

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P. (C) 6766/2008

% Judgment reserved on: 17th April, 2012
Judgment delivered on: 02nd July, 2012

MANJIT SINGH

..... Petitioner

Through: Mr.Ashok Bhalla and Mr.K.G.
Mishra, Advs.

Versus

PUNJAB & SINDH BANK & ORS.

..... Respondents

Through: Mr.Jagat Arora and Mr.Rajat
Arora, Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant petition, petitioner has sought to setting aside the order dated 29.07.2008 passed by the Appellate Authority thereby and thus, quashing / setting aside chargesheet dated 25.01.1992, show cause notice dated 17.02.2007 and order of punishment dated 18.02.2008 with all consequential benefits to the petitioner with interest @ 18% per annum.

2. The facts of the case in brief are that on 25.01.1992, petitioner was working as Manager of the Bank at Connaught Circus, New Delhi. He was placed under suspension and was served with a charge-sheet dated 21.01.1992, followed by another chargesheet dated 03.06.1992,

wherein after holding mock departmental enquiry, he was dismissed from the service vide order dated 02.05.1995, against which the Appeal was also rejected by the Appellate Authority vide order dated 27.09.1996.

3. Being aggrieved, petitioner filed a C.W.P. No. 1739/1997, which was allowed by this Court vide final order and judgment dated 13.05.2003. The extract of which read as under:-

“The net result of the discussion is that the impugned order dated 02.05.1995 of the termination of the services of the petitioner as well as the order dated 27.09.1996 passed by the appellate authority are quashed. The writ petition is allowed. However, liberty is granted to the respondent if they do desired to proceed on the basis of the said charges against the petitioner in accordance with law.

The question of payment of back wages shall be decided after the decision of the respondent with regard to holding of inquiry and if the decision is taken to hold the inquiry, then after the conclusion of the said inquiry.

Writ petition stands disposed of. Rule is made absolute”.

4. Pursuance to the aforesaid order, petitioner submitted joining report to respondent no. 2 on 31.05.2003. In response to which, he was apprised that the said judgment was being legally examined for further appropriate action stage. Therefore, his request for allowing him to join the duties could not be considered.

5. Vide communication dated 21.07.2003, respondent Bank advised the petitioner to report for duties at its Zonal Office at Kolkata.

Pursuance to which, he reported for duties on 04.08.2003.

6. While supplying the list along with copies of Management documents, respondent no. 3 decided to hold De Novo enquiry vide its order dated 18.12.2003. The petitioner was accordingly asked to submit his reply to the chargesheet dated 25.01.1992 and 03.06.1992.

7. Vide communication dated 09.01.2004, petitioner sought further time for submitting reply to chargesheets and thereafter he submitted reply to chargesheet annexing therewith opinion of Sh. S.K. Gupta, handwriting expert and also requested respondent no.3 to keep departmental proceedings in abeyance, in view of the fact that in the intervening period CBI had registered an RC No. 64(A)/14-Bombay. The said reply dated 31.01.2004 was duly served upon respondent no. 2 on 05.02.2004.

8. Respondent no. 3 by denying the receipt of reply dated 31.01.2004, constituted an enquiry on 20.05.2004 by appointing the enquiry officer and presenting Officer.

9. Petitioner apprised respondent no. 3 on 31.05.2004 that since he had submitted reply to the chargesheets, which stood delivered to the respondent bank on 05.02.2004, and requested for recalling the decision of constituting the enquiry. The said representation mechanically, with biased approach, rejected by the respondent no.3.

10. Petitioner submitted another representation on 01.07.2004 to the disciplinary authority to recall the decision of constituting enquiry,

particularly when the Bank did not make payments under Bank Guarantees to the Customs Department and had itself disputed veracity of the same, but in vain.

11. Mr.Ashok Bhalla, Id. Counsel appearing on behalf of the petitioner submitted that on 17.01.2005, Presenting Officer submitted list of Management Documents and witnesses. The aforesaid Officer examined two witnesses, thereafter examined additional witnesses. During the course of enquiry proceedings, where after petitioner submitted list of defence documents / witnesses, some of which documents were not made available to him. To cut short the time, the Enquiry Officer directed the Presenting Officer and the petitioner to submit their written submissions.

