

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on : 13th September, 2022**
Pronounced on: 23rd December, 2022
+ W.P.(C) 4213/2011 & CM APPL. 19728/2022

..... Petitioner

Through: Mr. Sanjay Sharawat, Mr. Digvijay Rai, Mr. Divyank Rana, Mr. Archit Mishra and Mr. Akash Sahraya, Advocates

versus

THE CHAIRMAN, BANK OF MAHARASHTRA AND OTHERS

..... Respondents

Through: Mr. Soumitra Chatterjee and Ms. Sriparna Chatterjee, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant civil writ petition has been filed on behalf of the petitioner under Article 226 of the Constitution of India seeking setting aside of order of dismissal from service and dismissal of the appeal thereof. The petitioner is assailing the order dated 24th December 2010 passed by the General Manager, Bank of Maharashtra, Regional Office, New Delhi (hereinafter "Disciplinary Authority") whereby the services of

the petitioner were terminated. The petitioner has also moved this Court to challenge the order dated 7th April 2011 passed by the Executive Director, Bank of Maharashtra, Pune (hereinafter “Appellate Authority”) passed in the appeal preferred by the petitioner against the order of the Disciplinary Authority.

BACKGROUND

2. The perusal of the record reveals that the following course of events have culminated into the dispute between the present parties and filing of the instant petition:-

- a) The petitioner was working at the post of Economist at the Regional Office of the Bank of Maharashtra, New Delhi under the subordination of Senior Manager, Swapan Saha in the Planning Section of the Regional Office.
- b) On 17th May 2010, the Senior Manager made a complaint against the petitioner alleging that she had removed his credit card, made purchases of a gold chain and a ring, valuing ₹34,622/-, and returned the same amount of cash, which was found lying on the table of the Manager on the next day alongwith an anonymous letter.
- c) Thereafter, upon the complaint of the Senior Manager, a Show Cause Notice dated 9th March 2010 was served upon the petitioner intimating her about the complaint made against her, that she failed to maintain good conduct and discipline and that the acts alleged against her were in violation of Regulation No. 3

(1) and 3 (2) of the Bank of Maharashtra Officer Employees (Conduct) Regulations, 1976 (hereinafter “Employees Regulations”).

d) The petitioner replied to the Show Cause Notice vide her communication dated 27th March 2010, stating therein that the Senior Manager had himself given her the credit card to purchase the aforesaid gold chain and ring as a favour, which she purchased and immediately handed over to him.

e) Pursuant to the Show Cause Notice and the reply thereto, a disciplinary inquiry was conducted whereupon the Disciplinary Authority, upon making its findings vide order dated 24th December 2010, imposed the penalty of dismissal from service upon the petitioner with disqualification from future employment.

f) The petitioner approached the Appellate Authority, i.e., the Executive Director, Pune, aggrieved by the order of the Disciplinary Authority.

g) On 7th April 2011, the Appellate Authority passed the order upholding and confirming the findings of the Disciplinary Authority.

h) Therefore, the petitioner has approached this Court by way of the instant petition assailing the order of dismissal from service dated 24th December 2010 and order passed by the Appellate Authority dated 7th April 2011. The petitioner also prays for reinstatement to the post and position she held at the time of dismissal from service.

SUBMISSIONS ON BEHALF OF THE PARTIES

3. This Court shall now proceed to elaborate upon the submissions made on behalf of the parties in their pleadings as well as those made during the course of hearing.

