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Editorial

COME AUTUMN

It is the time of the year when autumn sets in and is the onset of the much-awaited festive season which has its hue; its ecstasy. All the hardships encountered throughout the year would witness a common destination - a sense of fulfillment. This sense of fulfillment is celebrated with new clothes, new colours, and new dreams. The arrival of autumn is celebrated through observance of Navratri, Durga Puja, Diwali, and traditional festivals across the country. The editorial board of Common Bond extends its festive greetings to the entire membership of the Confederation and their families and all its well-wishers.

Unfortunately, the celebration for bankers for the festive season has been muted over the last few years for various reasons as we had had to face mergers, followed by the pandemic, and of course the threat of privatisation. The economy is in a tailspin. Both retail and wholesale inflation is refusing to respond to the policy prescription of the Reserve Bank of India and other central banks elongating the shadow of stagflation over an economic horizon and postponing thereby the recovery of a pandemic-ravaged system.

Such macro developments have an impact on the financial sector and are more pronounced on the balance sheet of the banks. We all know that like in 2008, the public sector banks had pulled

up their entire resources for the recovery of the economy when the pandemic was at its zenith risking the lives of its employees. Honestly, the banking system was in working in full flow when the other sectors were in slumber. But when the external crisis deepens and affects the banking system the onus is effortlessly shifted on the shoulders of the bankers and the same is used as an alibi for privatisation, consolidation, and other regressive measures under the garb of big-bang reforms dove-tailed to favour the crony corporate houses.

Refashioning the priorities of the movement has become vital at a time when the nation is facing a confluence of crises, chronic and emerging, which often intersect. Such a situation may not be unique but the current state of political developments and prevailing socio-economic currents makes this extremely tricky. It may require a major overhaul of how we interpret the emerging challenges and how we propose to counter them. For the Confederation and the movement, this is a daunting task. We have to encounter fresh challenges and we have to devise suitable strategies to accept the gauntlet and rise to the occasion.

We have repeatedly emphasised that we need to reach out to the citizenry and win their trust and confidence in battling it out with the powers that be which is trying to destabilise the banking

A JUG FILLS DROP BY DROP

sector in particular and the economy in general. We have reasons to believe that the cannon of prudential lending will be given a go-by to boost the morale of a shattered economy. Though all unbiased scholarly reports and articles establish the commanding role of the public sector banks, (an important research paper published in the RBI bulletin shared in this issue itself), repeated attempts are being made through media trials and by spreading panic news about the imminent sale of the public sector banks to break the moral of our members. It is heartening, as revealed by the audience report that the total following of our Facebook page www.facebook.com/BankBachaoDeshBachao/ has crossed 290K at the time of going to press.

The importance of this social media campaign lies in developing organic connectivity between the social media campaign and the street program for which the full involvement of the Confederation and the membership is essential. The interval of the festival holidays should be aggressively used for connecting with our stakeholders. If all of us collectively join hands, then attaining an audience of 500K by 30th November 2022 is eminently achievable. This small step will lay the foundation of a gigantic movement against the sale of national assets and the real message of the festival, the triumph of good over evil, can be spread across the nation.

The government has to appreciate that bankers are central to any change in the economic system and they cannot be left out of the realm of reforms underway to have a system that pleases the corporate backers. We have seen what recently happened in Lakshmi Vilas Bank and Catholic Syrian Bank and are aware of the toxic internal working condition in the entire private sector banking space. The same fate will await

us if the sinister plan of privatisation is implemented through the amendment of the Banking Companies (Acquisition and Transfer and of Undertakings) Act 1970 and 1980 is tabled and passed in the ensuing sessions of the parliament. From a movement that also championed periodic salary revision and improvement in superannuation benefits including updating of pension, it would have to convert itself to a movement protecting job security, and social security and fighting a possible large-scale retrenchment while concentrating on movements to keep the hard-earned benefits intact.

Hence navigating the emerging challenges promises to be extremely demanding, if not, treacherous with old-fashioned ideas of movement jostling with newer forms of resistance. It requires a total transformation of the way; we are looking at the issues today. It may be necessary to give up many of the traditional means and ways of resistance and adopt fresh ideas for a wider outreach ensuring that our movement is not merely in step with the current needs but is always a step ahead.