12. Accordingly, Presenting Officer submitted in brief, a copy of which was forwarded to the petitioner, who thereafter submitted Written Brief on 24.09.2005, annexing therewith opinion of another Handwriting Expert Sh. S.K. Saxena.

13. Learned counsel submitted that the Enquiry Officer without placing reliance upon any report of the Handwriting Expert, independently assessed/evaluated the evidence led before him and submitted enquiry report to respondent no. 3 on 02.11.2005 by holding that:-

“No allegation is proved against CSO in respect of Charge Sheet dated 25.01.1992 and 03.06.1992 for want of conclusive and un rebuttable evidence.”

14. Ld. Counsel further submitted that the Disciplinary Authority disagreed with the findings of enquiry officer and held that charges as levelled in the chargesheet had stood proved, therefore, he asked the petitioner to submit his comments. The said letter dated 17.02.2007 along with enquiry report dated 02.11.2005 were supplied to the petitioner vide letter dated 30.03.2007, on receipt of which the petitioner sought time up to 30.04.2007 and thereafter petitioner requested further time for 15 days to submit comments, if so advised.

15. Petitioner filed CW (P) 3482/07 inter alia challenging show cause notice dated 17.01.2007, which was disposed of by this Court vide order dated 11.05.2007, with liberty to the petitioner to assail the order of competent authority / appellate authority as to what cause of action arose.

16. Accordingly, petitioner on 12.05.2007, submitted comments in opposition to show cause notice dated 17.02.2007. Disciplinary Authority vide its order dated 18.02.2008 inflicted punishment “dismissal” of the petitioner from Bank Service under Regulation 4 (g) of Punjab & Sindh Bank Officer Employees (Discipline & Appeal) Regulation 1981 as amended from time to time (hereinafter referred to as the ‘Regulation’).

17. Petitioner submitted departmental appeal against the aforesaid order of punishment on 31.03.2008, which was not decided by the Appellate Authority despite the elapse of considerable period.

18. At last, petitioner filed 3rd CW(P) 4646/2008, praying therein,
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directions to respondent no. 2 to dispose of the appeal expeditiously. The said writ petition was disposed of by this Court vide order dated 02.07.2008 with directions to dispose of the Departmental Appeal to the petitioner within 4 weeks.

19. Learned counsel further submitted that vide order dated 29.07.2008, respondent no. 2 without correctly appreciating the legal as well as the factual submission, acting under the dictates of CVO / Higher Authorities, with malafide intentions, rejected the appeal of the petitioner and confirmed the punishment inflicted upon him.

20. The main ground amongst the other grounds is that any document produced by the Presenting Officer in the enquiry, which was not included in the list of documents supplied along with charge sheet in terms of Regulation 6 (3) D & A Regulations is of no consequence, whatsoever, and any reliance placed upon the said document by the Disciplinary Authority, while disagreeing with the enquiry report is illegal and violative of statutory regulations.

21. The other ground is that because Regulation 6 (5) (iii) of the Punjab and Sindh Bank Discipline and Appeal Regulations provides that the Disciplinary Authority, whereas, it is not the inquiring authority, shall forward to the Enquiry Authority a list of documents by which and list of witnesses by whom the articles of charges are proposed to be substantiated, violation of which vitiates the enquiry.

22. Therefore, the disciplinary authority and the Appellate Authority totally failed to appreciate the correct interpretation of Regulation 6

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(14) of D & A Regulations.

23. Mr.Ashok Bhalla, Id. Counsel for the petitioner has relied upon the law laid down by the Apex Court in case of ***Managing Director, ECIL, Hyderabad and others vs. B. Karunakar & Ors. reported as 1993 4 SCC 727*** wherein it is held as under:

“where the Disciplinary Authority disagreed with the findings of enquiry Officer it is incumbent upon him to record tentative reasons for disagreement with reasons of Enquiry Officer and communicate to the delinquent employee to give him an opportunity to submit the enquiry report. Only after receipt of reply from the delinquent employee, the Disciplinary Authority is to record his findings whether the charges are proved or not.”

