Reserved On : 26/08/2025

Pronounced On : 04/09/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 330 of 2025
In
R/SPECIAL CIVIL APPLICATION/19748/2016
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2025
In
R/LETTERS PATENT APPEAL NO. 330 of 2025
With
CIVIL APPLICATION (FOR MODIFICATION OF ORDER) NO. 2 of 2025
In
R/LETTERS PATENT APPEAL NO. 330 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and
HONOURABLE MR.JUSTICE R. T. VACHHANI

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Approved for Reporting	Yes	No
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ZONAL MANAGER, BANK OF INDIA
Versus
PRESIDING OFFICER & ANR.

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Appearance:
MR. DHARMESH DEVNANI for NANAVATI ASSOCIATES(1375) for the appellant(s) no. 1
PARTY IN PERSON(5000) for the Respondent(s) No. 2

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CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MR.JUSTICE R. T. VACHHANI

CAV JUDGMENT

(PER : HONOURABLE MR.JUSTICE R. T. VACHHANI)

By way of the captioned LPA, the appellant – Bank challenges the

CAV judgment dated 28.01.2025 passed in the captioned writ petition; whereby the said petition came to be partly allowed upholding the directions issued by the Tribunal in clause No.(i) to (iv) while quashing and setting aside the directions issued in clause (v) of the impugned award dated 12.08.2016 passed by the CGIT-cum-Labour Court, Ahmedabad (for short "Tribunal") in Reference (CGITA) No. 45 of 2005.

2. For the sake of convenience and brevity, the parties herein, appellant would be referred to as the "Bank" and respondent No.2 as the "employee".

FACTUAL MATRIX :-

3. Brief facts of the case are that respondent No.2-employee was appointed as an Account Clerk on 01.09.1977 in the Bank of India, Naroda Branch. On 05.03.2002, Mr. Rakesh D. Dogra, an officer working at Naroda Branch, filed a complaint against respondent No. 2-employee before the Manager, Bank of India, Naroda Branch, Ahmedabad, alleging assault and threat to his life. Thereafter, the said complaint was investigated by Mr. A. M. Makim, Staff Officer, on the basis of which the respondent No.2-employee was served with the memorandum on 29.04.2002 so as to offer an explanation regarding misconduct and in consequence thereof, the respondent No.2-employee was served with the charge-sheet containing various charges, as described hereunder:

> "*Charge: 1 Physically assaulting staff officer Shri Rakesh Dogra and also threatening him to leave Naroda area or else he would be killed.*
>
> *Charge: -2 Leaving branch premises without intimation/prior permission and when asked about the said, showing indecent behaviour*

against other Officials of the Branch."

3.1 Thereafter, a departmental inquiry was initiated against the respondent No.2-employee, and after considering the evidences produced and submissions canvassed by the parties, the Inquiry Officer submitted his report dated 31.07.2002 holding all the charges levelled against the respondent No.2-employee stand proved.

3.2 On the basis of the said report of the Inquiry Officer, the Disciplinary Authority issued a second show cause notice dated 19.08.2002 to respondent No.2-employee, and called upon him to submit his report against the finding arrived at by the Inquiry Officer. However, the respondent No.2-employee, despite being called upon to show-cause and also given a personal hearing, failed to appear. Again the respondent No.2-employee was called to file his reply on 08.11.2002 and on 09.11.2002, but neither the respondent No.2-employee nor his representative appeared. The said exercise proved futile as the respondent No.2-employee failed to remain present, which constrained the Disciplinary Authority vide order dated 11.11.2002 to order for compulsorily retirement of the respondent No.2-employee from the service of the Bank with immediate effect and alongwith superannuation benefits.

3.3 Being aggrieved by the said order of the Disciplinary Authority, the respondent No.2-employee preferred an appeal before the Appellate Authority, who by order dated 19.02.2003 rejected the said appeal and confirmed the punishment of compulsory retirement from the service.

3.4 Thereafter, the respondent No.2-employee raised an industrial dispute by way of filing Reference Case No. 45 of 2005 before the Tribunal challenging the punishment of compulsory retirement imposed by the appellant-Bank. The Tribunal by its order dated 06.03.2013 held that principles of natural justice were not followed and reasonable opportunity was not granted to the respondent No.2-employee and therefore, the inquiry report and findings of the Inquiry Officer dated 31.07.2002 are held to be perverse and quashed.