Let this autumn be our hunting ground for newer ideas, a newer form of resistance, and a welcome break to rejuvenate ourselves for the struggles ahead.

Stay well! Enjoy the festivities. Let us keep our gun powders dry for a decisive battle.

March on comrades,

#NationAgainstPrivatisation

#StrikeHard

#PowerofUnity

#BankBachaoDeshBachao

IN THE SKY THERE IS NO DISTINCTION OF EAST AND WEST

ADIEU AND WELCOME



FAREWELL

Comrade Murali Soundararajan T, President AIBOC, and General Secretary, Indian Overseas Bank Officers' Association has demitted office on his attaining superannuation from Indian Overseas Bank on 30th September, 2022 after an illustrious journey in banking trade union. Common Bond places on record his valuable contribution as a member of the *Editorial Board*.



WELCOME

Common Bond welcomes Com Balachandra P M, General Secretary, All India Union Bank Officers' Federation, as the President of AIBOC. It trusts that it will be impacted by his stellar guidance and contribution as a member of the *Editorial Board*.

ECONOMY

A research paper was recently published in RBI bulletin which empirically showed that the government move to privatise the public sector banks is not well thought of and may bring more disaster

to the economy. An edited version keeping the basic message of the report intact is shared herein below with our readers for their information and for using it in our ongoing struggle.

RBI STUDY REPORT

The dichotomy in the thinking of the regulator and DFS is well manifested in the knee-jerk reaction exhibited by RBI while responding to an internal research report prepared by its research wing. The major points in the form of excerpts of the research report are being shared here with the hope that it will sharpen our intellectual armoury in the ongoing struggle against privatisation:

a) Privatisation has become a buzzword worldwide since the 1990s and governments all over the world have either reduced participation or

withdrawn completely from a range of activities in the last four decades. Prior to the global financial crisis (GFC), banking was no exception to this trend. In developing countries, the average share of assets held by government-owned banks declined from 40 percent in 1995 to 17 percent in 2008 while in high-income countries, the same fell from 36 percent in 1995 to 10 percent in 2008. Post GFC however, there has been a renewed interest in the public ownership of banks as many high-income and developing countries capitalized or nationalized stressed banks. In countries such as Iceland, Kazakhstan, the United

THERE HAS TO BE EVIL SO THAT GOOD CAN PROVE ITS PURITY ABOVE IT

Kingdom, and the República Bolivariana de Venezuela, the share of assets held by the government in the banking sector increased by more than 10 percentage points between 2008 and 2010 (Cull, Peria, and Verrier, 2018). Since then, the pros and cons of public ownership of banks have remained a hotly debated topic all over the world.

b) Privatisation has had a significant influence over economic thinking in India as well, although banking had remained largely untouched by its winds till recently. In the Union Budget 2021-22, the government announced its intent to take up the privatisation of two PSBs. A recent policy prescription emphasizes that ‘...PSBs have underserved the economy and their stakeholders, to make a case for privatisation of all PSBs excluding the State Bank of India.

c) The RBI article offers an alternate perspective by taking inspiration from the strands of literature that justify the role of PSBs on several grounds. The ‘social view’ propagated by Atkinson and Stiglitz (1980) suggests that state-owned enterprises (SOEs) are created to address market failures, and often their social benefits exceed the social costs.

d) An important aspect that is often ignored by researchers proposing privatization is the role played by PSBs in financial inclusion. Incorporating this dimension in the objective function, the article provides empirical evidence on how PSBs have been more welfare-enhancing than their private sector counterparts in India.

e) PSBs account for the highest share of bank branches in rural areas, followed by semi-urban areas, in adherence to their commitment to the financial inclusion objective. The PSBs dominate in meeting the credit demand of rural areas. Although Private Sector Banks have been making some inroads in the rural areas, their progress remains slow and lackadaisical. The PSBs have been adopting innovative ways of providing financial services in rural areas. For example, their share in ATMs in rural areas is more than twice that of PVBs. Another channel that has been used most effectively by PSBs to make financial services available in rural

and financially excluded areas is the use of the Business Correspondent (BC) Model. The share of PSBs in BC outlets in rural areas has remained consistently above 60 percent over the years, the highest among the bank groups. PVBs on the other hand have adopted the urban BC model.