24. Ld. Counsel further submitted that the Disciplinary Authority and Appellate Authority had filed the opinion of Sh. S.K. Gupta, Handwriting Expert as DEX No. 5 on 13.06.2005 and thereafter along with written arguments dated 24.09.2005, the petitioner had also submitted the report dated 10.06.2005 of Sh. S.K. Saxena (Document Examiner and Senior Handwriting expert with 37 years of experience with CBI, Police Department, PSUs, etc. and retired as Govt. Examiner of Questioned Documents, Govt. of India) who opined as under:-

“In spite of the fact that the pictorial appearances of the questioned signatures (signature on alleged fake BGs) resemble with those of standard signatures but the presence of so many finds of significant differences as mentioned above between the questioned and standard signatures along with the signs of imitation present in the questioned signatures and defective line quality of the questioned signatures lead me to the conclusion that author of the

standard signatures marked S12, S4 is not the writer of the questioned signature marked Q1 and Q 17.”

25. Ld. Counsel further submits that the two opinions of handwriting expert mentioned above produced by the petitioner, were neither considered nor dealt by the Disciplinary Authority while disagreeing with the findings of the Enquiry Officer, by placing reliance upon the alleged G.E.Q.D Report dated 13.09.1995.

26. More so, the Disciplinary Authority was not competent to reject the opinion of the handwriting experts produced by the petitioner, which was the correct opinion and could not be faulted on any flimsy ground.

27. Ld. Counsel has further submitted that the decision of the Disciplinary Authority and Appellate Authority as well, are factually incorrect and erroneous as they had wrongly observed in Para 11 of the communication dated 17.02.2007, the order of punishment dated 18.02.2008 and the order dated 29.07.2008 that the documents which were not made available to the petitioner were not mentioned in the list of defence documents dated 26.04.2005.

28. Ld. Counsel for the petitioner submitted that the allegations against the petitioner were as under:-

“That Sh. Manjit Singh, Manager, unauthorizedly issued six Bank Guarantees as detailed below, favouring Asstt. Collector of Customs, Bombay on behalf of M/s. Narmada Nylon (P) Ltd., who had been maintaining a current account no. 515 with B.O. Peddar Road, Bombay.

<u>Sr. No.</u>	<u>B.G. No.</u>	<u>Date of Issue</u>	<u>Amount (Rs.)</u>
1.	1/84	29.03.1984	7,83,080.00
2.	2/84	12.05.1984	2,27,504.21
3.	27/84	25.07.1984	4,62,860.80
4.	28/84	25.07.1984	4,62,860.80
5.	32/84	27.07.1984	3,85,762.04
6.	34/84	27.07.1984	3,85,762.04
		TOTAL	27,07,749.89

Sh. Manjit Singh has not got his action confirmed or obtained sanction of competent authority for aforesaid Bank Guarantees. Thus acted unauthorizedly and beyond his delegated powers. By this the Bank is likely to suffer financial loss of Rs.27,07,7449.89 plus interest to be paid by Bank as per terms of guarantee.

That Sh. Manjit Singh did not receive any request / application from the Party M/s Narmada Nylon (P) Ltd. Requesting for issue of the six bank guarantees as listed per Clause – I above. No financial papers were obtained to assess the credit worthiness of M/s. Narmada Nylon (P) Ltd., required as per practice and Head Office guidelines.”

29. Ld. Counsel for the petitioner has drawn the attention of this Court to the Order dated 27.09.1996 of the Appellate Authority, wherein it is recorded as under:-

“Aggrieved by the order dated 02.05.1995 of the Disciplinary Authority Sh. Manjit Singh has filed an appeal on 09.06.1995 wherein he has contended that the orders of Disciplinary Authority are not speaking orders and there is gross violations of the principles of natural justice. That the impugned order is arbitrary as the comments of CSO on findings of enquiry officer have not been taken into account. That the concerned Bank Guarantees were recorded in Bank record and were secured by 100% margin and a commission of 2% have been charged. The Bank Guarantee was not signed by him. The charge that Bank

Guarantees have been signed by him has not been proved.”

30. It is further submitted that though vide communication dated 28.05.2004 , the respondent Bank assured the petitioner, that he will be given appropriate opportunity and communicated as under:-

“Now to give you the opportunity to defend your case, it has been decided in order departmental enquiry, where you will be given full opportunity to inspect the management documents, requisition the documents in your defence, and cross-examine the management witnesses and produce the witnesses in your defence, in terms of the provisions of Punjab and Sindh Bank Officer Employees’ (Discipline & Appeal) Regulations, 1981.

