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

% *Date of Decision: 31st January, 2025*

\+ W.P.(C) 13645/2009 and CM APPL. 45449/2021

RANJEET KUMAR .....Petitioner

Through: Mr. Shanker Raju and Mr. Nilansh Gaur, Advocates.

versus

BANK OF BARDOA AND ORS .....Respondents

Through: Ms. Praveena Gautam, Ms. Kanika Kalyan, Ms. Akanksha Tyagi and Mr. Pawan Shukla, Advocates for Respondents/BOB.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. This writ petition is preferred on behalf of the Petitioner under Articles 226/227 of the Constitution of India, laying a challenge to order dated 29.05.2004 passed by the Disciplinary Authority ('DA') whereby penalty of *"Removal from service with superannuation benefits, i.e. Pension and/or provident fund and gratuity as would be due otherwise under the rules or regulations prevailing at the relevant time and without disqualification for future employment",* was imposed as also order dated 06.06.2007 passed by the Appellate Authority dismissing the appeal against the penalty order. Consequential benefits including retiral benefits are sought.

2. Case of the Petitioner as averred in the writ petition is that Petitioner joined the erstwhile Bareilly Corporation Bank Limited ('EBCBL') in 1982.

Upon transfer from Bangarmau, Petitioner joined Faridabad Branch on 08.04.1989 as Cashier In-charge. Petitioner worked on the said post from 08.04.1989 to 07.05.1993 and was promoted as JMGS-I (Officer Grade) on 01.05.1993. Between 1993 to 1997, Petitioner remained posted at Sambhal and Ujhani branches of EBCBL.

3. On 12.08.1998, charge sheet was issued against the Petitioner by EBCBL containing the following Articles of Charges:-

> *"1.i While making the cash payment of the debit cash payment vouchers (From No. 10), you overlooked a very important aspect that these vouchers were not bearing the signatures of the recipient at the place specified for. Details of such instances are given as under:-*

S.No	Date of Voucher	Amount In Rs.	Name of the account
1.	11.08.1990	1,00,000/-	SB A/c Khairati Lal A/c No. 443
2.	03.08.1990	1,40,000/-	SB A/c Khairati Lal A/c No. 443
3.	02.02.1991	30,000/-	M/s R.B. Oil Enterprises . A/c No. 256
4.	04.07.1991	3,000/-	M/s Bee Kay Appliances Pvt Ltd. C/A No. 166
5.	03.07.1991	1,00,000/-	D/L Ravi Mohan Garg
6.	15.07.1991	1,00,000/-	D/L Ravi Mohan Garg
7.	14.10.1992	1,50,000/-	D/L R.M. Garg
8.	4.1.1993	1,00,000/	D/L Har Vilash Gupta
9.	16.08.1991	92,000/-	D/L V.K. Gupta
10	16.03.1993	1,00,000/-	D/L Rajendra Gupta

> *1.ii Though the signatures of the recipients were not appearing on the reverse side of the various (FormNo.10), you also did not ensure to obtain the same while making payment of the aforesaid vouchers.*

1.iii. You thus colluded with the then officers of the Branch viz. Mr. Ajay Kumar Gupta and Mr. V.K. Kakkar while making the aforesaid cash payments in an unauthorized manner with malafide intentions.

1.iv Due to your aforesaid acts, the misutilization of the Bank's funds by manipulating the entries could not be surfaced immediately.

2.i. You made the cash payment of various withdrawals forms without ensuring that these withdrawal forms were bearing the signatures of the drawer/account holder. The particulars of such withdrawal forms are appended herebelow:-

S.No	Name of the A/c	A/c No	Amount	Paid on
1.	Ravi Mohan Garg & Others	631	2,00,200.00	13.03.93
2.	-do-	-do-	1,00,000.00	10.04.93
3.	-do-	-do-	75,000.00	30.04.93
4.	-do-	-do-	90,000.00	03.05.93

2.ii Though the signatures of the recipients were appearing on the reverse side of the voucher(withdrawal form), you also did not ensure to obtain the same while making the cash payment of the aforesaid withdrawal forms.

2.iii You thus colluded with Mr. V.K. Kakkar, the then officer of the Branch, who had passed these unauthorized withdrawal forms.