Pradhan Mantri Jan Dhan Yojana (PMJDY), envisages universal access to banking facilities with at least one basic banking account for every household. As of July 2022, more than 45 crore beneficiaries have been banked and 78 percent of these accounts were in PSBs. Moreover, more than 60 percent of PMJDY accounts opened in PSBs were in rural and semi-urban areas.

It is often argued that PVBs meet their priority sector lending target of 40 percent fully and thus contribute towards financial inclusion. Granular data however show that the PVBs have met their priority sector targets not through organic lending but through investment in priority sector lending certificates (PSLCs), especially in agriculture and small and marginal farmers categories. These categories of priority sector lending are especially challenging and attract higher premiums. The PVBs have shown a willingness to pay higher premiums to meet their PSL targets rather than develop skills and expertise in such lending.

f) PSBs have consistently allocated a larger proportion of their total credit to agriculture and industry than PVBs. Agriculture lending is a priority, as well as a challenging area. Over time, the share of co-operative banks and RRBs in agriculture lending has reduced while that of PSBs has increased, suggesting that the latter have played an important role in providing credit to the needy sector.

Since the corporate bond markets in India are not deep and vibrant, industries had fewer other avenues to raise resources than banks. Earlier research has also shown that larger and stronger industries can access the equity market easily but that option is scarcely available to smaller entities. This was especially true during the cyclical downturn that started in the Indian economy since 2017-18. By providing credit to the industrial sector, the PSBs have

played a counter-cyclical role.

Infrastructure finance has been a bottleneck in the country's development and growth. PSBs have a lion's share in these lendings and their role has been especially crucial against the backdrop of the withering away of erstwhile development financial institutions.

PSBs are also more effective in monetary policy transmission, aiding the counter-cyclical monetary policy actions to gain traction. During the last easing cycle, for example, their reduction in lending rates was substantially higher than that of PVBs. At the same time, their deposit rates were relatively stickier as compared with PVBs. The resultant higher NIMs of PVBs are an indication of their profit maximization objective. On the other hand, by playing a crucial role in monetary transmission, the PSBs have contributed to larger social goals. At the onset of the global financial crisis, deposits flew out of PVBs to PSBs. A viewpoint suggested that this reallocation was not indicative of the better financial health of the bank to which the deposits flew, but rather indicated implicit government guarantees in them.

g) Privatisation is not a new concept, and its pros and cons are well known. From the conventional perspective, that privatisation is a panacea for all ills, economic thinking has come a long way to acknowledge that a more nuanced approach is required while pursuing it. RBI article provides an alternative view with evidence that public sector banks are not entirely guided by the profit maximisation goal alone and have integrated the desirable financial inclusion goals into their objective function, unlike PVBs. In recent years, these banks have also gained greater market confidence. Despite the criticism of weak balance sheets, data suggests that they weathered the Covid-19 pandemic shock remarkably well. The establishment of National Asset Reconstruction Company Limited (NARCL) will help in cleaning up the legacy burden of bad loans from their balance sheets. The recently constituted National Bank for financing infrastructure and development (NABFiD) will provide an alternate channel of infrastructure funding, thus reducing the asset-liability mismatch concerns of PSBs. Overall, these reforms are likely to help strengthen the PSBs further. Against the backdrop of these findings, a big bang approach to privatisation of these banks may do more harm than good.

Organisation

ACTION POINTS AS DECIDED IN THE 96TH EXECUTIVE COMMITTEE HELD AT CHENNAI ON 14th AND 15th SEPTEMBER, 2022.

1. All affiliates and state units to observe 6th October, 2022, the 38th Foundation Day of the Confederation in a befitting manner and also organise social welfare/society connect programs. Each affiliate/state unit is being directed to organise flag hoisting ceremonies at the state capitals, sub-division headquarters, etc.

2. Twitter campaign commemorating the 38th Foundation Day will be scheduled; accordingly, the hashtag will be released at the appropriate time. All affiliates/state units to activate their social media team to make our Twitter campaign a success.