On behalf of the Petitioner

a) Learned counsel appearing on behalf of the petitioner submitted that on the day of the incident for which the complaint against the petitioner was filed, the Senior Manager, Swapan Saha, approached the petitioner and persuaded her to purchase some ornaments for his wife and himself entrusted her with his credit card. The petitioner, on instructions of the Senior Manager, purchased a gold chain worth ₹26,000/- and a gold ring worth ₹8,622/-, which were handed over to the him along with his credit card. However, the Senior Manager coined a story about the theft of his credit card and also, lodged a complaint with the Police. It is submitted that the complainant, at any stage, did not make any statement to suggest that the gold articles purchased were not in his possession.

b) As per the Senior Manager his credit card was stolen, however, it is submitted that the petitioner could not have used the same without knowing the PIN to the card. Moreover, none of the shop-keepers/dealers were inquired or called upon during inquiry to cross-examine the petitioner and neither there is any written statement of these dealers relied upon while drawing the conclusion that the petitioner had stolen the credit cards to make the purchases.

c) On 23rd February 2010, the petitioner was detained in the office by the Senior Manager and other male colleagues, where she was made to sign a confessional statement on the extreme threats and mental torture at late hours, whereafter she was placed under suspension with immediate effect vide order dated 23rd February 2010 of the General Manager, Delhi, passed in the late night of the same day. It is submitted that the urgency of serving the notice of suspension in the middle of the night after the petitioner was detained in the office and made to sign a confessional statement was in no manner whatsoever justified and was with ulterior motives.

d) It is submitted that Chargesheet dated 17th May 2010 was issued upon the complaint of the Senior Manager, Swapan Saha, who had also made a complaint to the Police, and eventually he made the communication dated 23rd February 2010, to the SHO Police Station R.K. Puram stating therein that he did not want any police action against the petitioner since his credit card was received back by him on 20th February 2010 but departmental inquiry be initiated against her.

e) Learned counsel appearing on behalf of the petitioner while assailing the impugned orders of dismissal from service and dismissal of appeal by the Appellate Authority submitted that the inquiry against the petitioner was impartial and unfair and was also influenced by the Senior Manager. It is submitted that opportunity of personal hearing was not given to the petitioner by the Appellate Authority before passing the order dated 7th April 2011 and the

order was passed mechanically, arbitrarily and was discriminatory. Reliance has been placed upon the judgement passed by the Hon'ble Supreme Court in the judgment of *Ram Chander vs. Union of India, (1986) 3 SCC 103*, to submit that the Appellate Authority was bound to provide an opportunity of personal hearing to the petitioner before passing the impugned order and thereafter, pass a detailed and reasoned order.

f) It is further submitted that the Disciplinary Authority completely failed to consider the bill dated 19th February 2010 for ₹26,000/- issued by M/s Ashwini Kumar's Mehraons Jewelers which was issued in the name of the Senior Manager Swapan Saha. Neither the employees of the shop were called as witness nor was Swapan Saha inquired on this point.

g) Moreover, no material or witness had been produced by the Inquiry Officer or even the Presiding Officer to establish that the petitioner had stolen the credit card of the Senior Manager or that they had seen her writing any letter to the Senior Manager or had seen her keeping the letter on his desk.

h) It has also been submitted that the concerned Senior Manager, Swapan Saha in his personal vendetta had filed the false complaint, since the petitioner rejected the advances made by him. It is submitted that the husband of the petitioner, who is posted with the Railways at Mumbai, lives away from the petitioner and therefore, the Senior Manager, with the intent of getting close to the petitioner started visiting her residence at odd hours. The Senior Manager attempted to form illicit relations with the petitioner.

i) The petitioner had made complaints regarding the advances made by the Senior Manager, however, at the time of inquiry, the Presenting Officer and the Inquiry Officer removed the documents dated 27th August 2010 from the purview of inquiry pertaining to sexual harassment.

j) The learned counsel for the petitioner has strongly urged that the inquiry held against the petitioner was in violation of the guidelines issued by the Hon'ble Supreme Court in the judgment of *Vishaka & Ors vs. State of Rajasthan & Ors, (1997) 6 SCC 241*. The directions necessitate that cases of sexual harassment should be headed by a woman and not less than half of its member should be women. The departmental inquiry conducted against the petitioner did not meet the mandate of the Hon'ble Supreme Court.

k) It is, therefore, prayed that the instant petition be allowed and the reliefs sought therein are granted to the petitioner.