3.i You made the cash payment of various cheques, without ensuring that these cheques were bearing the signatures of the drawers/account holders. Such instances have been given as under:-

Sr. No	Name of the A/c	A/c No	Amount	Instrument No.	Date of payment
01.	M/s Superlife Appliances	O/D	64,000/-	360381	27.9.1990
02.	M/s Superlife Appliances	C/C	25,025/-	027841	01.10.1991
03.	M/s Beekay Appliance (P) Ltd.	C/C	40,000/-	344309	17.04.1993
04.	M/s Richa Engg. & Const.	C/A 366	3,00,000/-	341156	04.04.1992
05	-do-	-do-	7,00,000/-	225535	18.04.1992

06.	-do-	-do-	1,00,000/-	349281	07.11.1992
07.	-do-	-do-	3,00,000/-	349291	19.11.1992
08	-do-	-do-	10,00,000/-	343976	20.11.1992
09.	M/s Mittal Brothers	C/A 402	1,50,000/-	342374	21.04.1993

3.ii Though the signatures of the recipients were not appearing on the reverse side of these instruments, you also did not ensure to obtain the same while making payment of the aforesaid instruments.

3.iii You thus colluded with Mr. Ajay Kumar Gupta and Mr. V.K. Kakkar, the then officers of the branch, who had passed these unauthorized instruments/cheques.

Your aforesaid acts, if proved, are acts of gross misconduct. It is, therefore, decided to conduct a departmental enquiry into these allegations and the bank charges you as under:-

i. Willful acts of aiding and abetting in commission of frauds which are prejudicial to the interest of the bank under clause 19.5 (j) of the Bi-partite Settlement, as amended:

ii. Willful negligence in performance of duties, which are acts prejudicial to the interest of the bank under clause 19.5(j) of the Bi-partite Settlement, as amended.

iii. Willful acts of dishonesty prejudicial to the interest of the bank under clause 19.5(j) of the Bi-partite settlement, as amended.

iv. Willful acts of tarnishing the image of the bank prejudicial to the interest of the bank, under clause 19.5(j) of the Bi-partite Settlement, as amended.

The conduct of the Departmental Enquiry has been entrusted to Shri V.G. Acharya, Manager AGM (DC) office, New Delhi who shall inform you about the date, time and venue of proceeding and further hearings. You will be allowed to be defended at the enquiry by:-

a. A representative member of the Union/Association of the Bank of which you are a member on the date notified for the enquiry first:

b. If you are not a member of any Trade Union/Association on the aforesaid date, by a representative of Registered Union/Association of the Bank in which you are an employee:

c. A representative (at the request of the Bank's Union/Association) of Union/Association to which the Bank's Union/Association is affiliated.

You should ensure your presence during the hearings. If you fail to attend the hearings without any valid cause or reasons, the enquiry proceedings will be held ex-parte."

4. Corrigendum was issued to the charge sheet on 28.11.1998 with the following charges:-

"1. Willful acts of aiding and abetting in commission of frauds which are prejudicial to the interest of the bank under clause 19.5(j) of the Bi-partite settlement as amended.

2. Willful negligence in performance of duties, which are prejudicial to the interest of the bank under clause 19.5(j) of the Bi-partite settlement as amended.

3. Willful acts of dishonesty prejudicial to the interest of the bank under clause 19.5(j) of the Bi-partite settlement, as amended.

4. Willful acts of tarnishing the image of the bank prejudicial to the interest of the bank, under clause 19.5(j) of the Bi-partite settlement, as amended."

5. On 03.06.1999, EBCBL amalgamated with Bank of Baroda/ Respondent No.1. Inquiry Officer ('IO') was appointed on 28.08.2002 to conduct the inquiry. Petitioner avers that on 21.12.2002, he made a representation for supply of documents/information regarding claims made by the account holders of the accounts referred to in the charge sheet, followed by another representation on 28.01.2003. The documents at serial Nos. 2 and 4 of the list provided by the Petitioner were held to be irrelevant and Petitioner was permitted to inspect other documents being debit vouchers/records relevant to the charges. After conclusion of evidence, IO rendered the Inquiry Report on 26.06.2003 holding Articles of Charges 1(i) and 1(ii) as 'proved'; 1(iii) as 'not proved'; 1(iv) 'proved'; 2(i) 'proved'; 2(ii) 'proved'; 2(iii) 'not proved'; 3(i) 'proved'; 3(ii) 'proved'; 3(iii) 'not proved' and charge 4 as 'proved'.