3. All state units are being directed to organise the BankBachaoDeshBachao Bus Yatra in their respective states in November 2022 well before the

commencement of the winter session of the Parliament. The campaign should be planned meticulously and ensure the following: participation of all stakeholders; covers all districts and strategic points; coverage by the print and electronic media, addressed by the lawmakers, trade union leaders, important personalities, etc. Affiliates are urged to financially support their respective state units for this endeavour.

4. An intensive campaign is to be launched to increase the number of likes of the page <https://www.facebook.com/BankBachaoDeshBachao/> to 500K by 30.11.2022

5. All affiliates and state units should contact lawmakers and other prominent personalities and

THREE THINGS CANNOT BE LONG HIDDEN: THE SUN, THE MOON AND THE TRUTH

record their brief bytes on BankBachaoDeshBachao in support of the movement.

6. Further action points have been enumerated on page 35 of the Secretary's Report of the 96th Executive Meeting, which is to be carried out to intensify our movement against the bank privatisation. (**Copy annexed***)

7. One-day evening demonstration to be conducted at all Regional Offices of Standard Chartered Bank at all metros and other major centres in support of our affiliate- Association of Standard Chartered Bank Officers' Organisation (ASCBOO). A memorandum is to be handed over to the HR Head thereafter. The date of the demonstration and the draft memorandum will be announced and sent in due course.

8. All affiliates are to join the mass protest organised

by the Federal Bank Officers' Association at Aluva on the 21st September, 2022 to extend solidarity in support of the movement against the possible takeover of the bank.

9. Four separate Twitter campaigns will be launched in support of our affiliates of the Federal Bank Officers' Association; Lakshmi Vilas Bank Officers' Association, Catholic Syrian Bank Officers' Association, and Association of Standard Chartered Bank Officers' Organisation. The dates and the hashtag will be announced in due course.

10. All state committees to convene state unit meetings within 7/10 days, repeat within 7/10 days to communicate the action points as decided in the 96th EC Meeting and accordingly chalk our programs. All State units are advised to send confirmation having convened such meetings.

* ANNEXURE

i. Small duration street plays / Nukkad Natak/ carnivals, distribution of "sun-shades" with slogans 'SAVE PUBLIC SECTOR BANKS, SAVE INDIA", **#BankBachaoDeshBachao** to hawkers, roadside vendors. These will have a long life and visibility.

ii. Every meeting should have a backdrop with slogans of 'SAVE PUBLIC SECTOR BANKS, SAVE INDIA", **#BankBachaoDeshBachao**

iii. All Affiliates shall have Twitter handle, FaceBook Groups of their members, and the posts of AIBOC on its official Twitter / FB page posts to be liked / positively commented on and shared in large numbers. Affiliates are to ensure the support of all officers in this campaign. Innovative videos/ clippings to be circulated on Social media on the Facebook page **#BankBachaoDeshBachao** to garner support for our movement.

iv. Songs, Cartoons, and Video Clippings of common people from real life to be massively spread out to propagate their voices supporting PSBs.

v. Small acts performed by Stand-up comedians, recitation by poets, and other performing art forms in support of our movement.

vi. Bytes of politicians in support of our movement and denouncing bank privatization. (So far we have received only 5 such bytes)

vii. A slogan "**Bank Bachao, Desh Bachao**" to be vowed in meetings / Dharnas / Street Corners, Facebook like/Signature Campaigns, and interacting with people organizing meetings/ seminars at various places like college/university.

viii. All affiliates to involve their State/ Circle / Zonal units to carry forward the movement of AIBOC

ix. State unit to prepare leaflets in Regional language and distribute them among people during Dharnas, Street Corners, Facebook like/Signature campaign, etc.

x. Bicycle rallies/Marathons/Walkathons to be organized to generate public awareness.

