CASE NO.:
Appeal (civil) 3961 of 2001

PETITIONER:
Lalit Popli

RESPONDENT:
Canara Bank & Ors.

DATE OF JUDGMENT: 18/02/2003

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT.

JUDGMENT:

J U D G M E N T

ARIJIT PASAYAT J.

Order of dismissal from service having been restored by Division Bench of Delhi High Court setting aside judgment of the learned Single Judge, this appeal has been filed.

Factual background filtering out unnecessary details is as follows:

Appellant (hereinafter referred to as 'the employee') joined services of The Lakshmi Commercial Bank in 1976 as a Clerk. The said bank was merged with Canara Bank (hereinafter referred to as 'the employer') in October, 1985. As a consequence, services of the employee stood transferred to the employer-Bank. He was posted as a Clerk in Deen Dayal Upadhyay Marg, New Delhi Branch and was deputed to work at AIWC extension of the said branch.

One customer of the Bank i.e. S.V. Deshpande, advocate lodged a complaint with the police stating that there has been unauthorized withdrawal of Rs.1.07 lakhs from his account in the Bank. An internal investigation was also undertaken by the employer in respect of the complaint. Report of the preliminary investigation was submitted and the employee was served with charge sheet along with imputations of misconduct to the effect that the employee was responsible for the unauthorized withdrawal from the customer's account.

Enquiry Officer was appointed to hold the enquiry and along with other witnesses the evidence of Handwriting expert Shri V.K. Sakhuja was tendered. The proceedings in the enquiry were concluded on 29.4.1993. Both the parties were asked to submit their written submissions. At this stage, the employee filed an application for further cross-examination of an Handwriting expert. Said prayer was rejected on 10th May, 1993. The Enquiry Officer submitted his report and the employee was also furnished with a copy to make his submissions as regards the findings. The written submissions were submitted on 24th June, 1995. Findings of the Enquiry Officer were recorded. Thereafter order of dismissal was passed.

The Disciplinary Authority concurred with findings of the Enquiry Officer after taking into account the

submissions made by the employee. The charge-sheet contained the following allegations:

"On the 11th of May, 1992, a charge-sheet was issued to the petitioner in the following terms:-

Whereas, there are prima facie grounds for believing that you have committed gross misconduct, the particulars whereof are given below, this charge sheet has been drawn up against you and you are required to submit me within 15 days of receipt of this charge sheet a statement in writing setting forth your defence, if any and showing cause as to why suitable action should not be taken against you.

CHARGE:

You have been working at Canara Bank, DDU Marg, New Delhi Branch since 7.3.1986. One Shri S.V. Deshpande, Advocate, Supreme Court of India is maintaining his SB a/c No.4272 with AIWC Extn. counter of DDU Marg, New Delhi Branch. On 23.12.1991 a cheque book authorized to be issued in S.B. a/c no.4272 to one Sri Mohinder kumar on the strength of a purported letter in violation of the laid down procedure of the bank. Thereafter, a total of Rs.1,07,000/- was withdrawn from his account by utilizing 5 cheques out of the above said cheque book, details which are given below:

Date	Cheque No.	Amount
26.12.91	460827	Rs.15,000/-
28.12.91	460823	Rs.15,000/-
31.12.91	460821	Rs.15,000/-
31.12.91	460822	Rs.14,000/-
31.12.91	460826	Rs.50,000/-

The account holder as complained/disputed the above said withdrawals as well as issuance of the cheque book no.460821 to 460830. The purported letter on the basis of which the above said cheque book had been issued had also not been found on records. The handwriting expert has confirmed that the signatures appearing on the above said cheque are not that of Shri S.V. Deshpande, the account holder and they are forged.

The cheque No.460826 for Rs.50,000/- was posted by you in the relative ledger on 31.12.91 though there was fictitious endorsement on the reverse of the cheque to give creditability to the transaction.

Handwriting expert has opined after examining your handwriting with that of the disputed instruments in question that the signatures of the account holder appearing on the above said 5 cheques and the endorsement on the back of the cheque No. 460826 for Rs.50,000/- is in your handwriting.

From the above, it is evident that you by misusing your official position, in collusion with someone else, got the above said cheque book issued in S.B. A/c no.4272, utilised the cheque leaves in question by

forging the signature of the account holder and got the same presented to encash the cheques fraudulently.

By your above said fraudulent acts you have caused damage to the property of the bank thereby committed a gross misconduct within the meaning of Chapter-XI, Regulation 3 Clause (j) of Canara Bank Service Code.

Your above said acts are also prejudicial to the interests of the bank thereby you have committed a gross misconduct within the meaning of Chapter-XI, Regulation 3 Clause (j) of Canara Bank Service Code.

Your above said acts are also prejudicial to the interests of the bank thereby you have committed a gross misconduct within the meaning of the Chapter-XI, Regulation 3 Clause (m) of Canara Bank Service Code".

