Supreme Court of India Roop Singh Negi vs Punjab National Bank & Ors on 19 December, 2008 Author: S Sinha Bench: S.B. Sinha, Cyriac Joseph REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7431 OF 2008
(Arising out of SLP (C) No. 14429 of 2007)

ROOP SINGH NEGI ... APPELLANT

Versus

PUNJAB NATIONAL BANK & ORS. ... RESPONDENTS

JUDGMENT

S.B. SINHA, J. 1. Leave granted. 2. Appellant was working as a peon in the respondent - Bank. On or about 24.11.1993, a complaint was lodged by the Manager of the Bank alleging that some drafts which were presented for encashment by M/s Anil Trader and some other persons and purported to have been issued from the Mall Road Branch of the Bank had in fact not been issued therefrom. A First Information Report (for short, "FIR") under Section 380/120B of the Indian Penal Code was registered. The investigation of the said case was assigned to one Shri Janardhan Singh, Senior Inspector. He submitted a report on 11.12.1993, inter alia, opining that the integrity of the appellant who had been transferred to Rampur, Shimla was doubtful. It was concluded: "In view of the facts stated above we are of the view that both the joint custodian i.e. Shri H.C. Grover - Manager, presently posted at BO Chandni Chowk, Delhi and Shri P.C. Gupta - AM are responsible for the loss of the drawing book since either of the two have remained one of the custodians from 1.6.93 to 24.8.93. The loss of drawing book could have been avoided had they taken due care and precaution. Further, Shri Sharad Narain, Sr. Manager is also responsible as he has failed to ensure compliance of laid down instructions in respect of monthly checking of security forms and also for non-submission of M.C. after 31.5.93." In the said report, various procedural lapses on the part of some officers of the Bank were also pointed out. 3. After five years of the said incidence, a disciplinary proceeding was initiated against the appellant stating that during the period 18.11.1991 and 9.10.1993, he had taken away one blank draft issue book bearing No. 626401 to 626425. A show-cause notice was issued. Cause was shown by him. He was found guilty by the Enquiry Officer. In the said proceeding, reliance was placed on the purported confession

of the appellant before the police authorities in the year 1993. It was marked as Exhibit PE-3. 4. Indisputably, the forms and other important books and documents belonging to a Bank never remain in the custody of a peon. It was accepted that documentary evidences were collected by the police officers. Those documents were simply produced; they were not proved. The purported confession by the appellant was also not proved. Only because the said confession was made before the police authorities, the enquiry officer inferred on the basis thereof that the appellant had connection with those persons who had used those bank drafts, stating: ".....Therefore, the undersigned is of the opinion that PE-4 proves that Shri Roop Singh Negi has connections with the said culprits. On examination of witness MDW-1 on 20/7/99, he has said that according to the statement of Shri Roop Singh Negi, he has confessed that on the instructions/saying of Rajbir, Devinder alias Mental, Asif and Brahmpal, who are the residents of trans-Yamuna area he had stolen the draft book....." It was, inter alia, concluded: "In view of the above details/proceedings it is proved that the delinquent employee has admitted that drafts being no. QWA-626401 to 626425 have been stolen from Branch office Mall Road Delhi Branch vide page no. 25057 and has caused financial loss to the bank but he has not admitted that he has stolen the said drafts. As the main charge on the delinquent employee is of stealing the draft books and other documents, therefore, in such matters direct proof/evidence are not available generally and the conclusion has been arrived at on the basis of assumptions...." Assumption of certain factual foundation was drawn on the basis of the documents supplied by the police as would appear from the following findings of the Enquiry Officer. "1. Efforts were made to through Lost Draft book no. 626404 dated 6.9.93 for Rs. 6,90,000/- was prepared the fake draft and encashed through OBC Farukabad prepared through PNB Branch Farukabad and again draft drawn on OBC Delhi and encashed through CBI Narain branch. 2. From this draft no. 626402 dated 24.8.93 for Rs. 5,40,000/- made in the name of M/s Ajay Sales and encashed from Farukabad Branch. 3. From the pages, draft no. 626415 dated 27.9.93 for Rs. 7,35,000/- and draft no. 626423dated 1.10.95 for Rs. 8,65,000/- drawn on branch Saharanpur and encashed on branch Khalsi Lines Saharanpur. 4. Arresting of culprits namely K.K. Gupta, Rajbir, Ashok Kumar, Ravinder Pal Singh, Kante Gupta and Harvinder alias Billa with the remaining pages of the draft book by the Thane Mysori (Ghaziabad) police. 5. Stealing of draft book bearing no. 626401 to 626425 and other documents from branch Mall Road Delhi. 6. First draft was issued on 24.8.93 from the stolen draft book which fact came to the knowledge of Mall Road Delhi Branch from the Central Bank of India Branch Officer. 7. Before 9.10.1993 Shri Roop Singh Negi was posted in the Mall Road Delhi Branch. 8. Bank Security Form Department is out of reach of non-bank employees/outsiders." It was purported to have been found: "1. Stealing of drawing book and specimen signatures of officers happened before 24.8.93. 2. The factum of stealing the drafts came to the knowledge on 24.11.93 while the same was done on 24.8.93. Draft book has been stolen from Security Form Department in such a manner which fact has come to the knowledge very late. Possibly this draft book has been taken away available at the last serial