BETTER THAN A HUNDRED YEARS OF IDLENESS IS ONE DAY SPENT IN DETERMINATION

CIRCULARS

28 dated 24th September, 2022: Text of the circular issued by four officers' organisations on discussions on Residual Issues with IBA

JUDICIAL VERDICT

2022 LLR 237
SUPREME COURT OF INDIA
Hon'ble Mr. Sanjay Kishan Kaul, J.
Hon'ble Mr. M.M. Sundresh, J.
CAJCA No.267/2022, Dt/- 19.01.2022
Indian Overseas Bank & Ors.
Vs.
Om Prakash Lal Srivastava

IMPORTANT POINTS

- * Punishment of dismissal from service for the proved misconducts of breach of duty, dishonesty, fraud/manipulation of documents, willful insubordination, threatening and abusing the Branch Manager, behaving in a riotous, disorderly and indecent manner etc.
- * Past conduct of the workman on the basis of Bank record support the charges leveled against the workman.
- * When the charge of breaching the trust of a widowed sister-in-law as well as of the bank, makes it hardly a case for interference either on law or on moral grounds by the High Court.
- * If the preliminary issue on the question of fairness of the domestic inquiry is decided against the management, Industrial Tribunal/Labour Court have to grant an opportunity to the Management on request of the management to prove the charges by adducing additional evidence.
- * In disciplinary proceedings evidence is to be evaluated on the basis of probabilities and preponderance and not by strict rule of evidence, i.e., beyond reasonable doubt, as applicable criminal trial.
- * Commission of fraud and forgery by

manipulating the signatures of any third party, opening an account, operating the account and appropriating the money of the third party, are serious misconducts, justifying punishment of dismissal from service.

* Evidence of handwriting is only an opinion, by a scientific comparison and on the basis of familiarity resulting from frequent observations and experiences wherefrom 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 which is permissible under section 73 of the Evidence Act.

* Evidence of Handwriting Expert need not be invariably corroborated and the Court is to decide whether to accept such an uncorroborated evidence or not.

* When experts' evidence is not there, Court has power to compare the writings and decide the matter.

* There are certain inherent legal limitations to the scrutiny of an award of a Tribunal by the High Court while exercising jurisdiction under Article 226 of the Constitution of India.

YOU WILL NOT BE PUNISHED FOR YOUR ANGER, YOU WILL BE PUNISHED BY YOUR ANGER

* If there is no jurisdictional error or violation of natural justice or error of law apparent on the face of record, there is no occasion for the High Court to get into the merits of the controversy as an appellate court.

* Interference of the High Court with the merits of matter is not proper in view of opinion formed in respect of two sets of signatures by the Enquiry officer on a bare comparison of the signature that there is a difference in the same, which, of course, is also apart from the un-rebutted testimony of the sister-in-law of the workman.

JUDGMENT

Sanjay Kishan Kaul, J. – 1. The appellant-Bank, a nationalised one, took the ultimate step against the respondent as an employee in pursuance of departmental proceedings having found him guilty on various counts inter alia including breach of duty as a custodian of public money and dishonesty, fraud or manipulation of documents. The Industrial Tribunal ultimately upheld the decision of the appellant-Bank but in terms of the impugned judgment of the Allahabad High Court, five of the charges were found not proved while qua two of the charges the matter was remitted back to the Industrial Tribunal with a limited mandate.

2. The said decision was, however, stayed by this Court on 5.3.2019.

The facts:

3. The respondent was employed with the appellant-Bank as a clerk- cum-cashier w.e.f. 14.9.1981. The appellant-Bank received a complaint dated 8.10.1994 from the sister-in-law of the respondent, Smt. Meera Srivastava, that the respondent had opened and operated a savings account No. 7882 in the joint name of the respondent and his sister-in-law by forging her signatures, and encashed a demand draft of ₹ 20,000/- which was issued to her by way of interim relief by Kalyan Nigam Limited in which her husband was employed as a Junior Engineer, who had unfortunately passed away in a road accident on 15.4.1994. The respondent was placed under suspension on 5.11.1994 by the Bank for

committing acts of grave misconduct at the Gorakhpur Branch and he was issued a charge-sheet dated 22.3.1995. The charges are as under:

“Charge No.1: On 28.9.94 you went to the clearing house without collecting the outward clearing cheques from Mr. T.K. Sridhar officer in violation of the specific instructions of the Branch Manager Mr. R.N. Saxena and thus you committed an act of wilful insubordination which is a gross misconduct under para 19.5(e) of the Bipartite Settlement dated 19.10.66.