On behalf of the Respondents

a) Learned counsel appearing on behalf of the respondents submitted that the reply to the Show Cause Notice also showed that the petitioner had used the credit card of the Senior Manager and to that effect, she had also signed a confessional statement on 23rd February 2010 before the bank authorities wherein she admitted that she had taken away the credit card in question and made purchases thereon and only after that she was put under suspension vide office memo dated 23rd February 2010. During the inquiry proceedings, it was proved beyond doubt that the petitioner

unauthorizedly took away and used the credit card of her Senior Manager. It is submitted that the petitioner misrepresented herself to be the wife of Swapan Saha and unauthorizedly used his credit card.

b) The Inquiry Authority investigated into the matter and placed its report dated 9th November 2010 before the Disciplinary Authority, which upon consideration of all the material, after affording a hearing to the petitioner and hearing her concluded that the charges levelled against her were proved. Thereafter, the penalty was imposed and the petitioner was dismissed from services by way of passing a detailed order.

c) It is further submitted that the Presenting Officer produced a set of 20 documents and examined 6 witnesses in support of the charges whereas, the petitioner, even after being given due and reasonable opportunity for being heard, did not prefer to produce any witness in her favour.

d) Learned counsel for the respondents submitted that the petitioner attempted to wriggle out from her confessional statement signed on 23rd February 2010 on the pretext that she was detained in the office till 9 pm, whereas in reality she left the office in the evening and came back on her on where she wrote the confessional statement in the presence of others officers. This stance was supported by three witnesses of the respondents who were not confronted or disproved in cross-examination.

e) It is submitted that the acts of the petitioner were unbecoming of a Bank Officer and hence, covered under the Clause

3 of the Employees Regulation. It is submitted in this regard that the petitioner is a bank official and for the Bank the integrity of its official is its primary concern. Thus, a bank official indulging in activities like misuse of other persons credit card was liable to be penalized by way of a major penalty and as such called for a disciplinary action under Regulation 4 of the Bank of Maharashtra Officer Employee (Discipline and Appeal) Regulation, 1976. Reliance has been placed upon the case of ***K. Raj Arora v. State Bank of India, 2006 SCC OnLine Del 1044***, wherein it was held that in banking business the dedication, diligence, integrity and honesty are required to be preserved by every bank employee and most importantly the bank officer so that the confidence of the public in the bank is not impaired and therefore, any officer committing misconduct for his personal needs and against the bank and the depositors deserves to be dealt with iron hands and not leniently.

f) It is submitted that the petitioner had taken the allegations of sexual harassment after the conclusion of evidence and had raised it only while pressing the instant petition before this Court to take advantage of the guidelines issued under ***Vishaka vs. State of Rajasthan (Supra)***. The said allegations were raised by the petitioner only at the time of filing of the written statement before the Inquiry Authority on 27th August 2010 and were not even raised at the time of issuing reply to the Show Cause Notice on 27th March 2010. Moreover, the petitioner wrongly suggested that the letters pertaining to the allegations were not considered by the

Inquiry Authority.

- g) Learned counsel for the respondents has also relied upon the judgment of *Union of India vs. Parmananda*, (1989) 2 SCC 177, *B.C. Chaturvedi vs. Union of India*, (1995) 6 SCC 749, *Pravin Kumar vs. Union of India*, (2020) 9 SCC 471 and *State Bank of India vs. Ajai Kumar Srivastava*, (2021) 2 SCC 612 to give force to his arguments that the powers of judicial review may not be exercised as those of an Appellate Court.
- h) It is, therefore, submitted that the instant petition may be dismissed for being devoid of any merit.