nos. of the draft books. 3. From the whole embezzlement it is clear that the gang had full knowledge of the banking working or any employee was involved in this embezzlement/fraud. 4. That fraud has been committed so cleverly so that there is no direct proof or evidence available." Conclusion was drawn up on the basis of the above facts by the Enquiry Officer as under: "That Shri Roop Singh has direct or indirect links with the culprits who were arrested by the Thane Mysori (Ghaziabad) along with pages of drafts and on the basis of whose statement Shri Roop Singh Negi was arrested by the Delhi Police on 9.12.93 from Rampur Bushahar Himachal Pradesh and taken to Delhi. Having links with the aforesaid accused, it is proved that Shri Roop Singh Negi has stolen the draft book no. 626401 to 626425 from the Security Form Department." 5. Before the disciplinary authority, the appellant contended that there was no evidence against him. The attention of the disciplinary authority was furthermore drawn to the fact that by an order dated 9.5.2000, the Criminal Court passed an order of his discharge. Only charges under Section 411 of the Indian Penal Code were framed against one Rajbir. Neither the State nor the Bank preferred any revision petition thereagainst. The same attained finality. The Regional Manager acting as a disciplinary authority by an order dated 24.1.2001 without assigning any reason and without considering the contentions raised by the appellant including the fact that he had been discharged by the criminal court, directed the appellant to be dismissed from services, stating: "That I have again gone through the facts carefully and I hold you responsible for gross misconduct in terms of Bipartite Settlement clause 19.5 (amended from time to time) and there is no justification to reduce the proposed punishment. Therefore, in terms of the Bipartite Settlement clause 19.6, I confirm the proposed punishment"Dismissal from Bank Service". As you are under suspension, therefore, I order that in terms of Bipartite Settlement Provisions you will be eligible for subsistence allowance only till your dismissal from bank service." 6. Appellant made a representation against the said order before the appellate authority. The appellate authority noticing his contentions in details. Inter alia, on the premise that appellant had been given an opportunity of personal hearing, the appeal was dismissed, opining: "In view of the above, the submissions made by the appellant in his appeal dated 23.02.2001 and his verbal submissions made during personal hearing are devoid of merits. As such I find no reasons to interfere or alter the order of Disciplinary Authority. Thus keeping in view the nature and gravity of the proven charges, punishment of"Dismissal from Bank Service", imposed upon Shri Negi by Disciplinary Authority vide its order dated 24.01.2001 is hereby confirmed and appeal of Shri Negi is rejected." 7. The appellate authority also did not apply his mind to the contentions raised by the appellant; no reason was assigned in support of his conclusion. On what evidence, the appellant was found guilty was not stated. 8. Aggrieved by and dissatisfied with the said orders, the appellant filed a Writ Petition. The same by reason of the impugned judgment has been dismissed, stating: "... The writ jurisdiction can be exercised by this court only in exceptional circumstances which have not been mentioned by the petitioner in the petition. However, once the petition was admitted for hearing in exercise of the writ jurisdiction after a lapse of so