Charge No.2: You refused to include the outward clearing cheques for ₹ 2,21,161.47 for the day’s clearing on 28.9.94 when Mr. A.K. Chakraborty and Mr. S.N. Pandey officer handed over the said cheques at the clearing house before 10.30 a.m., despite the specific instructions given by them, which is an act of wilful insubordination and is a gross misconduct under para 19.5(e) of the Bipartite Settlement dated 19.10.66.

Charge No.3: By refusing to include the outward clearing cheques for ₹ 2,21,161.47 for the day’s clearing on 28.9.94, you caused inconvenience and hardship to the Bank’s customers concerned and thus acted in a manner prejudicial to the interests of the Bank, which is a gross misconduct under para 19.5(j) of the Bipartite Settlement dated 19.10.66.

Charge No.4: You fraudulently and dishonestly opened savings bank account No.7882 in the joint names of yourself and your sister-in-law Mrs. Meera Srivastava by forging the signature of the latter which is an act prejudicial to the interests of the Bank and a gross misconduct under para 19.5(j) of the Bipartite Settlement dated 19.10.66.

Charge No.5: You fraudulently and dishonestly withdrew from the joint account No.7882 a sum of ₹ 20,000/- (being the proceedings of the demand draft issued in favour of Mrs. Meera Srivastava and credited into the account) in two instalments of ₹ 7,000/- and ₹ 13,000/- on 20.5.94 and 13.6.94 respectively by forging the signature of Mrs. Meera Srivastava in the withdrawal slip which is an act prejudicial to the interests of the Bank and a gross misconduct under para 19.5(j) of the

Bipartite Settlement dated 19.10.66.

Charge No.6: By Gheraoing the Branch Manager Mr. R.N. Saxena along with a few outsiders and staff members, by threatening and abusing the Branch Manager-I unparliamentary language and by forcibly taking the copy of the suspension order after searching the Branch Manager's brief case, table drawer and his pocket on 9.11.94, you behaved in a riotous, disorderly and indecent manner which is a gross misconduct under para 19.5(c) of the Bipartite Settlement dated 19.10.66.

Charge No.7: By erasing

- i) your own acknowledgement contained in the duplicate copy of the suspension order dated 5.11.94,
- ii) the narration made against your name in the attendance register through application of white fluid, you tampered with the records of the branch and thus acted in a manner prejudicial to the interest of the Bank which is a gross misconduct under para 19.5(j) of the Bipartite Settlement dated 19.10.66."

4. The respondent denied the allegations in response to the charge-sheet. An inquiry officer was appointed to adjudicate upon the charges. It is the appellant's case that all principles of natural justice were followed and the respondent was supplied with all documents/material relied upon by the appellant-Bank. The inquiry officer concluded the inquiry and submitted the report dated 6.12.1995 opining that all charges stood proved against the respondent. Consequently, the respondent was served with a show cause notice dated 28.2.1996 by the Disciplinary Authority proposing the punishment of dismissal from service. The respondent submitted a reply but the Disciplinary Authority after considering the reply proceeded to uphold the finding and impose the penalty of dismissal from service vide order dated 11.5.1996.

5. The respondent filed an appeal before the appellate authority but the appellate authority

rejected the appeal vide order dated 10.9.1996.

6. The respondent sought to raise an industrial dispute and the Central Government referred the dispute vide G.O. dated 30.10.2003 to the Presiding Officer, Central Government Tribunal-cum-Labour Court, Kanpur on the issue whether the action of the Management imposing the penalty of dismissal was justified and legal.

7. The proceedings were contested before the Tribunal and the Tribunal framed a preliminary issue on the question of fairness of the domestic inquiry. The Tribunal vide order dated 15.11.2011 decided the preliminary issue against the appellant as the appellant- Management/Bank had failed to produce original documents and most photocopies of the relevant pages were not readable. It was, thus, concluded that there was violation of the principles of natural justice. However, the Tribunal granted an opportunity to the appellant-Bank to prove the charges against respondent by adducing evidence. The Bank led its evidence by producing five witnesses while the respondent examined himself. The Tribunal vide award dated 21.2.2013 answered the reference against the respondent opining that the appellant-Bank/Management had been successful in establishing all the charges against the respondent. On the issue of quantum of punishment also it was held that the same was commensurate to the charges levelled and proved against the respondent.