Rejoinder on behalf of the petitioner

- a) It is submitted that the Presenting Officer's note to the Inquiry Officer and the AGM, which is appended as Annexure P-13 to the petition, clearly indicates that the Presenting Officer declared the allegations of the petitioner submitted vide communications/complaints as false without even conducting any inquiry upon the same.
- b) It is submitted that the Senior Manager/complainant was accompanied by the petitioner to the jewellery shops and offered the articles bought to the petitioner, however, she refused the advancements made by him, which led him to file the complaint and concoct the entire story about his credit card being stolen.
- c) It is stated by the petitioner that in fulfilment of ulterior motives, the Senior Manager managed to get the suspension letter against the petitioner at late night of 23rd February 2010, which was

served upon her without even affording her an opportunity of being heard and without the issuance of any Show Cause Notice. Thereafter, after having served upon the petitioner the suspension order, the Senior Manager, Swapan Saha approached the Police Station at late night hours of the same day to withdraw his complaint stating that he had received his credit card on 20th February 2010 and he also communicated that he only wanted disciplinary action against the petitioner.

d) It is submitted that, therefore, the petitioner is entitled to be reinstated to her position.

4. Heard the learned counsel for the parties at length and have perused the entire record.

ANALYSIS AND FINDINGS

5. The petitioner, by way of filing of the instant petition, has assailed the order for dismissal from services and the appellate order, which have been perused by this Court. The parties present two contradictory position of facts by way of their pleadings and oral submissions, however, at this stage in the writ jurisdiction, this Court shall not conduct a roving inquiry into the facts of the case. The extent of powers which this Court may exercise has been elaborated by the Hon'ble Supreme Court.

6. In *B.C. Chaturvedi vs. Union of India*, (1995) 6 SCC 749, the Hon'ble Supreme Court made an observation *qua* the power of review of inquiry:-

“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.”

7. Therefore, it is for this Court to see whether the order imposing major penalty upon the petitioner was passed by the competent authority following the due procedure, while observing the principles of natural

justice, affording fair treatment to her and drawing the observations, findings and conclusion based on evidence.

8. The Hon'ble Supreme Court in *Union of India vs. P. Gunasekaran*, (2015) 2 SCC 610 has settled the law with respect to the extent of powers which a High Court may exercise while adjudicating a matter pertaining to disciplinary action and has held as under:-

“12. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

(a) the enquiry is held by a competent authority;

(b) the enquiry is held according to the procedure prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.”

9. The Hon'ble Supreme Court in *State Bank of India vs. Ajai Kumar Srivastava*, (2021) 2 SCC 612 had held as under:-

“26. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the Court is to examine and determine:

(i) whether the enquiry was held by the competent authority;

(ii) whether rules of natural justice are complied with;

(iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.”

10. Upon a conjoint reading of the precedents of the issue, there is no doubt to the effect that while exercising powers under Article 226 of the Constitution of India, this Court will limit itself to the questions whether the principles of natural justice were observed, the findings given and conclusion drawn were based on evidence before the competent authority and not influenced by extraneous considerations and also whether such findings and conclusion were arbitrary and/or capricious. The guidelines and directions of the Hon'ble Supreme Court need to be given effect while adjudicating upon the instant case.

11. Moving towards the peculiar and specific circumstances of the instant case, it is pertinent to see that soon after the complaint was made

by the Senior Manager, a suspension order was served upon the petitioner, on 23rd February 2010. The suspension order as well as the order of dismissal from services were passed on the ground that the act of stealing the credit card by the petitioner portrayed conduct which was unbecoming of a bank official and was in violation of Clause 3 of the Bank of Maharashtra Officer Employees (Conduct) Regulations, 1976 which reads as follows:-

“3. (1) Every officer employee shall, at all times take all possible steps to ensure & protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank officer.

(2) Every officer employee shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations.

(3) No officer employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgement except when he is acting under the direction of his official superior.

(4) Every officer employee shall take all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control and authority.”

12. Soon after the complaint was filed, the petitioner was served with suspension order which noted as under:-

“It has been reported to the undersigned that Dr. Ms. Rajkumari Manager Regional Office Delhi removed the credit card belonging to Mr. Swapan Saha Senior Manager Regional Office Delhi on 19.02.2010 and misused the same for making purchases worth Rs. 34622/- from Merchant Establishments in South Extension Delhi.

