in equity.” (vide **Air India Corporation, Bombay v. V.A. Ravellow**, AIR 1972 SC 1343 **The Binny Ltd. v. Their Workmen**, AIR 1973 SC 1403; **Kamal Kishore Lakshman v.**

**Management of M/S Pan American World Airways Inc & Ors., AIR 1987 SC 229; Francis Kalein & Co. Pvt. Ltd., v. Their Workmen, AIR 1971 Sc 2414; Regional Manager Rajasthan SRTC v. Sohal Lal, (2004) 8 SCC 218 and Bharat Heavy Electricals Ltd. v. M. Chandrashekhar Reddy & Ors., 2005 AIR SCW 1232).**

**In Kanahaiya Lal Agrawal & ors. v. Factory Manager, Gwalior Sugar Co. Ltd. (2001) 9 SCC 609**, the Hon'ble Supreme Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that, (i) the Workman is holding the position of trust and confidence; (ii) by abusing such position, he commits act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite interference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved."

12. The writ petitioner having served in the Bank, which is dealing with public money committed breach of trust and lost the confidence of the Bank for continuing in service. In the departmental proceedings, he was given full opportunity, which the writ petitioner failed to avail and a finding was recorded by

the Enquiry Officer with regard to embezzlement, which reads thus:-

“Thus Mr. Gupta has been found guilty of all the charges mentioned in the chargesheet no.RO:PRS:SPS:89:1217 dt. 20.3.89 alongwith CORRIGENDUM RO:PRS:MJ:89:1770 dt. 26.4.89. It has been proved that Mr. Gupta has pocketed the sum of Rs.20,000/- received from Sh. Satish Vaid holder of HSS Ac/ No.10329 being amount deposited by the party vide pay-in-slip a/c no.10329 dt. 31.10.86 fvg. Sh. Satish Vaid for Rs.20,000/- with a view to commit fraud and cheat the bank/depositor.”...

13. It is relevant to point out that the writ petitioner failed to avail the opportunities given to him at the time of enquiry, hence he cannot contend that opportunity was not given to him. The only defence throughout was that having been acquitted in criminal case, he shall be reinstated in service. The said issue having been found against the writ petitioner the order of the Single Judge is liable to be set aside and LP appeal is allowed. If deceased-writ petitioner was not paid subsistence allowance during the entire period of suspension, same shall be paid to his legal heirs namely respondent Nos.1 to 3 within a period of eight weeks from the date of receipt of copy of this order.

14. Appeal is allowed. No costs.

**(Bansi Lal Bhat)**  
**Judge**

**(N. Paul Vasanthakumar)**  
**Chief Justice**

**Jammu,**  
**29.02.2016**  
**Vinod.**