6. Inquiry report was furnished to the Petitioner and opportunity was

granted to make a representation against the same, which the Petitioner did on 14.07.2003. On 24.11.2003, Note of Disagreement was issued by the purported DA as it proposed to differ with the conclusions and findings arrived at by the IO to the extent the charges were held 'not proved'. Petitioner was called upon to submit his representation and attend regular hearing on 13.12.2003. Petitioner appeared for the personal hearing and gave detailed representation denying the allegations, save and except, of clearing the unsigned cheques for cash payments. The DA, passed an order on 29.05.2004 imposing penalty of *"Removal from service with superannuation benefits, i.e. Pension and/or provident fund and gratuity as would be due otherwise under the rules and regulations prevailing at the relevant time and without disqualification for future employment"*, on the Petitioner.

7. Petitioner gave a representation on 05.08.2004 for releasing his superannuation benefits but was informed by the Bank vide letter dated 04.04.2005 that his claim for payment of gratuity was rejected under Rule 8(1)(ii) of Payment of Gratuity Rules, 1972 on the ground that proved allegations against the Petitioner reflected serious negligence and there was unauthorised cash payment of Rs.40.59 Lakhs with *mala fide* intent in collusion with Sh. Ajay Kumar Gupta and Sh. V.K. Kakkar. Further, vide letter dated 13.04.2005, Petitioner was informed in response to his letter dated 15.03.2005 seeking release of Bank's share of Provident Fund ('PF') that the claim of PF had been settled as per Rule 18 of the Bank of Baroda PF Rules.

8. Petitioner filed a writ petition being CWP No.13813/2005 before the High Court of Punjab and Haryana, which was disposed of on 12.02.2007

with a direction to the Petitioner to file an appeal within one month and a direction to Bank to decide the same by a speaking order. Appeal was filed by the Petitioner on 02.03.2007 and was rejected by the Appellate Authority on 06.06.2007. Petitioner sent legal notices for release of retiral benefits on the ground that there was no loss caused to the Bank due to the alleged misconduct of the Petitioner but the retiral benefits were not released and Petitioner filed CWP No.15020/2008 before the Punjab and Haryana High Court, which was dismissed as withdrawn on 25.05.2009 on ground of lack of territorial jurisdiction of the said High Court, whereafter Petitioner filed the present writ petition.

9. Arguing on behalf of the Petitioner, learned counsel raised multiple grounds to assail the penalty and appellate orders. It was argued that as per Clarification (2) of Clause 24.17 of Chapter 24 of Book of Instructions – Volume-12: HRM-I for a misconduct, which occurred prior to the promotion of the employee to officers' cadre, disciplinary action shall be in terms of the rules applicable to workmen employees. As per 'Service Conditions of Award Staff', AGM being the Regional Head was the DA of the Petitioner as Cashier In-charge, since the alleged misconduct was for the period prior to Petitioner's promotion in the officer's cadre on 01.05.1993. Therefore, while the chargesheet was issued by the AGM being the DA, however, the General Manager, who was the Zonal Head, treating the Petitioner as a Scale-I Officer and not Award Staff, assumed the role of DA *albeit* he was the Appellate Authority and disagreed with the report of the IO with respect to the charges which were held to be 'not proved'.

10. It was argued that in exercise of power conferred by Bipartite Settlement, the Chairman and Managing Director ('CMD') appointed the

Disciplinary and the Appellate Authorities of the Award Staff posted at Branches/Regional Offices and as per this stipulation, the DA of the Petitioner was Executive in Scale IV and above functioning as Regional Head while the Appellate Authority was Executive in Scale V and above, functioning as Zonal Head. Therefore, the Disagreement Note issued by the GM on 24.11.2003 was not by the DA, i.e. the AGM and was in violation of the Bipartite Settlement.

11. It was further argued that assuming for the sake of argument, a higher authority, i.e. the GM could render the Disagreement Note, this has caused grave prejudice to the Petitioner in the present case inasmuch as after the Disagreement Note was rendered by the GM, the final order imposing penalty was passed on 29.05.2004 by a lower functionary, i.e. the Deputy General Manager ('DGM') *albeit* even the DGM was not Petitioner's DA. It is only natural that a lower authority will not apply its independent mind while taking a decision for imposition of penalty once the higher authority has taken a decision to disagree with the findings of the IO with respect to the charges 'not proved' and in the present case, the penalty order dated 29.05.2004 shows that the DGM has only followed the dictate of the GM in the Disagreement Note.