The above act of commission on her part amounts to violation of Bank of Maharashtra Officer Employees (Conduct) Regulations 1976 as under

a) Every officer employee shall do nothing which is unbecoming of a bank officer.

b) Every officer employee shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations.

Bank intends to conduct departmental enquiry as per the provisions of Bank of Maharashtra Officer Employees (Discipline & Appeal) Regulations against her. Pending the said enquiry, she is placed under suspension with immediate effect.”

13. A Show Cause Notice was then served upon the petitioner on 9th March 2010, the relevant portion of which is reproduced hereunder:-

“It has been reported to the undersigned as under –

- On 19.02.2010, you unauthorisedly took away Credit Card No. 4006 6610 3641 3826 from the wallet of Mr. Swapan Saha, Senior Manager of our office while he was attending a meeting in the afternoon.*
- On 19.02.2010, you made purchases as under on the above mentioned credit card of Mr. Saha*
 - Gold Chain 22kt (12.44 gms) worth Rs. 26,000 from M/S Ashwini Kumar's.*
 - Gold finger ring 22kt (4.18 gms) worth Rs. 8,622 from M/S Titan Industries Ltd.*
- On 20.02.2010, currency notes for the said transaction amount wrapped in an anonymous letter*

were found by Mr. Saha on his table.

The above act is unbecoming of a Bank Officer. You have also failed to maintain good conduct and discipline and show courtesy and attention to all persons in all transactions. Your above acts amount to violation of the Regulation No.3 (1) and 3(2) of Bank of Maharashtra Officer Employees' (Conduct) Regulations, 1976.

You are hereby called upon to show cause as to why disciplinary action should not be taken against you. Your reply must reach the undersigned within 15 days of the receipt of this letter failing which necessary steps will be taken in accordance with the above mentioned regulations."

14. It is evident from record that it was only after the suspension order was passed that the Show Cause Notice was issued to the petitioner and prior to the said suspension, no opportunity was afforded to the petitioner to make even a statement on the allegations levelled against her, let alone defend her case. Although, a suspension is only a precautionary action and not a punitive action, yet the petitioner was not formally intimated about the complaint against her until the suspension order was passed against her.

15. After the Show Cause Notice was issued, a reply was made by the petitioner on 27th March 2010. The relevant portion of the reply is reproduced hereinunder:-

"1. I deny that I had unauthorizedly took away the Credit Card bearing No. 4006 6610 3641 3826 from the wallet of Mr. Swapan Saha, Sr. Manager, Planning Deptt., Regional Office Delhi.

2. It is true that I have visited the shops mentioned in the

letter at the instance of Mr. Swapan Saha on 19-02-2010. Mr. Swapan Saha gave me his Credit Card and asked me for a favor to purchase the Gold Chain and Finger Ring for his use. When I asked that how can I purchase on his Credit Card as it requires the signatures of the Card Holder. He told me these shopkeepers are well known to him and he will communicate them about my visit. Accordingly I went to shop and make purchases for him and Articles were handed over to him.

I don't know how he plotted the things. Sir, it may be treated as SIMPLE TRAP for the Reasons Best Known to him only.

3. I am not aware of any such Anonymous Letter which is reported to be found by Mr. Swapan Saha.”

16. After consideration of the reply to the Show Cause Notice, the disciplinary action was sought against the petitioner and statement of charges were framed as under:-

“Dr. Mrs Rajkumari while working as Manager at Delhi Regional Office during the period from 12.09.2009 to 23.02.2010 committed following misconducts:

01. On 19.02.2010 she had taken away the credit card of Mr. Swapan Saha, Senior Manager, Regional Office Delhi, when he was away from his seat for attending a meeting at Regional Office, Delhi.

02. She used the above mentioned credit card of Mr. Swapan Saha for making purchases worth Rs. 34,622 from Merchant Establishments – M/S Ashwini Kumar's Mehrasons Jewellers and M/S Titan Industries Ltd.”

17. An Inquiry Report was submitted to the Disciplinary Authority and ultimately, the order of dismissal dated 24th December 2010 was passed.