3.5 Being unsuccessful, the appellant – Bank preferred Special Civil Application No. 8452 of 2013 before this Court challenging the said order dated 06.03.2013 passed by the Tribunal.

3.6 Being aggrieved by the order of dismissal of Special Civil Application No.8452 of 2013, the appellant – Bank preferred Letters Patent Appeal No. 1001 of 2015, wherein after hearing both the parties, the Division Bench, while confirming the order passed by learned Single Judge as well as the order of the Tribunal, disposed of the same vide judgment and order dated 22.06.2015 with clarification that respondent No.2-employee may be permitted to cross-examine the evidence of witnesses adduced by the employer so far, as also further evidence which may be led by the Management. The same may duly be considered in the inquiry and to be adduced before the Tribunal.

3.7 As per the aforesaid directions, the parties again approached the Tribunal and the Tribunal by the impugned award dated 12.08.2016, reinstated the respondent No.2 employee on his original post with all

consequential benefits and with 100% back wages and further directed that the back wages be recovered from the officers concerned who had initiated proceedings against the respondent No.2-employee.

3.8 Being aggrieved by the said award dated 12.08.2016 passed by the Tribunal, the appellant – Bank has preferred the present Special Civil Application No.19748 of 2016 which came to be partly allowed upholding the directions issued by the Tribunal in clause No.(i) to (iv) while quashing and setting aside the directions issued in clause (v) of the impugned award dated 12.08.2016 passed by the Tribunal in Reference (CGITA) No. 45 of 2005.

3.9 Hence, in the peculiar facts and circumstances of the case as narrated hereinabove, the present LPA is filed challenging the CAV judgment passed in the Special Civil Application NO.19748 of 2016.

Submissions advanced by learned advocate for the appellant – original petitioner:

4. Learned Advocate Mr. Dharmesh Devnani appearing for the appellant-Bank has submitted that the order passed by the learned Single Judge is illegal, unjust, improper and contrary to the provisions of the law and against evidence on record. He has further submitted that the evidence adduced by the appellant–Bank has not been properly considered by the Tribunal and the Tribunal committed a grave error in discarding the explicit provisions of the law and the evidence on record by not observing the principles of natural justice. He has further submitted that the learned Single Judge ought to have taken into

consideration the fact that the Tribunal erred in only relying upon the cross-examination of the witnesses and has not considered the entire deposition of the witness as a whole, which clearly demonstrates the manner and method in which the entire incident took place. He has further submitted that the learned Single Judge ought to have taken into consideration the fact that witnesses have supported the case of the Bank in toto and the Tribunal was wrong in holding that it was not safe to rely upon the oral testimony of the witnesses. He has further submitted that the entire incident was regarding disorderly in indecent behavior in the premises of the Bank, which was supported by the witnesses along with reference in the written complaint and that was a part of evidence.

4.1 He has further submitted that the learned Single Judge ought to have taken into consideration the fact that the departmental proceeding, and criminal trial are distinct and further any reliance upon the acquittal order passed by the competent Court would have no binding in departmental proceedings, more particularly, in view of the fact that when the decision of the criminal Court is on the ground of the charge being not proved beyond reasonable doubt, it cannot be construed as a sole case of acquittal. In short, the benefit of doubt is given to the respondent No.2-employee.

4.2 He has further submitted that the learned Single Judge ought to have taken into consideration the fact that the incident is of the year 2002, however the Tribunal itself considered the deposition of the year 2016 in the departmental proceeding, which was beyond one year and therefore also, there was no breach of any settlement of not proceeding within one

year of the misconduct, which does not vitiate the departmental proceeding.

4.3 He has further submitted that the learned Single Judge ought to have taken into consideration the fact that the Tribunal has entered into the arena of sufficiency of evidence and has also evaluated the *bona fides* which is clearly *de-hors* the settled legal principle that it was a case of departmental inquiry and not of criminal trial, wherein the charges / case is required to be proved beyond reasonable doubt. He has further submitted that the learned Single Judge ought to have taken into consideration the fact that both the witnesses have completely supported the case of the appellant-Bank and the departmental proceedings initiated on the charges are clearly supported in the deposition.