12. It was further contended that a bare perusal of the Disagreement Note would show that the same was final and conclusive in nature and not tentative and that while issuing the Note, DA had already made up its mind that Petitioner was guilty of all the charges levelled in the charge sheet. It was urged that no doubt, DA has the power and prerogative to disagree with any or all conclusions and findings of the IO but while disagreeing the opinion in the Disagreement Note must be tentative and the final decision

must be left to a stage after the delinquent employee has been given a reasonable opportunity to contest the reasons for disagreement. In this context, learned counsel relied on the judgments of the Supreme Court in ***Punjab National Bank and Others v. Kunj Behari Misra, (1998) 7 SCC 84*** and ***Yoginath D. Bagde v. State of Maharashtra and Another, (1999) 7 SCC 739.***

13. It was submitted that in ***Yoginath D. Bagde (supra),*** the Supreme Court held that a delinquent employee has a right of hearing not only during the inquiry proceedings but also at a stage at which those findings are considered by the DA and the DA forms a tentative opinion that it does not agree with the findings of the IO. If the findings of the IO are in favour of the delinquent employee and it is held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee, before reversing those findings. Formation of opinion should be tentative and not final and delinquent employee has to be given an opportunity of hearing after he is informed of the reasons on the basis of which DA proposes to disagree with the findings of the IO and this is in consonance with Article 311(2) of the Constitution of India.

14. Learned counsel submitted that a bare perusal of the Disagreement Note dated 24.11.2003 with respect to Articles of Charges 1(iii), 2(iii) and 3(iii), which were held by the IO to be 'not proved', DA conclusively held that the same were 'proved' and the charges do not fail at all. It was also observed that once the IO held that charge of wilful act of aiding and abetting in commission of frauds was proved against the Petitioner, it is obvious that the acts were performed in collusion with Sh. Ajay Kumar Gupta and Sh. V.K. Kakkar and they all conspired together for fraudulent

purposes. These are not tentative but final conclusions and are in the teeth of law laid by the Supreme Court in ***Yoginath D. Bagde (supra)***.

15. Last but not the least, it was argued that Petitioner has been discriminated in the matter of award of penalty of removal from service inasmuch as the two co-accused, i.e. Sh. B.P. Dubey and Ms. Sunita Dhingra, the two Clerks at the Faridabad Branch were only given the penalty of stoppage of increments and this violates Article 14 of the Constitution of India. It was urged that the Bank has without any cause withheld the gratuity of the Petitioner in the absence of any loss to the Bank. There was no charge of any financial loss caused to the Bank and thus no evidence to prove the loss and yet gratuity has been withheld on a false and frivolous plea of Rs.40.59 Lacs caused to the Bank on account of the Petitioner's alleged misconduct. It was also argued that assuming everything against the Petitioner, Bank could not have denied the benefit of gratuity and its share of PF in light of penalty which was removal with superannuation benefits.

16. Counsel for the Bank, *per contra*, argued that there is no legal infirmity in the Disagreement Note dated 24.11.2003. After the DA examined the inquiry report and the evidence on record, it was of the tentative view that the IO had incorrectly found that certain charges were not proved. The Disagreement Note was furnished to the Petitioner with an advice to submit his representation and attend the oral hearing on 13.12.2003, which he did. Every opportunity was granted to the Petitioner to prove and establish that he was not guilty of charges 1(iii), 2(iii) and 3(iii), however, Petitioner was unable to prove through evidence that he was not guilty of the said charges. The opinion was tentative inasmuch as the DA

reassessed the allegations on the basis of record and evidence and gave his final findings on 09.01.2004 giving reasons for disagreeing with the IO. Subsequent thereto, again a show cause notice was issued to the Petitioner on 28.02.2004 asking him to show cause against the proposed punishment. An oral hearing was granted on 11.03.2004, which the Petitioner attended and therefore, it is incorrect for the Petitioner to urge that the opinion in the Disagreement Note was final.