31. The proceedings dated 01.02.2005 conducted by the respondent Bank in respect of chargesheet dated 25.01.1992 and 03.06.1992 reads as under:-

*“XXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX*

The PO was asked whether he has any further document / exhibit to be lodged. The P.O. submitted that he has no more documents / exhibits to be lodged at this stage. He, however, stated that he reserved the right to bring on records any relevant documents as the enquiry progresses and as the C.S.O open their defence.

*XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX*

Shri Girish Kumar Gupta, Officer, IO, Mumbai was produced as Management Witness.

MW-1

P.O.: The MW-1 was shown MEX 11 and above MEX 5 and asked whether the signatures on them has been done by the same person i.e. S. Manjit Singh, C.S.O.

MW1: It appears that signatures were of the same as per specimen shown but are not matching hundred percent.

D.R.: Have you taken any training for handwriting examination.

MW1: No.

D.R.: Whether the signatures were done in his presence.

MW1: They were not signed in my presence.

D.R.: Have you earlier ever verified signatures of the CSO.

MW1: No, I have never come across his signatures earlier.

Witness of Sh. Dennis Robin Henry – MW-2.

MW-2

P.O. He was shown MEX No. 11 along with MEX No. 5, 6 13, 15, 17, 19, 21, 29 to 31 and asked whether the signatures are same.

MW2: I cannot comment. I have no experience.

D.R.: Whether the C.S.O has signed above exhibits in your presence.

MW2:No.

32. Ld. Counsel for the petitioner submitted that in the proceedings dated 13.06.2005 it is recorded as under:-

“XXXXXXXXX

The CSO and Defence confirmed having received the defence documents desired by them except the following:-

- 1. Copy of Fact Finding Report.*
- 2. Copies of Inspection Report for the Yrs. 84-85 & 85-86*
- 3. Copies of loss caused to the Branch on account of these BGs in charge sheet.*
- 4. Copy of Charge Report of B/O Peddar Road of handing over charge by the CSO to the new incumbent.*
- 5. Copies of Investment Statement 84-85 & 85-86.*
- 6. Copies of letter of BO Peddar Road sent to Department*

of Customs in response to their claims in Fake BGs.

XXXXXXXXXX

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The I.O. asked the defence to submit their documents and produce their witnesses, if any.

XXXXXXXXXX

XXXXXXXXXX

The CSO further contended that the CSO is expecting some more documents in defence which they may be allowed to submit along with written briefs.

33. Ld. Counsel further submits that vide letter dated 13.06.2005, petitioner communicated to the enquiry Authority as under:-

“I wish to further submit that since the required defence documents were not provided to me hence, I have to for some more documents and same will be submitted to yourself alongwith my brief in this enquiry proceedings.

34. The Enquiry Officer, in its findings in respect of the charge sheet dated 25.01.1992 and 03.06.1992 recorded as under”-

“I have gone into depth of each issue and relevant record / evidence and file and have noted that MW-4 (Sh. T.S. Uggal) has identified the signatures of CSO on alleged BGs but has used the word “appear”. The dictionary meaning of “Appear” is not certain. It denotes “may be or may not be”. Moreover, MW-4 has never worked along with CSO and did not see him writing or signing with his eyes. Under these circumstances, the PO should have produced the report of approved handwriting expert. But he did not make any effort to produce any report of hand writing expert whereas the report was dated 13/09/1995 could have been procured from CBI and produced during enquiry.

Submission of this report after the enquiry proceedings and annexing of this report with written brief is of no relevance. The report is required to be produced and got exhibited through some witnesses preferably the hand writing expert and given opportunity to defence side i.e. CSO to cross examine him. Hence, it cannot be relied upon.

Further, the silence of Beneficiary for about six years before involving alleged BGs also creates doubts specifically when Bank has taken opposite stand for not paying the BGs being not genuine and till date BGs have not been paid. Non-passing of any entry in Bank's Books also given the impression that the party M/s. Narmada Nylon (P) Ltd. Has masterminded the whole show and produced BGs to Custom Authorities are the basis of impersonation of CSO and the alleged signatures on BGs purportained to be signed by CSO are false and are not genuine. Hence the allegation is not proved against CSO at all.

Allegation No. 2, 3 & 4: All these allegations are interconnected with allegation No. 1 and allegation no. 1 is the foundation on which these allegations stands.