4.4 He has further submitted that the learned Single Judge ought to have considered the fact that the Division Bench while upholding the order passed by the learned Single Judge and the Tribunal in earlier round of Letters Patent Appeal, this Court has clarified that the respondent No.2-employee was permitted to cross-examine the witnesses produced by the employer and the further evidence which may be led by the appellant – Bank Management. He has further submitted that the learned Single Judge ought to have taken into consideration the fact that the foundation of the order passed by the Tribunal is on the basis that departmental proceedings are more or less similar to criminal proceedings however, such a foundation is absolutely contrary to the settled legal position of non-application of the strict rule of evidence in domestic enquiry. He has submitted that the standard of proof required in a

domestic enquiry is that of preponderance of probability and not the proof beyond a reasonable doubt, which is the requirement for a regular criminal trial.

4.5 He has further submitted that the Tribunal has erred in relying on Clause 19.4 of the bipartite settlement to hold that the issuance of the charge sheet dated 30.05.2002 against respondent No. 2-employee was in violation of the said clause, which otherwise does not apply to the facts of the present case. He has further submitted that the learned Single Judge committed an error by not considering the factum of non-examination of the Investigating Officer Mr.Naik as well as Mr.Rakesh Dogra, original complainant, which cannot be said to be fatal, as the charges against the respondent No.2-employee has been proved and supported by the independent witnesses; however the said fact has not been considered by the Tribunal.

4.6 By making the above submissions, learned Advocate Mr. Dharmesh Devnani appearing for the appellant-Bank has submitted that appeal may be allowed and the order passed by the learned Single Judge may be quashed and set aside.

Submissions of respondent No.2-employee (party-in-person):

5. *Per contra*, the respondent No.2 – employee appearing as a party-in-person while defending the order passed by the Tribunal, which has been confirmed by the learned Single Judge has submitted that the entire domestic inquiry held against him was vitiated and the appellant – Bank was directed to justify its action taken against him on the basis of the

production of the fresh material on record so as to substantiate the claim of the appellant – Bank, which otherwise does not inspire any confidence so as to prove the charges levelled against him. It is further submitted by respondent No.2 -employee that in earlier round of litigation, the order of the Tribunal holding that the principles of natural justice have been violated by the appellant – Bank has been challenged by filing Special Civil Application as well as the Letters Patent Appeal wherein while upholding the impugend order, permission was granted only to cross-examine the witnesses adduced by the employer so far, and further directed to consider all such evidence in the inquiry and to be adduced before the Tribunal and thus, the order of the Tribunal, as confirmed by this Court, has attained the finality in absence of any challenge being made.

5.1 It is further submitted that the appellant – Bank has also adduced the fresh evidence of two witnesses viz., Shri Nalinkant C. Gilder and Shri T. K. Parmar at Exh.29 and Exh.30 respectively. However, these witnesses have not supported the case of the appellant – Bank and thus the Tribunal has rightly held that the said piece of evidence is not reliable. It is further submitted that despite the opportunity being granted to the appellant-Bank to adduce the fresh evidence by the order of the Division Bench in the earlier round of litigation, the witnesses examined before the Tribunal have not supported the case of the appellant – Bank; however for the reasons best known, the appellant – Bank has not examined the Inquiry Officer, who is alleged to have conducted the inquiry being a vital witness and therefore, the learned Single Judge has rightly confirmed the award passed by the Tribunal.

5.2 It is further submitted that since the depositions of the aforesaid two witnesses was examined subsequently, the same neither inspire any confidence nor any substance is found, as none of the witnesses despite being claimed to have been present at the time of incident, supported the incident as alleged to have taken place on the fateful day. Thus, the same can barely be considered as a case of "no evidence" as the material and important witness, who himself has filed complaint against the respondent No.2-employee has also filed complaint before the Bank Management about the questioned incident, and has not been examined by the Bank. Despite he being in service, no cogent reasons have been adduced by the Bank for non-examining this material witness. It is further submitted that apart from the incident in question, which otherwise seems to be lacking with material substance, no other incident in the form of misbahaviour has ever been reported during the entire tenure of the employee who has completed 25 years of continuous service on the date of the incident and 16 years of service were left from the date of punishment so awarded for bank service.

5.3 By making the above submissions, respondent No.2 – employee appearing as a party-in-person has urged to dismiss the present appeal and to confirm the order passed by the learned Single Judge.

6. We have heard the learned advocate appearing for the appellant-Bank and respondent No.2 – employee appearing as a party-in-person.