17. Regulation 7(2) of BOB Officer Employees' (Discipline & Appeal) Regulation, 1976 ('1976 Regulations') provides that in case DA is in disagreement with IO's report on any Articles of Charge, it can record its reasons for such disagreement and its own findings on such charge, if the evidence on record is sufficient for the purpose. Regulation 7(2) is extracted hereunder:

> *"7(2). The Disciplinary Authority, shall if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose."*

18. This Regulation was considered by the Supreme Court in ***Kunj Behari Misra (supra),*** and it was held that the delinquent officer must be given an opportunity to represent before the DA gives his final finding and this procedure was admittedly followed in letter and spirit. The action of the Bank was in consonance with Regulation 7(2) and Petitioner can make no complaint against the Disagreement Note.

19. It was explained that the General Manager had issued the Disagreement Note on 24.11.2003 but he was subsequently promoted as Executive Director and in these circumstances, the then DA, i.e. the DGM passed the order of penalty based on the evidence on record and report of the

IO as also the Disagreement Note and no fault can be found with the penalty order. Moreover, under 1976 Regulations read with Circular dated 23.07.1998, the Managing Director or any other Authority empowered by him may institute or direct the DA to institute disciplinary proceedings against an Officer Employee of the Bank by virtue of Regulation 5(1). As Petitioner was JMG/Scale-I Officer, the competent DA in terms of Schedule I of the Circular was the Zonal Head not below the rank of DGM. Therefore, both GM and DGM were competent to act as DAs. In this context, reliance was placed on the judgments of the Supreme Court in ***Allahabad Bank v. Prem Narain Pande and Others, (1995) 6 SCC 634*** and ***UCO Bank and Others v. Sushil Kumar Saha, (2013) 1 SCC 335.***

20. As for the parity in punishment, it was argued that there were serious allegations of fraud and dishonesty against the Petitioner who himself admitted that he honoured the cheques in question and made cash payments of 23 cheques/instruments/debit vouchers without there being the signatures of the drawer or recipient on these instruments, in violation of the banking rules. Through the inquiry, Petitioner raised a defence that he acted on the instructions of the higher authorities but obeying unlawful command cannot be a just defence. Appellate Authority also examined the penalty order and found justification in the order of DA inasmuch as being an employee of the Bank and having involvement in financial transactions, integrity of the highest degree and trustworthiness are unexceptionable virtues. Though subtly, it was also argued that appreciation and re-appreciation of evidence in departmental inquiries is beyond the scope of this Court in judicial review under Article 226 of the Constitution and reliance was placed on the judgment of the Supreme Court in ***Union of India and Others v. P.***

Gunasekaran, (2015) 2 SCC 610. It was submitted that self-contribution of provident fund of Rs.3,05,075.45 p. was credited to the account of the Petitioner while Bank's share was appropriated towards the loss suffered by the Bank and cannot be released and similarly due to loss of Rs.40.59 Lacs, gratuity has been withheld.

21. Heard learned counsels for the parties and examined their rival submissions.

22. Questioned before the Court in the present proceedings are the charge sheet dated 12.08.1998, Disagreement Note dated 24.11.2003, order of the DA dated 29.05.2004 as also order of the Appellate Authority dated 06.06.2007.

23. First and foremost, I may consider the issue of legal validity of the Disagreement Note dated 24.11.2003. There is a two-pronged attack to the Disagreement Note, firstly, on the jurisdiction of the General Manager to issue the Disagreement Note and secondly, on the ground that it is in the nature of a final order inasmuch as the DA has recorded conclusive finding of guilt with respect to Articles of Charge 1(iii), 2(iii) and 3(iii), which were held to be 'not proved' by the IO.

24. Coming to the first ground, Petitioner has brought forth that in case of Award Staff, it is clarified under Clause 24.17 of Chapter 24 of Book of Instructions – Volume-12: HRM-I that for a misconduct which occurred prior to the promotion of the employee to the Officers' cadre, disciplinary action shall be taken in terms of the rules applicable to the workmen employees. Relevant clarification is as follows:

> *"(1) For a misconduct, which occurred prior to the promotion of the employee to Officers' cadre, disciplinary action shall be in terms of the rules applicable to workmen employees."*