As it is proved that BGs are bogus and are not issued by CSO and as such allegation No. 2, 3 & 4 also fails and not proved against the CSO."

35. Learned counsel further submitted that on disagreeing with the Enquiry Officer Report, the Disciplinary Authority had to record its disagreement by giving the reasons. In the absence of the same; the decision of the Disciplinary Authority is bad in law.

36. In the disagreement order, it is recorded as under:-

"Further you have stated that you were not supplied the following documents:

1. Fact finding report.

2. *Inspection report for the year 1984-85 and 1985-86*
3. *The detail of loss caused to be branch on a/c of these fake BGs*
4. *Charge report of BO Peddar Road, Mumbai*
5. *Copies of the investment stamen for the year 1984-85 & 1985-86.*
6. *Copies of letter BO Peddar Road, Mumbai sent to Deptt. of Custom in response to their claim in fake BGs.*

As such I have reason to draw that your demand for above said documents in the written brief is an after thought.

I have also examined the deposition of Management witnesses (MW). Sh. T.S. Uggal-Sr. Manager who deposed in his witness in the Inquiry Proceeding dates 26.04.2005 and submitted that he had seen original bank guarantee with the custom Deptt. Mumbai and replied that signature in place of branch Manager including signature of the official under seal & stamp of bank appeared to be signature of the charge sheeted Officer (You).

Then Sh. Girish Kumar Gupta-Officer deposed his witness on 01.02.2005 who also replied that it appears that signature on BGs were of the same as per specimen.

The above deposition of witnesses cannot be set on naught rather it is in form of affirmation.

In the light of above, I disagree with findings of the Inquiry Officer and hold the allegations / charges of the said charge sheets in question as proved against you.”

37. To strengthen his arguments, ld. Counsel for the petitioner has relied upon ***State of Uttaranchal & Ors. Vs. Kharak Singh (2008) 8 SCC 236***, wherein it is held as under:-

“From the above decisions, the following principles would emerge:

- i) *The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.*
- ii) *XXXXXX*
- iii) *XXXXXX*
- iv) *XXXXXX”*

38. In ***Yoginath D. Bagde vs. State of Maharashtra AIR 1999 SC 3734*** it is held as under:-

“In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end

only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution.

Applying the above principles to the facts of this case, it would be noticed that in the instant case the District Judge (Enquiry Officer) had recorded the findings that the charges were not proved. These findings were submitted to the Disciplinary Committee which disagreed with those findings and issued a notice to the appellant requiring him to show-cause why he should not be dismissed from service. It is true that along with the show-cause notice, the reasons on the basis of which the Disciplinary Committee had disagreed with the findings of the District Judge were communicated to the appellant but the Disciplinary Committee instead of forming a tentative opinion had come to a final conclusion that the charges against the appellant were established. The Disciplinary Committee, in fact, had acted in accordance with the statutory provisions contained in Rule 9(4)(i)(a)&(b). He was called upon to show-cause against the proposed punishment of dismissal as will be evident from the minutes of the Disciplinary Committee dated 21st June, 1993 which provide as under:-

"Decision : Discussed. For the reasons recorded in Annexure "A" hereto, the Committee disagrees with the finding of the Enquiry Officer and finds that the charges levelled against the delinquent Judicial Officer have been proved. It was, therefore, tentatively decided to impose upon the Judicial Officer penalty of dismissal from service. Let notice, therefore, issue to the delinquent Judicial Officer calling upon him to show cause why penalty of

dismissal from service as prescribed in Rule 5(1)(ix) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 should not be imposed upon him.

Show cause notice will be accompanied by a copy of the Report of the Inquiring Authority and the reasons recorded by this Committee."

These minutes were recorded after the Disciplinary Committee had considered the Enquiry Report and differed with the findings and recorded its final opinion in para 10 of its reasons as under:-

"10. The Disciplinary Committee is of the opinion that the findings recorded by the Enquiry Officer on both the charges cannot be sustained. The Committee, after going through the oral and documentary evidence on record, is of the opinion that both the charges against the delinquent are proved. The delinquent is a Judicial Officer who has failed to maintain the absolute integrity in discharge of his judicial duties."