many years since the writ petition was admitted in the year 2001, it may not be appropriate for this Court to pass an order now that the petitioner should make out a case for reference to the industrial tribunal and therefore the petition filed by the petitioner is being considered." 9. The High Court noticed the decision of this Court in Kuldeep Singh vs. Commissioner of Police & ors. [(1999) 2 SCC 10], Narinder Mohan Arya vs. United India Insurance Co. Ltd. & ors. [(2006) 4 SCC 713] and Bhagwati Prasad Dubey vs. The Food Corporation of India [AIR 1988 SC 434] whereupon reliance has been placed by the learned counsel appearing on behalf of the appellant, and held: " All the aforesaid decisions are not directly attracted to the present facts though the law laid down applies to the present facts. But in the facts of the case it is not a case of no evidence but only in regard to the conclusions drawn based upon the evidence which reappraisal cannot be done by this Court. Coming to the arguments that there can be no reappraisal of the evidence by this Court once the findings have been given by the Enquiry Officer considering the evidence, it is not the case of the petitioner that there was no evidence at all as against him led before the Enquiry Officer, but the dispute is in regard to the conclusion drawn by the enquiry Officer based upon evidence. According to law even if two views are possible to be drawn against the petitioner on the basis of the Enquiry Report one which has been drawn by the Enquiry Officer cannot be held to be wrong taking the plea that the second view was also possible to be drawn based upon evidence. The decision of Hon'ble Apex Court in Narinder Mohan Arya's case (supra) clearly lays down that the proceedings of departmental enquiry report are quasi criminal in nature. Therefore the guilt of the delinquent official is not required to be proved beyond any reasonable doubt as in a criminal case. We have considered the report of the Enquiry Officer and the penalty imposed by the Bank is based upon evidence as such it is not open to this Court to consider that some other view was also possible and since it was not a case of no evidence therefore there cannot be reappraisal of evidence or draw its own conclusion by this Court based upon evidence. The findings recorded by the Enquiry Officer and the punishment imposed by the respondent Bank or its officers call for no interference by this court and as such there is no merit in the petition which is dismissed accordingly." 10. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession,

as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left. 11. In Union of India vs. H.S. Goel [(1964) 4 SCR 718, it was held: "....The two infirmities are separate and distinct though, conceivably, in some cases, both may be present. There may be cases of no evidence even where the Government is acting bona fide; the said infirmity may also exist where the Government is acting mala fide and in that case, the conclusion of the Government not supported by any evidence may be the result of mala fides, but that does not mean that if it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will not issued without further proof of mala fides. That is why we are not prepared to accept the learned Attorney-General's argument that sine no mala fides are alleged against the appellant in the present case, no writ of certiorari can be issued in favour of the respondent. That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charged framed against the respondent has been proved, is based on no evidence. The learned Attorney-General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by he appellant is a reasonably possible view, this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondents case is, is there any evidence on which a finding can be made against the respondent that charge No. 3 was proved against him ? In exercising its jurisdiction under Art. 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which dealt with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charges in question is proved against the respondent ? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well-founded because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that charge number 3 is proved against him is based on no evidence. 12. In Moni Shankar v. Union of India and Anr. [(2008) 3 SCC 484], this Court held: 17. The departmental proceeding is a quasi judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The

Court exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely - preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality." 13. In Narinder Mohan Arya vs. United India Insurance Co. Ltd. & ors. (supra), whereupon both the learned counsel relied upon, this Court held: "26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the Enquiry Officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. [See State of Assam and Anr. v. Mahendra Kumar Das and Ors. [(1970) 1 SCC 709] (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice [See Khem Chand v. Union of India and Ors. (1958 SCR 1080) and State of Uttar Pradesh v. Om Prakash Gupta (1969) 3 SCC 775]. (3) Exercise of discretionary power involve two elements (i) Objective and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. [See K.L. Tripathi v. State of Bank of India and Ors. (1984) 1 SCC 43]. (4) It is not possible to lay down any rigid rules of the principles of natural justice which depends on the facts and circumstances of each case but the concept of fair play in action is the basis. [See Sawai Singh v. State of Rajasthan (1986) 3 SCC 454] (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charges is wholly illegal. [See Director (Inspection & quality Control) Export Inspection Council of India and Ors. v. Kalyan Kumar Mitra and Ors. 1987 (2) Cal. LJ 344. (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. [See Central Bank of India Ltd. v. Prakash Chand Jain (1969) 1 SCR 735, Kuldeep Singh v. Commissioner of Police and Ors. (1999) 2 SCC 10]." The judgment and decree passed against the respondent therein had attained finality. In the said suit, the enquiry report in the disciplinary proceeding was considered, the same was held to have been based on no evidence. Appellant therein in the aforementioned situation filed a Writ Petition questioning the validity of the disciplinary proceeding, the same was dismissed. This Court held that when a