7. At the outset, the legal proposition of law as enunciated in catena

of decisions pertaining to the scope of judicial review in service matter is settled by now. The learned Single Judge in the impugned judgment has also considered the said aspect in paragraph No.7[a], which reads thus:

> "*[a] In case of INDIAN OIL CORPORATION LTD. VS RAJENDRA D. HARMALKAR - (2022) 17 SCC 361, it has been held, more particularly in para 20 of the said judgment that:-*
>
> > *"xxx xxx xxx"*
> >
> > *Moreover, in para 21 of the said judgment, it has been held that:*
> >
> > *"In the case of Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) v. Rajendra Singh, (2013) 12 SCC 372, in paragraph 19, it was observed and held as under:*
> >
> > *"19. The principles discussed above can be summed up and summarised as follows:*
> >
> > *19.1 When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.*
> >
> > *19.2 The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.*
> >
> > *19.3 Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.*
> >
> > *19.4 Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.*

> *19.5 The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of chargesheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable."*
>
> *Furthermore, in para 22 of the said judgment it has been held that:*
>
> > *"22. In the present case, the original writ petitioner was dismissed from service by the disciplinary authority for producing the fabricated/fake/forged SSLC. Producing the false/fake certificate is a grave misconduct. The question is one of a TRUST. How can an employee who has produced a fake and forged b marksheet/certificate, that too, at the initial stage of appointment be trusted by the employer? Whether such a certificate was material or not and/or had any bearing on the employment or not is immaterial. The question is not of having an intention or mens rea. The question is producing the fake/forged certificate. Therefore, in our view, the disciplinary authority was justified in imposing the punishment of dismissal from service."*

8. Thus, in light of the above proposition of law laid down by the Supreme Court, the High Court / Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. However, if the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the

conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

9. Now, reverting back to the facts of the case on hand, as per the submissions advanced by the learned advocate for the appellant-Bank and respondent No.1-employee (party-in-person), the undisputed facts emerges from the case are that:-

(01) Mr.Rakesh Dogra, complainant, filed a complaint of an alleged incident that took place on 05.03.2002 to the Bank authority as well as to the police;

(02) The same set of evidence and witnesses as adduced before the criminal Court, as well as before the departmental inquiry seems to have been relied upon by the Bank;

(03) The original complainant – victim of the questioned incident Mr.Rakesh Dogra has not been examined by the Bank despite the opportunity having been afforded by the Tribunal, as directed by the Division Bench vide order dated 22.06.2015 as noted herein above;

(04) Not only that even the Inquiry Officer who inquired into the charges levelled against the employee Mr.P J Naik, who also seems to have recorded the statement of the witnesses has not been

examined;

(05) Two vital witnesses on the basis of whose stance, the entire gamut of the case of the appellant – Bank rests; were not examined, which throws doubt on the credence and stance of the appellant – Bank;

(06) It is also not in dispute that despite the opportunity being granted to adduce fresh evidence, the appellant – Bank has chosen not to examine these vital witnesses; to the contrary relied upon the two witnesses referred herein above who otherwise seem not to have supported the incident in question; in its entirety.

(07) Thus in absence of the examination of the independent witnesses, as surfaced from the material, on record more particularly, the vital witnesses viz., the Mr.Rakesh Dogra, original complainant and the Investigating Officer Mr.Naik, the conduct of the appellant – Bank smacks doubt as to the credence of the evidence, which not only lacks substance; but also creates a doubt and therefore, the conclusions arrived at by the Tribunal as to the non-examination of the complainant and the Inquiry Officer warrants no interference at the hands of this Court since the appellant – Bank seems to have miserably failed to avail the opportunity accorded to it to submit the fresh evidence by the Division Bench of this Court, while confirming the order of the Tribunal and the learned Single Judge.

(08) Moreover, the witnesses that have been examined by the appellant – Bank do not support the stand of the Bank, as the evidence so far adduced by the Bank, as appreciated by the Tribunal rightly establishes the fact of lacking *prima facie* substance and credence so as to attract any misconduct governed under the Service Conduct Rules.

(09) One more aspect has been succinctly dealt with by the Tribunal, pertaining to the departmental inquiry having been conducted in sheer violation of the Bipartite Agreements, which otherwise appears in a case where the standard of proof has been subjected of a criminal trial of the alleged incident, even then thereafter respondent No.2-employee was charge sheeted and was also subjected to the departmental proceedings.