Along with the show-cause notice, a copy of the findings recorded by the Enquiry Officer as also the reasons recorded by the Disciplinary Committee for disagreeing with those findings were communicated to the appellant but it was immaterial as he was required to show-cause only against the punishment proposed by the Disciplinary Committee which had already taken a final decision that the charges against the appellant were proved. It was not indicated to him that the Disciplinary Committee had come only to a "tentative" decision and that he could show cause against that too. It was for this reason that the reply submitted by the appellant failed to find favour with the Disciplinary Committee.

Since the Disciplinary Committee did not give any opportunity of hearing to the appellant before taking a final decision in the matter relating to findings on the two charges framed against him, the principles of natural justice, as laid down by a Three-Judge Bench of this Court in Punjab National Bank & Ors. vs. Kunj Behari Mishra, (1998) 7 SCC 84 = AIR 1998 SC 2713, referred to above, were violated.

39. In ***Roop Singh Negi vs. PNB (2009) 1 Scale 284*** it is held as under:-

“Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The 10 purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved.

Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left”.

40. On the other hand, Mr. Jagat Arora, learned counsel for the respondents, submitted, the second enquiry is covered by the judgment of this court whereby, an opportunity was granted. The petitioner was given full opportunity to rebut the show cause notice given by the Disciplinary Authority. Ld. Counsel further submitted that Regulation of the Bank is as under:-

“Where it is proposed to hold an inquiry, the Disciplinary Authority shall, frame definite and distinct charges on the basis of the allegations against the officer employee and the articles of charge, together with a statement the allegations, list of documents relief on along with copy of such documents and list of witnesses along with copy of statement of witnesses, if any, on which they are based, shall be communicated in writing to the officer employee, who shall be required to submit, within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), within such extended time as may be granted by the said Authority, a written statement of his defence “Provided that wherever it is not possible to furnish the copies of documents, disciplinary authority shall allow the other employee inspection of such documents within a time specified in this behalf.”

41. Ld. Counsel for the respondent has relied upon a case of ***Debotosh Pal Choudhary v. Punjab National Bank & Ors. AIR 2002 SC 3276:***

“Regulation 6 (5) of the Regulations which requires the disciplinary authority shall, where it is not the inquiring authority, forward to the Inquiry Authority the following documents:-

- (1) A copy of the articles of charge and statement of imputations of misconduct or misbehaviour;*
- (2) A copy of the written statement of defence, if any, submitted by the Officer employee;*
- (3) A list of documents by which and list of witnesses by whom the articles of charge are proposed to be substantiated;*
- (4) A copy of the statement of the witnesses, if any;*
- (5) Evidence providing the delivery of the articles of charge under Sub-Regulation (3); and*
- (6) A copy of the order appointing the ‘Presenting Officer’ in terms of sub-regulation*

Fulfilment of some of the requirements of this Regulation is purely procedural in character. Unless in a given situation, the aggrieved party can make out a case of prejudice or injustice, mere infraction of this Regulation will not vitiate the entire enquiry.

42. Ld. Counsel further submitted that after exonerating him in the departmental enquiry, as per the rules show cause notice issued and after considering his reply, reasoned order was passed vide order dated 17.02.2007.

43. It is submitted that vide letter dated 17.02.2007 petitioner was communicated as under:-

“I have noted from the report of Inquiry Officer that “DO should have produced the report of approved handwriting expert. But he did not make any efforts to produce any report of hand writing expert whereas the report was dated 13.09.1995 and could have been procured from CBI and produced during inquiry. Submission of this report after the inquiry proceedings and annexing of this report with written briefs is of no relevance. The resort is required to be produced and got exhibited through some witnesses preferably the hand writing expert and given opportunity to defence side i.e. CSO to cross examine him. Hence it cannot be relied upon.

I have examined the case from the evidence for and against produced during inquiry process and noticed that in the inquiry proceeding dated 13.06.2005, you was allowed to submit your defense documents after the inquiry proceeding. Presenting Officer submitted report dated 13.09.1995 of the Govt. Bureau of Police Research and Development, Ministry of Home Affairs, Govt. of India, Hyderabad before the close of the case and you were given opportunity for defence on said report / opinion dated 13.09.1995.