8. The appellant sought to assail this order of the Tribunal by filing writ petition, being WP(C) No. 53458/2013, before the High Court of Judicature at Allahabad. In terms of the impugned judgment dated 31.5.2018, the said writ petition has been allowed while remitting matter back in respect of charges 4 & 5. The impugned judgment held that when the earlier departmental proceedings were found to be violative of the principles of natural justice then no findings vis-a-vis charges 1, 2, 3, 6 & 7 should have been arrived at, based on the plea that the Bank led evidence only in respect of charges 4 & 5. In respect of charges 4 & 5 it was opined that on the request of the respondent the signatures of Mrs. Meera Srivastava should have

been got compared with her admitted signatures by an expert and then only a correct conclusion could have been arrived at whether the signatures on the account opening form or the withdrawal form have been forged by the respondent or not and the Tribunal should have refrained from acting like an expert. This was so as fraud was alleged and a degree of investigation should have been a standard which is resorted to by a criminal court.

9. We may notice at this stage that the inquiry officer had opined that while observing the admitted signatures in comparison with the signatures in question from a banker's eye it could be said that there is absence of similarity. Mrs. Meera Srivastava's claim was that even the account was opened fraudulently without her ever visiting the bank. The position was the same with respect to two withdrawal slips of ₹ 7,000/- and ₹13,000/-. Mrs. Meera Srivastava had corroborated this aspect in her deposition. In the deposition she accepted that both her and the respondent were members of a joint family but the drafts were given to the respondent for safe-keeping and when after one and a half month she asked the respondent to return her draft he refused to do so on one pretext or the other. Thus, two or three months later she complained to the bank on learning that the drafts had been encashed at the Branch. On making the complaint she got her money from the Bank. In her cross- examination it was never put to her that she had gone to the Bank to open the account and the account opening form bears her signatures nor was it put to her that she had gone to the Bank to withdraw the amounts of ₹ 7,000/- and ₹ 13,000/-. Her statement was opined to have been trustworthy by both the inquiry officer and the Industrial Tribunal. Submissions of the Appellant:

10. It was the submission of the learned counsel for the appellant that the High Court fell into an error in applying the standards of proof of criminal proceedings to disciplinary proceedings as the misconduct by an employee in disciplinary proceedings is to be evaluated on the basis of probabilities and preponderance of evidence. There was sufficient evidence to show that the

respondent committed fraud and forgery by manipulating the signatures of the complainant Mrs. Meera Srivastava, opening an account, operating the account and appropriating the sum of ₹ 20,000/- received through a demand draft as compensation on the demise of her husband. The respondent took advantage of the complainant being his sister-in-law. The complainant has given clear and unequivocal testimony on oath before the Tribunal and nothing had come out to the contrary in her cross-examination. In fact, regarding this aspect, it was submitted that there was no material cross-examination and there is no reason to doubt her testimony.

11. Insofar as the remaining charges are concerned, the documents led to an irresistible conclusion that even those charges relating to insubordination, disobeying the orders of the higher authorities, forging the suspension letters were proved and even by themselves were sufficient to award the punishment of dismissal from service.

Submissions of the Respondent:

12. Learned counsel for the respondent on the other hand pleaded that in terms of the impugned judgment charges other than charges 4 & 5 were in any case not proved as no evidence had been led in that behalf and reliance could not be placed only on documents.

13. It was further submitted that charges 4 & 5 were also not proved and sought to refer to the judgment of this Court in *Lalit Popli v. Canara Bank*, (2003) 3 SCC 583 more specifically para 13, which reads as under:

"13. 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

HE WHO SEEKS HAPPINESS BY HURTING WILL NEVER FIND IT

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 v. State of Madhya Pradesh (1980) 1SCC 704]."

CONCLUSION:

14. On having considered the rival submissions of the learned counsel for the parties, we are of the view that the High Court has fallen into an error in coming to the conclusion in the impugned judgment and directing, once again, the matter to be remitted to the Industrial Tribunal to now seek opinion of a hand writing expert.