18. The charges as have been levelled against the petitioner were that she had stolen the credit card of the Senior Manager, Swapan Saha and had purchased gold jewellery items using the same without his consent and knowledge.

19. A perusal of the record, including the evidence by way of witness statements highlighted in the Inquiry Report, the order of the Disciplinary Authority and the Appellate Authority order, shows that the same were passed on the primary ground that the petitioner had signed a confessional statement on the 23rd of February 2010 admitting to the effect that she had stolen the credit card in question. The said statement had been vehemently disputed and strongly opposed by the petitioner on the ground that she was detained in the office premises and made to sign the statement under the threat of being handed over to the police on accounts of theft.

20. This disputed position of fact, although cannot be investigated into by this Court, however, is extremely pertinent to be examined which was not adequately considered during the inquiry proceedings. The possibility and likelihood of the alleged detention, threat and influence was not sufficiently considered and was decided based on the witness statements of officials present at the office and parties to the alleged detention and threat at the odd hours. The allegations of detention and threat by certain officials by the petitioner were serious enough to cast a shadow of doubt on the credibility of the statement signed by the petitioner admitting to taking the card away from the possession of the Senior Manager.

21. Pursuant to the signing of the alleged confessional statement, the petitioner was served with the suspension order. The said suspension order signed at the late hours of the same night also raised a suspicion as to the genuinity, impartiality and non-biasness of the allegations levelled and action taken against the petitioner. It is difficult to accept the contention that a suspension order, which was drafted and issued immediately upon signing of the confessional statement at the late-night hours, i.e., 10 pm, engaging the administrative side of the Bank, only to suspend the petitioner for her unbecoming conduct was not to give effect to an ulterior motive. There is no reason apparent for which the suspension of the petitioner was rushed.

22. After the suspension, and other formal proceedings the impugned order was passed, the relevant portion of which is reproduced as under:-

“[7] From the record the DA/undersigned find that the inquiry is properly conducted, adequate opportunity to defend was granted to the CSOE and conclusions drawn by the Inquiring Authority are based on the evidence brought before him. The undersigned has examined all the submissions made by the CSOE on the findings of the Inquiring Authority and has not found anything substantive in her submissions. Having carefully gone through the entire record of the case and having examined all the submissions of the CSOE the DA/undersigned find that the findings are based on adequate evidence and are rational. Therefore, the undersigned accept the findings of the Inquiring Authority that both the charges levelled against her are proved.

[8] Having examined the nature and gravity of the charges the undersigned impose the following punishments upon Dr. (Mrs.) Raj Kumari (PF No.24913), Manager (under suspension), Regional Office, Delhi.

<i>S. No.</i>	<i>Charge</i>	<i>Findings of IA</i>	<i>Punishment imposed</i>
01	<p><i>On 19.02.2010 she had taken away the Credit Card of Mr. Swapan Saha, Senior Manager, Regional Office Delhi, when he was away from the seat for attending a meeting at Regional Office, Delhi.</i></p> <p><i>She committed breach of regulation 3 (1) and 3 (2) of Bank of Maharashtra Officer Employees' (Conduct) Regulations, 1976.</i></p>	Proved	Dismissal which shall ordinarily be a disqualification for future employment.
02	<p><i>She used the above mentioned Credit Card of Mr.Swapan Saha for making purchases worth Rs.34,622/- from Merchant Establishments – M/s Ashwani Kumar's Mehrasons Jewelers and M/s Titan Industries Ltd.</i></p> <p><i>She committed breach of regulation 3 (1) and</i></p>	Proved	Dismissal which shall ordinarily be a disqualification for future employment.

	<i>3 (2) of Bank of Maharashtra Officer Employees' (Conduct), Regulations, 1976.</i>		
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23. The aforesaid impugned order passed by the Disciplinary Authority, was thereafter, confirmed by the Appellate Authority.