25. In the present case, the alleged misconduct pertains to the period prior to the promotion of the Petitioner to the Officer Grade on 01.05.1993. At the time of the alleged misconduct, Petitioner was admittedly working as Cashier In-charge and was undoubtedly an Award Staff. Therefore, by virtue of the Clarification, the disciplinary action was to be in terms of rules applicable to workmen employees. In Rule 24.19, the Disciplinary and Appellate Authorities, as appointed by the CMD, in exercise of power conferred by Bipartite Settlement have been provided, which reflects that for Award Staff posted at Branches/Regional Offices, DA is the Executive in Scale IV or above functioning as Regional Head while Appellate Authority is Executive in Scale V and above functioning as Zonal Head. Relevant rule is as follows:

> *"In exercise of the power conferred by the Bipartite Settlement, the Chairman and Managing Director has appointed the following executives/officers as the Disciplinary Authorities and Appellate Authorities:*

Sl. No.	*Award Staff posted at*	*Disciplinary Authority*	*Appellate Authority*
(i)	*Branches/ Regional Offices*	*Executive in Scale-IV and above functioning as Regional Head*	*Executive in Scale-V and above functioning as Zonal Head*
(ii)	*Branches headed by Chief Manager/ Senior Manager- for minor and/or gross misconduct.*	*Chief Manager/ Senior Manager functioning as in-charge of Branch.*	*Zonal Head*
(iii)	*Branches headed by officers in JM-I/MM-II/ Regional Office/ Training Centre/ Colleges*	*Regional Manager of the Region in the geographical area of which the branch/office is located. In his absence any Regional Manager of the Zone.*	*Zonal Head"*

26. Respondent Bank has explained that General Manager issued the Disagreement Note by virtue of his authority from Regulation 5(1) of 1976 Regulations read with Circular dated 23.07.1998. In my view, this is a wholly misconceived argument. Clearly, for Award Staff working at Branches/Regional Offices the AGM was the DA of the Petitioner and GM was the Appellate Authority. Regulation 5(1) by a plain reading shows that it is applicable to an Officer Employee and same is the position with respect to the Circular. Since the misconduct related to the period prior to promotion of the Petitioner to the Officer Grade, neither Regulation 5(1) nor the Circular were applicable and therefore, as rightly contended by the Petitioner, the Appellate Authority exercised the power of a DA. While it is true that an authority higher than a DA can exercise disciplinary power but in the present case, there is a serious fall out of the Disagreement Note being issued by the GM. It needs no reiteration that once the GM disagreed with the IO, the DGM who passed the penalty order naturally felt bound by the view of his superior, which is not difficult to believe or perceive and therefore, the exercise of the DA applying its mind independently to the inquiry proceedings and the inquiry report as also the defence of the Petitioner, became an illusionary and futile exercise. In fact a plain reading of the penalty order fortifies the stand of the Petitioner that the DGM was completely influenced by the observations of the GM in the Disagreement Note and he has at several places referred to the findings in the Note and expressed his agreement with them. This completely vitiates the penalty order.

27. There is yet another glaring illegality in the Disagreement Note. The IO in his inquiry report held Articles of Charges 1(iii), 2(iii) and 3(iii) as

'not proved'. It is more than obvious that the authority rendering the Disagreement Note recorded a conclusive finding of guilt on the three charges and thus pre-judged the issue. It is finally and conclusively opined in the Disagreement Note that the three charges do not fail at all and are 'proved'. It is also concluded that Petitioner was guilty of collusion with Sh. Ajay Kumar Gupta and Sh. V.K. Kakkar and together and in an unauthorised manner, all conspired together for fraudulent purpose. There is a final finding that the authority does not agree with the findings of the IO in respect of the charges 'not proved'. In ***Yoginath D. Bagde (supra),*** the Supreme Court held that where DA disagrees with the findings of the IO, a tentative opinion for disagreement has to be recorded and not a conclusive one as the latter would amount to pre-judging the issue and this illegality is not capable of rectification even by a post-decisional hearing. The Disagreement Note dated 24.11.2003 is in the teeth of the judgment in ***Yoginath D. Bagde (supra),*** relevant passage from which is as follows:

> ***"31.*** *In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be*

pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution."