crucial finding like forgery was arrived at on an evidence which is non est in the eye of the law, the civil court would have jurisdiction to interfere in the matter. This Court emphasized that a finding can be arrived at by the Enquiry Officer if there is some evidence on record. It was furthermore found that the order of the appellate authority suffered from non application of mind. This Court referred to its earlier decision in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. [(1999) 3 SCC 679] to opine: "41. We may not be understood to have laid down a law that in all such circumstances the decision of the civil court or the criminal court would be binding on the disciplinary authorities as this Court in a large number of decisions points point that the same would depend upon other factors as well. See e.g. Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh and Anr. (2004) 8 SCC 200 and Manager, Reserve Bank of India Bangalore v. S. Mani and Ors. (2005) 5 SCC 100. Each case is, therefore, required to be considered on its own facts. 42. It is equally well settled that the power of judicial review would not be refused to be exercised by the High Court, although despite it would be lawful to do so. In Manager, Reserve Bank of India Bangalore (supra) this Court observed: '39. The findings of the learned Tribunal, as noticed hereinbefore, are wholly perverse. It apparently posed unto itself wrong questions. It placed onus of proof wrongly upon the appellant. Its decision is based upon irrelevant factors not germane for the purpose of arriving at a correct finding of fact. It has also failed to take into consideration the relevant factors. A case for judicial review, thus, was made out." 14. In that case also, the learned single judge proceeded on the basis that the disadvantages of an employer is that such acts are committed in secrecy and in conspiracy with the person affected by the accident, stating: ".....No such finding has been arrived at even in the disciplinary proceedings nor any charge was made out as against the appellant in that behalf. He had no occasion to have his say thereupon. Indisputably, the writ court will bear in mind the distinction between some evidence or no evidence but the question which was required to be posed and necessary should have been as to whether some evidence adduced would lead to the conclusion as regard the guilt of the delinquent officer or not. The evidence adduced on behalf of the management must have nexus with the charges. The Enquiry Officer cannot base his findings on mere hypothesis. Mere ipso dixit on his part cannot be a substitute of evidence. 45. The findings of the learned Single Judge to the effect that 'it is established with the conscience (sic) of the Court reasonably formulated by an Enquiry Officer then in the eventuality' may not be fully correct inasmuch as the Court while exercising its power of judicial review should also apply its mind as to whether sufficient material had been brought on record to sustain the findings. The conscience of a court may not have much role to play. It is unfortunate that the learned Single Judge did not at all deliberate on the contentions raised by the appellant. Discussion on the materials available on record for the purpose of applying the legal principles was imperative. The Division Bench of the High Court also committed the same error." 15. Yet again in M.V. Bijlani vs. Union of India & ors. (2006) 5 SCC 88, this Court held: ".....Although the charges in a departmental proceedings are not required to be proved like a criminal

trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with." 16. Yet again in Jasbir Singh vs. Punjab & Sind Bank & ors. [(2007) 1 SCC 566], this court followed Narinder Mohan Arya vs. United India Insurance Co. Ltd. & ors. (supra), stating: "12. In a case of this nature, therefore, the High Court should have applied its mind to the fact of the matter with reference to the materials brought on records. It failed so to do." 17. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof. 18. For the aforementioned reasons, the judgment of the High Court is set aside. The appeal is allowed with costs and appellant is directed to be reinstated with full back wages. Counsel's fee assessed at Rs.25,000/-. .....J. [S.B. Sinha] .....J. [Cyriac Joseph] New Delhi; December 19, 2008