An appeal was preferred by the employee before the prescribed appellate authority who rejected the appeal. The employee challenged the findings culminating in his order of dismissal by filing a writ petition before the High Court.

The main plea which was advanced before the learned Single Judge was that the Enquiry Officer should not have rested his decision on the opinion of the Handwriting Expert. The entire case rested on suspicion and there was no material to connect him with the alleged misconduct. Learned Single Judge referring to the evidence recorded during the enquiry proceedings came to hold that the conclusions arrived at by the Enquiry Officer were erroneous and no credence should have been attached to the evidence of V.K. Sakhuja and his evidence is no evidence at all. It was also held that the charges framed by the Bank do not have sustainability in law. These observations came to be made by learned Single Judge because of some adverse remarks made against V.K. Sakhuja in three cases. The conclusions of learned Single Judge in paragraph 17 so far as relevant read as follows:

"The fact that the Courts had made very strong stricture against the handwriting expert is not disputed. In my view, Mr. Sakhuja is not a person who is competent to speak about the handwriting or finger prints. His evidence is no evidence at all. Consequently, the charge issued by the bank is not sustainable in law. The findings by the inquiry officer against the petitioner are not based on any evidence and, thus, the order passed by the disciplinary authority cannot be sustained. In law there is, no evidence against the petitioner. Thus, the order of the disciplinary authority is wholly illegal and it cannot be sustained."

In appeal, the Division Bench observed that the High Court in exercise of the power under Article 226 of the Constitution of India, 1950 (in short 'the Constitution') does not act as an appellate authority and, therefore, the learned Single Judge was not justified in interfering with the conclusions arrived at by the disciplinary authority.

This judgment of the High Court is under challenge.

Learned counsel appearing for the appellant-employee submitted that there has been denial of fair play. There is no material to connect the appellant with alleged forgery which was the foundation for the disciplinary action. Report of the Handwriting expert about whose credibility serious remarks were made has no evidentiary value, and he is not a competent witness and his report which forms the foundation for disciplinary action has to be ignored and if that is kept out of consideration, there is no other material on which the allegations of misconduct could be substantiated. It is pointed out that when investigation was done initially, a report was submitted by the Forensic Science Laboratory which did not find any material against the employee and others. The employee was also denied an adequate opportunity to submit his reply as regards the enquiry report. The charges related to two transactions. One was posting of the cheque and the other related to forgery. Report of the Handwriting expert is full of inconsistencies and the conclusion about similarity in hand-writing in the disputed document and the admitted signatures has been drawn erroneously. To prove his innocence the employee had requested the authorities to hand over the enquiry to the Central Bureau of Investigation. This request was made as the employee was convinced that the authorities were bent upon removing him from service for union activities. Further, request was made for being represented by an advocate which was turned down. The employee had requested for supply of certain documents which were not acceded to causing thereby prejudice.

Learned counsel for the respondents on the other hand submitted that the Division Bench rightly considered the scope and ambit of judicial review in the matter of disciplinary proceedings. The stand that the Handwriting expert's report cannot be accepted without further corroboration is not the correct proposition in law. Denial of the representation by an advocate was also justified because the presenting officer was not an advocate or a person with law background. The only area of dispute related to acceptability of the Handwriting expert's report. The employee who claimed to be a trade union activist is well versed with various aspects relating to service jurisprudence, has cross-examined at length and quite effectively the management witnesses. Therefore, there is no substance in the plea that there was prejudice by refusal of permission to be represented by an advocate. It was further submitted that no argument was advanced before the High Court (either before learned Single Judge or the Division Bench) regarding prejudice. It is also pointed out that the employee himself had accepted that he committed careless mistakes, but took the plea that there was no criminal intent. The authorities have analysed the job requirements of the post which the employee held and discussed at great length as to how the requisite care and caution were not exercised. A bare look at the endorsement on the back side of the cheque would have aroused suspicion. The plea that many transactions took place that day is clearly without substance because an employee of the bank is required to be vigilant and any abnormality should have been noticed. The customer was an advocate and he could not have mis-spelt the word 'signature' as appears on the reverse side of the cheque in question in the endorsement. There was an unusual endorsement and withdrawal of Rs.50,000/- by a bearer

cheque. The unusual features should have aroused suspicion. That being so, the authorities were justified in drawing adverse remarks. The report of the Handwriting expert is clear and cogent and has clearly spelt out the areas of similarities in the disputed document and the admitted writings to highlight as to how employee was the author of forgery.

To start with the approach of the learned Single Judge as regards evidence of V.K. Sakhuja is clearly erroneous. Even if there were adverse remarks (which we find related to 1958-59) that did not affect the credibility of his evidence to treat it as totally irrelevant and to be no evidence in the eye of law. What was required was a careful analysis of evidence, if it was brought to the notice of the authorities that his evidence has been doubted in the past. Nothing could be shown to us as to how the report in this particular case suffers from any infirmity. There is no finding recorded by learned Single Judge to that effect. On that score alone the Division Bench was justified in upsetting the learned Single Judge's decision.