28. Following the judgments of the Supreme Court in ***Kunj Behari Misra (supra)*** and ***Yoginath D. Bagde (supra),*** the Division Bench of this Court in ***K.C. Sharma v. BSES Yamuna Power Limited, 2015 SCC OnLine Del 8125,*** held as follows:-

"15. In the decisions reported as (1998) 7 SCC 84 Punjab National Bank v. Kunj Bihari Misra and (1999) 7 SCC 739 Yoginath D. Bagde v. State of Maharashtra, the Supreme Court held that a facet of the principles of natural justice was that if the Disciplinary Authority disagreed with the findings returned by an Enquiry Officer it should record tentative reasons for the disagreement, leaving scope for an open mind to consider the response of the charged officer, give the tentative reasons for the disagreement to the charged officer and invite his response and then dealing with the response pass a reasoned order.

16. The jurisprudence behind said principle of law is that unless a person is given an opportunity to respond to a tentative reason to disagree, the person affected loses a valuable right of being heard before a decision adverse to his interest is taken and that the final decision must contain the reasons because it is this reasons which would determine the appellate remedy of the person whose interest is adversely affected by the decision.

17. In Yoginath D. Bagde's case (supra), the Supreme Court held:

"a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is

all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."

18. An argument was advanced in Yoginath Bagde's case before the Supreme Court that a post-decisional hearing may be granted. The Supreme Court negative the plea holding that the same would not be adequate because the Disciplinary Authority had already closed its mind by taking a determinative view."

29. The judgments of the Supreme Court in ***Kunj Behari Misra (supra) and Yoginath D. Bagde (supra)*** have been followed by different Courts and I may refer to a few to avoid prolixity. In ***Nasimuddin Ansari v. Union of India and Others, 2023 SCC OnLine Del 4623,*** the Division Bench of this Court observed as under:

"V. Predisposed mindset in the Tentative Disagreement Note.

88. *The petitioner has also assailed the Tentative Disagreement Note by stating that it is in the nature of a Final Order which displays the pre-disposed mindset of respondent no. 1. Reliance has been placed on the judgment of this court in Laxman Prasad (supra) to aver that Disagreement Note must be tentative in nature and can in no way indicate conclusiveness, which would render it liable to be quashed. Such*

conclusiveness implies that the Disciplinary Authority has pre-determined their decision rendering the right of the charged officer to submit their representation against the Disagreement Note to be an empty formality, which is in turn violative of the principles of natural justice.

xxx *xxx* *xxx*

90. *In the instant case, the Disciplinary Authority, in their Tentative Disagreement Note dated 11.07.2017, has interfered with the findings of the Inquiry officer i.e. "charges not proved" by stating that "Article-II appears as proved". The respondent no. 1 has not only displayed its inclination but also provided the final conclusion in the matter. Any opportunity afforded to the petitioner after such conclusion is only a post decisional opportunity and is violative of the rules of natural justice."*

30. In light of the settled law, the Disagreement Note dated 24.11.2003, which contains a conclusive opinion of the DA, cannot be sustained in law. This Court is conscious of the scope and ambit of its jurisdiction in judicial review under Article 226 of the Constitution of India in matters relating to disciplinary proceedings. The principles of judicial review were elucidated by a three-Judge Bench of the Supreme Court in ***B.C. Chaturvedi v. Union of India and Others, (1995) 6 SCC 749*** and I may quote the relevant paragraphs as follows:-

"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.

13. *The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."*

31. These well-settled principles were reiterated from time to time and it is clear that a Constitutional Court cannot assume the role of an Appellate Authority and can only evaluate the decision-making process as also examine if the principles of natural justice or required procedure for conduct of an inquiry were followed so as to ensure that no manifest injustice is caused to the Charged Officer. In ***Pravin Kumar v. Union of India and Others, (2020) 9 SCC 471,*** the Supreme Court observed that the jurisdiction of a Constitutional Court is circumscribed by limits of correcting errors of law, procedural errors and violations of principles of natural justice but judicial review is not analogous to venturing into merits like an Appellate Authority.

32. This Court is certainly not interfering with the evidence in the inquiry

proceedings and/or appreciating or re-appreciating the same. In exercise of judicial review, it is certainly open to a writ Court to evaluate the decision making process to ensure fairness in treatment and to correct manifest errors of law or procedure of departmental inquiries, which in this case has resulted in significant injustice and violation of principles of natural justice. This Court is only following the well-settled law of the Supreme Court that a Disagreement Note cannot be a final opinion so as to pre-judge the issue as also that the DA must be the one stipulated in the applicable rules.