24. A perusal of the impugned order dated 24th December 2010 shows that the Disciplinary Authority, while passing the order, had only reiterated inquiry proceedings held before the concerned Inquiry Officer, and the evidence considered while passing the Inquiry Report. It noted that the Inquiry Report had been made upon considering all the evidence that was before the Inquiry Officer and thereby, agreeing to the findings, it upheld the findings of the Inquiry Officer. The Disciplinary Authority has not even made a passing observation on the facts, evidence or findings pertaining to the matter. The Disciplinary Authority while imposing the major penalty has failed to give any reason for decision to dismiss the petitioner from services. While imposing the major punishment, the Disciplinary Authority ought to have applied its mind and recorded the reasons for imposing the same dismissing the petitioner from services alongwith the disqualification from future employment. The Appellate Authority also failed to consider that in case the Disciplinary Authority was upholding the Inquiry Report, it still required to give, if not comprehensive, a reasoned order especially when the punishment awarded was that of dismissal.

25. Moreover, the Appellate Authority as well noted that the inquiry and proceedings thereto were in accordance with the procedure, however, failed to consider and appreciate the lapse in inquiry with respect to the evidence, and the lack thereof as, was also erroneously overlooked by the Disciplinary Authority. The order of the Appellate Authority is hence, erroneous for the want of reasoning for confirming the order of the Disciplinary Authority. The lapse found in the impugned order dated 24th December 2010 persisted in the impugned order dated 7th April 2011 as well.

26. Another extremely significant point to be considered while evaluating the impugned orders is the fact that the petitioner addressed her complaints against the Senior Manager, Swapan Saha, pertaining to unwelcoming advances which she had time and again faced. The petitioner wrote the communications explaining the advances of unwelcoming and sexual nature made by the Senior Manager towards her however, at no point any inquiry was ever conducted into these communications/complaints and instead, in the Inquiry Report, it was found that the Presenting Officer had blatantly rejected the allegations and dismissed them as being fraud, false and baseless without even conducting a single hearing on the same and without even making a preliminary inquiry into it.

27. The Appellate Authority to this aspect, without giving any reasons for the same, made the observations as reproduced under:-

“[7] The observations of the Appellate Authority (AA) on the relevant submissions of the appellant are as follows:

(a) Observations of the AA on the general submissions:

i. The appellant has made unfounded allegations (mentioned under para 6.A above) against Mr. Saha. She has mentioned about her so-called personal relations with Mr. Saha. These allegations of the appellant are totally imaginary, unfounded, frivolous and slanderous and are obviously afterthought.”

28. The issue of sexual harassment at workplace is not limited to the four walls of an office premises but also extends to the officials outside the premises who are abusing their power and capacity as a superior to influence a junior and a newcomer by making unwelcoming advances, requesting sexual favours, making physical contact or other sexually determined behavior. These issues are of extremely critical nature which have to be addressed and resolved by the concerned officials who have the authority to adjudicate upon them. An unheard claim of a woman against sexual harassment at workplace can mute others in the future.

29. The Noting of the Presenting Officer is reproduced hereunder:-

“Mrs. Raj Kumari, Manager, Delhi, regional Office, submitted 2 letters dt. 27.08.2010 of one page and 3 pages each, she has levelled false and baseless charges without any evidence or witness. The contents of these letters show that these are written out of frustration by Mrs. Raj Kumari. My submission is that these letters should be ignored and removed from Inquiry”. That acting on such notice of the Presenting Officer, the Inquiry Officer; removed such letters of the petitioner pertaining to her prolonged Sexual Harassment by Mr. Salta from the purview of the Inquiry.”

30. This Court finds that the noting of the Presenting Officer made on the Inquiry Report was not an abomination and outrageous conduct which could not have been at any cost pardoned and allowed to sustain. Whether

the said noting was made under influence or not is not for this Court to decide, however, the very fact that the statement was made without consideration of the claims raised, was in itself arbitrary and condemnable.