Sections 45 and 73 of the Indian Evidence Act, 1872(in short 'the Evidence Act') deal with opinion of experts and comparison of signature, writing or seal with others admitted or proved. Section 45 itself provides that the opinions are relevant facts. It is a general rule that the opinion of witnesses possessing peculiar skill is admissible. There was no challenge to the expertise of V.K. Sakhuja. He deposed to have testified in about ten thousand cases relating to disputed documents. Though the employee highlighted certain adverse remarks, it cannot be lost sight of that they were about four decades back. But we need not go into that aspect in detail as no infirmity in the report acted upon by the authority in the present case was noticed or could be pointed out.

It is to be noted that under Sections 45 and 47 of the Evidence Act, the Court has to take a view on the opinion of others, whereas under Section 73 of the said Act, the Court by its own comparison of writings can form its opinion. Evidence of the identity of handwriting is dealt with in three Sections of the Evidence Act. They are Sections 45, 47 and 73. Both under Sections 45 and 47 the evidence is an opinion. In the former case it is by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experiences. In both the cases, the Court is required to satisfy itself by such means as are open to conclude that the opinion may be acted upon. Irrespective of an opinion of the Handwriting Expert, the Court can compare the admitted writing with disputed writing and come to its own independent conclusion. Such exercise of comparison is permissible under Section 73 of the Evidence Act. Ordinarily, Sections 45 and 73 are complementary to each other. Evidence of Handwriting Expert need not be invariably corroborated. It is for the Court to decide whether to accept such an uncorroborated evidence or not. It is clear that even when experts' evidence is not there, Court has power to compare the writings and decide the matter. [See Murari Lal vs. State of Madhya Pradesh (1980) 1 SCC 704]

In the instant case, the Enquiry Officer and the Disciplinary Authority took pains to carefully consider the Handwriting expert's report and also looked at the documents to arrive at their own conclusions.

Great emphasis was laid on the Forensic Science Laboratory's report to say that the Handwriting Expert's report is not worthy of acceptance. We have looked at the report of the Forensic Science Laboratory. It only says that no definite opinion can be formed. That itself is an indication that a clean chit was not given as claimed by the employee.

It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him; whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. [See State of Rajasthan v. B.K. Meena and Ors. (1996) 6 SCC 417)]. In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.

While exercising jurisdiction under Article 226 of the Constitution the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an Appellate Authority

In B.C. Chaturvedi v. Union of India and Ors. (1995 (6) SCC 749) the scope of judicial review was indicated by stating that review by the Court is of decision making process and where the findings of the disciplinary authority are based on some evidence, the Court or the Tribunal cannot re-appreciate the evidence and substitute its own finding.

As observed in R.S.Saini v. State of Punjab and Ors. (1999 (8) SCC 90) in paragraphs 16 and 17 the scope of interference is rather limited and has to be exercised within the circumscribed limits. It was noted as follows:

"16. Before adverting to the first contention of the appellant regarding want of material to establish the charge, and of non-application of mind, we will have to bear in mind the rule that the court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed

before the court in writ proceedings.

17. A narration of the charges and the reasons of the inquiring authority for accepting the charges, as seen from the records, shows that the inquiring has based its conclusions on materials available on record after considering the defence put forth by the appellant and these decisions, in our opinion, have been taken in a reasonable manner and objectively. The conclusion arrived at by the inquiring authority cannot be termed as either being perverse or not based on any material nor is it a case where there has been any non-application of mind on the part of the inquiring authority. Likewise the High Court has looked into the material based on which the enquiry officer has come to the conclusion, within the limited scope available to it under Article 226 of the Constitution and we do not find any fault with the findings of the High Court in this regard."

As noted above, the employee accepted that there was some lapse on his part but he pleaded lack of criminal intent. A bank employee deals with public money. The nature of his work demands vigilance with the inbuilt requirement to act carefully. Any carelessness invites action.

As has been rightly submitted by learned counsel for the respondents-Bank, even to the naked eye the mistakes in spelling of "signature" are visible and should not have escaped the eyes of a bank employee who is supposed to be trained and equipped to notice such glaring mistakes. The Enquiry Officer has noticed the similarities highlighted by the Handwriting expert in the disputed document and the admitted signatures of the employee to show how the similarity is visible and even any layman can notice the similarity. These were factual conclusions.

Considering the limited scope of judicial review, the Division Bench was right in upholding the order of dismissal by setting aside the learned Single Judge’s order by which interference was made with it. We find no reason to differ from the conclusions of the Division Bench. The appeal is without merit and is dismissed accordingly.