CONCLUSION:-

10. From the narration of above undisputed facts, it transpires that the case of the so called complainant as enquired by the Inquiry Officer appears to be a case at the most of heated exchange between the two employees who were discharging their duties and therefore, awarding of major penalty in such a trival incident in absence of any substantial evidence adduced by the Bank, has rightly been held by the Tribunal to be excessive and suffers from mala-fide and, even the conclusions arrived at by the Tribunal while adjudicating the case opining to be a case of harassment, victimization, discrimination, unfair labour practice finds a force, which do not require any interference at the hands of this Court.

11. The sum and substance of the discussions made in the preceding paragraphs in consonance with the conclusions arrived at by the Tribunal, which has been confirmed by the learned Single Judge do not dispute the fact that the party who asserts particular facts, the burden lies on him to prove the same so far as it pertains to the departmental inquiry and the same can be proved by observing the principles of preponderance of probabilities and in the criminal case the same is to be considered on the aspect of proving beyond the reasonable doubt. Simply because the said aspect has been discussed by the Tribunal, more particularly, the same set of evidence has been placed for consideration, is no ground to consider the stands of the appellant – Bank that the Tribunal committed a grave error. In this context, the observations made by the Tribunal in its award which has rightly been dealt with is relevant to reproduce hereunder:

> "*It is noteworthy The learned advocate of the first party had forgotten while arguing that the charge sheet is issued by the first party employer against the second party workman and therefore, burden of prove the allegations is on the first party employer and not on second party workman as understood by the learned advocate.*
>
> *The learned advocate of the first party had argued vehemently that it is a discretion of the bank and therefore, the second party does not confer any right to get equal treatment, even one fellow is not given any punishment, this argument is fallacious. Such statement of the learned advocate of the first party if seriously considered then it is admitted facts of Unfair Labour Practices on the part of the first party employer.*
>
> *Whatever arguments tendered by the first party; are irrelevant as this is a case of no evidence.*"

12. The ground urged by the appellant to the extent that the Tribunal fell in error in quashing aside the punishment order since the acquittal on benefit of doubt in the criminal proceedings will have no bearing on the departmental proceedings pales into insignificance since, the witnesses in

the departmental proceedings have not supported the case of the appellant. Even it is held that the Tribunal fell in error in examining the proceedings as if the departmental proceedings are akin to criminal trial. The same would have no bearing on the final outcome of the judgment of the Tribunal and the order passed by the learned Single Judge. As we have previously held that the complainant, on whose complaint the entire proceedings, both criminal and departmental, have arisen, has not been examined. Thus, after passage of so many years, we are not inclined to remand the matter to the Tribunal.

13. Much has been emphasized by the learned advocate for the appellant – Bank that in view of the alleged incident and the active involvement of the respondent No.2-employee, the appellant - Bank had lost faith in the integrity of the employee and therefore also, the appellant-Bank had a right to terminate the services of the respondent No.2-employee. The said argument though seems to be interesting; does not inspire any substance so far as the case on hand is concerned, which otherwise has been styled and considered as case of “no evidence” and therefore, when the respondent No.2- employee has been extended the benefit of doubt in the criminal proceedings and in the same set of facts and evidence before the departmental proceedings despite the appellant – Bank having been afforded the opportunity to submit a fresh evidence, and in default thereof, the appellant – Bank seems to have chosen not to submit fresh material and evidence except examining the two witnesses as referred herein above, who otherwise have not supported the stance of the appellant – Bank, as also nothing sort of any material transpires from the record to show that there was any loss of faith or any doubt in respect

of the integrity of the respondent No.2 workman. It is pertinent to note that despite the alleged incident took place in the open hall of the Bank's premises in front of the customers as well as other staff of the bank, the bank has chosen not to examine any independent witnesses to prove the charges levelled against the respondent No.2-employee. Even the employees of the appellant – Bank who were discharging their duties sitting in the proximity of the respondent No.2-employee have not been examined for the reasons best known to the appellant – Bank.

14. In the result, for the foregoing reasons and the reasons recorded by the learned Single Judge, the present appeal is devoid of merits and does not merit acceptance. Accordingly, the appeal is dismissed.

As a consequence, the connected applications are also dismissed.

(A. S. SUPEHIA, J)

(R. T. VACHHANI, J)

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