33. From the aforesaid discussion, two conclusions can be drawn by this Court touching upon the illegality in the procedure followed during the departmental proceedings i.e. Disagreement Note was issued by an Authority which was not the Disciplinary Authority of the Petitioner as per the applicable rules and Disagreement Note contained final conclusion pre-judging the guilt of the Petitioner for charges held as 'not proved' by the IO. In view of the taint in the Disagreement Note, the same cannot be sustained in law and deserves to be quashed and consequently, the order of the Disciplinary Authority imposing the penalty as also the Appellate Authority's order cannot sustain.

34. It is significant to note here that after the penalty was imposed on the Petitioner, he represented for release of his Gratuity, Bank's share of PF and Leave Encashment. By order dated 04.04.2005, claim of the Petitioner for Gratuity was rejected on the ground that there was sufficient evidence of his collusion with Sh. Ajay Kumar Gupta and Sh. V.K. Kakkar and proved allegations reflected serious negligence on his part. Quantifying the details of unauthorized cash payment of Rs.40.59 lacs, as alleged loss to the Bank, payment of Gratuity was declined. In my view, the order is completely

illegal. Admittedly, neither there was any charge of loss caused to the Bank nor any evidence led in this behalf in the inquiry. It is not even the allegation against the Petitioner that he misappropriated the money. In the absence of any charge or evidence of loss to the Bank, there was no reason for the Bank to withhold the Gratuity. It is no longer *res integra* that there must be finding by the Competent Authority to withhold the Gratuity, either in part or in full, before any employee can be deprived of the Gratuity benefit. There is no finding of the Competent Authority in the present case to withhold the Gratuity. In fact, to the contrary, the penalty imposed on the Petitioner was removal with superannuation benefits. Claim of the Petitioner for Gratuity was rejected by the Assistant General Manager vide impugned order dated 04.04.2005 passed on a representation made by the Petitioner for release of his Gratuity and is not an order by the Competent Authority. The order clearly deserves to be set-aside.

35. Coming to the impugned order dated 13.04.2005, whereby the Bank rejected the representation of the Petitioner for payment of Bank's share of PF invoking Rule 18 of Bank of Baroda PF Rules. Plain reading of the Rule which is extracted in the order itself shows that only when the member is dismissed for misconduct causing financial loss to the Bank, that the PF can be deducted. Indisputably, Petitioner was not dismissed from service and the penalty is one of removal and secondly, there is no charge of any financial loss to the Bank. The deduction of the PF was wholly unwarranted and order dated 13.04.2005 is untenable in law.

36. The last question that now arises for consideration is what relief can be granted to the Petitioner at this stage. Ordinarily, this Court may have remanded the matter back to the Bank from the stage where the illegality

crept in while issuing the Disagreement Note with a direction to issue a fresh Disagreement Note with a tentative opinion and call for the representation of the Petitioner. However, the peculiar facts of this case do not commend this course of action and I am not persuaded to remit the matter back to the DA. The reason to hold so is not far to seek. The penalty imposed on the Petitioner is removal with superannuation benefits and even if the matter is remitted to the DA for a fresh consideration, the penalty cannot be on a higher scale. As this Court has held above that Petitioner cannot be denied the benefits of Gratuity and PF with the existing penalty, no useful purpose will be served in remanding the matter back for a fresh consideration from the stage of the Disagreement Note as the Petitioner only seeks retiral benefits due to him, such as, Gratuity, PF and Leave Encashment and there is no relief for backwages or pension.

37. In light of the above, this writ petition is allowed setting aside the impugned order dated 29.05.2004 passed by the Disciplinary Authority as also order dated 06.06.2007 passed by the Appellate Authority. Petitioner is thus held entitled to notional reinstatement from the date of his removal till he attained age of superannuation on 16.09.2019. This period will be counted only for the purpose of computing Gratuity. Bank is directed to release its share of the PF as also Gratuity to the Petitioner along with Leave Encashment for the period Petitioner served till his removal from service. The dues shall be released within a period of 08 weeks from today.

38. Writ petition is disposed of in the aforesaid terms, along with pending application.

JYOTI SINGH, J

JANUARY 31, 2025/*B.S.Rohella*