15. We would like to emphasise at the threshold that there are certain inherent legal limitations to the scrutiny of an award of a Tribunal by the High Court while exercising jurisdiction under Article 226 of the Constitution of India. We may refer to the judgment of this Court in GE Power India Ltd. (Formerly Known as M/s. Alstom Projects Ltd.) v. A. Aziz, 2020 SCC Online SC 782. If there is no jurisdictional error or violation of natural justice or error of law apparent on the face of the record, there is no occasion for the High Court to get into the merits of the controversy as an appellate court. That too, on the aspect of an opinion formed in respect of two sets of signatures where the inquiry was held by an officer of the bank who came to an opinion on a bare comparison of the signatures that

there is a difference in the same. It has been looked at from the perspective of a "*banker's eye*". This is, of course, apart from the testimony of the sister-in-law of the respondent.

16. We have in the course of noting the submissions of the learned counsel for the parties in the context of the factual matrix recorded in para 9 that the Inquiry Officer had himself opined while observing the admitted signatures in comparison with the signatures in question from a "*banker's eye*", it was not just the ipse dixit of the Inquiry Officer but was based on the deposition of the sister-in-law of the respondent, Mrs. Meera Srivastava. The deposition of Mrs. Meera Srivastava was clear and unambiguous. She was staying in a joint family of which the respondent was a part. She unfortunately lost her husband in an accident. The two drafts were received from his employer and those drafts were kept in custody with the respondent, possibly because he was a banker and the elder brother of her deceased husband. Instead of extending the benefits of the same to her, the respondent went on a path of opening an account jointly in his and his sister-in-law's name, presenting the drafts, and drawing the amounts with appropriation of the same to himself. Mrs. Meera Srivastava had not even visited the bank to sign the account opening form or the signature cards, nor had she presented the drafts or signed the encashment vouchers. In fact, it is only when she complained about not receiving the amount that the bank inquired into it and, at least, the money was transferred to her. Her cross-examination elicited nothing, nor for that matter was it put to her in cross-examination that she had ever visited the bank, opened the account or signed the encashment vouchers. The relationships in the family were not estranged nor was there any endeavour to "fix" the respondent by a relative. In our view this evidence was enough to implicate the respondent.

17. The High Court appears to have applied the test of criminal proceedings to departmental proceedings while traversing the path of requirement of a hand writing expert to be called for the said purpose. This would go contrary to

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the settled legal position enunciated by this Court. It would suffice for us to refer to a recent judgment in Ashoo Surendranath Tewari v. Deputy Superintendent of Police, EOW, CBI,(2020)9 SCC 636 where it has been observed while referring to earlier judicial precedents, that the standard of proof in departmental proceedings, being based on preponderance of probability, is somewhat lower than the standard of proof in criminal proceedings where the case has to be proved beyond reasonable doubt.

18. We may also notice that the High Court has opined that only charges 4 & 5 could really have been gone into by the Industrial Tribunal, which required further evidence in its opinion, of a hand writing expert. So far as the other charges are concerned, a conclusion was reached that no further evidence was led.

19. In our view this is neither the correct approach nor borne out of the record. Evidence was led. Even earlier, the material in respect of other charges emanates from the record of the bank which shows

the conduct of the respondent which are apparent from the manner of framing of the charges themselves and the material led in support thereof. Thus, even the aspect of the other charges could not have been brushed aside in the manner it purports to. On the matter being remitted back, two witnesses (2020) 9 SCC 636 deposed as to these aspects, being MW-3 and MW-4. The respondent was a clerk-cum-cashier. It is a post of confidence. The respondent breached that confidence. In fact, the respondent breached the trust of a widowed sister-in-law as well as of the bank, making it hardly a case for interference either on law or on moral grounds. The punishment imposed on the respondent could also hardly be said to be disproportionate. The conduct established of the respondent did not entitle him to continue in service.

20. We are, thus, of the view that the impugned judgment dated 31.5.2018 of the High Court is liable to be set aside and the challenge to the award of the Industrial Tribunal dated 21.2.2013 is repelled.

21. The appeal is accordingly allowed leaving the parties to bear their own costs.

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