31. It is also found that in this entire matter there was no evidence or material on record to conclusively establish beyond doubt that the allegations levelled against the petitioner were proved. From the very beginning the complaint, recourse and action taken as well as the conclusions drawn were influenced by authorities and prejudiced against the petitioner.

CONCLUSION

32. The principles guiding the judicial review of order passed in matters of service, especially in matters of disciplinary inquiry, have already been settled by the Hon'ble Supreme Court and have been delineated earlier. In the background of the said guidelines/directions of the Hon'ble Supreme Court, this Court has reached the following conclusion upon perusing the record, hearing the contentions and submissions and considering the analysis as made in the foregoing paragraphs.

- I. The conclusion drawn by the Inquiry Officer, the Disciplinary Authority as well as the Appellate Authority, on the very face of it, was wholly arbitrary and capricious that no reasonable person could have arrived at in the absence of any incriminating evidence except for the alleged

confessional statement signed by the petitioner, which also was disputed, considering that the petitioner had made a categorical statement that she had been threatened to sign the same. Moreover, the probability and likelihood of intimidation and threat cannot be entirely overruled since the petitioner was not given any opportunity to defend herself at this stage and also, considering the fact that the said statement was signed beyond the official hours in the office premises in the presence of only male witnesses. No inquiry was made to this aspect to ensure that the confessional statement was signed by the free will of the petitioner.

- II. A primary consideration for this Court to evaluate was whether the findings of the Disciplinary and Appellate Authorities impugned by the petitioner were based on no evidence, and this Court finds that there was in fact nothing to show at the first instant that the petitioner had taken away the credit card in question from the possession Swapan Saha without his knowledge and made the purchases of the ornaments by herself without the consent of the Senior Manager. It is difficult to accept the contention that the petitioner was able to secure the credit card from the wallet of the Senior Manager, take it to two differently located shops, select two separate jewellery articles and make the payment with the said credit card using the PIN etc. all without the knowledge of the Senior Manager.
- III. The Inquiry Authority and the Disciplinary Authority had

erroneously failed to admit the admissible and material evidence which were the letters/communications made by the petitioner against the sexual harassment by the concerned Senior Manager, Swapan Saha, which were not even given a preliminary consideration by the authority concerned and was completely dismissed by the Presenting Officer, on her own will without investigation or inquiry into the same, by her noting made on the Inquiry Report. The inquiry had completely contravened the directions issued by the Hon'ble Supreme Court in *Vishaka vs. State of Rajasthan (Supra)*.

IV. The power of judicial review is meant to ensure that the individual receives fair treatment and in the instant matter, it is evident that from beginning to end the inquiry against the petitioner was prejudiced and treatment towards her was neither fair nor reasonable nor equitable.

33. Keeping in view the aforesaid conclusions, this Court finds strength in the case of the petitioner and force in the arguments advanced by the learned counsel on behalf of the petitioner as well as those raised in the pleadings, and therefore, the instant petition is allowed. Accordingly, the order dated 24th December 2010 passed by the General Manager, Bank of Maharashtra, Regional Office, New Delhi and the order dated 7th April 2011 passed by the Executive Director, Bank of Maharashtra, Pune are set aside.

34. In the totality of the circumstances as laid down, the respondents, who are the officials concerned of the employer Bank, are accordingly,

directed to take all necessary steps to reinstate the petitioner with all consequential benefits. It is, however, made clear that in accordance with the principle of “no work, no wages”, no back wages/arrears are required to be paid to the petitioner for the period during which she has not rendered her services i.e., from the date of her dismissal until the date of reinstatement.

35. Also, since the petitioner has been put through the rigours of prejudiced inquiry, investigation, and dismissal, and has only been able to have her grievances redressed and get the relief she had sought after over 10 years of pending litigation, to secure the ends of justice the respondents are also directed to pay a compensation of an amount of ₹1,00,000/- to the petitioner within a period of three months, failing which 9% p.a. interest shall be payable.

36. With the aforesaid discussion and directions, the instant petition is allowed.

37. Pending applications, if any, stand disposed of.

38. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 23, 2022
gs/ms