It has been found mentioned in the letters dated 12.07.2005 and 30.07.2007 of the Inquiry Officer that report dated 13.09.1995 of the Govt. Bureau of Police Research and Development, Ministry of Home Affairs, Govt. of India, Hyderabad was allowed and admitted by the Inquiry Officer. It was conveyed to you et supra and you submitted your comments on letter dated 12.07.2005 and 30.07.2005 vide your letter dated 26.07.2005 and 03.08.2005 respectively. It has also been agreed in the inquiry proceedings dated 13.06.2005 that both the parties will submit their briefs in order to save time and expenditure of the bank.

The version of the Inquiry Officer has been viewed in light of the regulation 6 (14) of Punjab and Sindh Bank Officer Employees (Discipline & Appeal Regulation 1981 as amended from time to time. It was correct and justified that Inquiry Officer was well within his power conferred on him by said regulation to allow any documents / evidence to the

Presenting Officer before the close of the case. It is there that you were given opportunity to make defence on report dated 13.09.1995 of the Govt. Bureau of Police Research and Development, Ministry of Home Affairs, Govt. of India, Hyderabad. Thus as allowed by the Inquiry Officer the said report is a part of the inquiry proceedings and I do not agree with the following version of the Inquiry Officer.

“PO should have produced the report of approved handwriting expert. Bud did not make any efforts to produce any report of hand writing expert whereas the report was dated 13.09.1995 and could have been procured from CBI and produced during inquiry. Submission of this report after the inquiry proceedings and annexing of this report with written briefs is of no relevance. The report is required to be produced and got exhibited through some witnesses preferably the hand writing expert and given opportunity to defence side i.e. CSO to cross-examine him. Hence it cannot be relied upon.”

I have perused the above documents meticulously and found that DEX-5 which is not from recognized agency and it is from private run institution. On the other hand report dated 13.09.1995 of the Govt. Bureau of Police Research and Development, Ministry of Home Affairs, Govt. Of India, Hyderabad has more with and authenticity and its testimony is recognized by every institution which concludes “The person who wrote the blue enclosed writing stamped and marked S1 to S47 and A1 to A3 also wrote the red enclosed writings similarly stamped and marked Q1 to Q33.

Further you have stated that you were not supplied the following documents:

- 1. Fact finding report.*
- 2. Inspection report for the year 1984-85 and 1985-86*
- 3. The detail of loss caused to be branch on a/c of these fake BGs*
- 4. Charge report of BO Peddar Road, Mumbai*

5. *Copies of the investment stamen for the year 1984-85 & 1985-86.*
6. *Copies of letter BO Peddar Road, Mumbai sent to Deptt. of Custom in response to their claim in fake BGs.*

I have perused the inquiry proceeding dated 13.06.2005 and noted that Interim orders shall continue asked you to submit your defence documents and you submitted the same containing documents DEX-1 to DEX-7 which were taken on record. I also do not find mention of these documents in your list of Defence Documents.

I have also examined the deposition of Management witnesses (MW). Sh. T.S. Uggal-Sr. Manager who deposed in his witness in the Inquiry Proceeding dates 26.04.2005 and submitted that he had seen original bank guarantee with the custom Deptt. Mumbai and replied that signature in place of branch Manager including signature of the official under seal & stamp of bank appeared to be signature of the charge sheeted Officer (You).

Then Sh. Girish Kumar Gupta-Officer deposed his witness on 01.02.2005 who also replied that it appears that signature on BGs were of the same as per specimen.

The above deposition of witnesses cannot be set on naught rather it is in form of affirmation.”

44. In a rejoinder Id. Counsel for the petitioner has argued that the judgment relied upon by the Id. Counsel appearing on behalf of the respondent, is prior to amendment. Therefore, has no relevance.

45. Learned counsel for respondent submitted that the petitioner was given an opportunity. Though, the department had relied upon the document, but that document had no relevance at all and the petitioner has not caused any harm to him. Therefore, the order is proper and the instant petition deserves to be dismissed.

46. More so, the petitioner has been convicted on 30.09.2005 after full trial, in a CBI case by Special Judge, Bombay.

47. Being aggrieved, the petitioner challenged the same by filing the appeal, same is pending for adjudication.

48. After hearing learned counsels for parties, the inquiry report submitted on 02.11.2005 against the petitioner, no allegation was proved in respect of the charge-sheet dated 25.01.1992 and 03.06.1992 for want of qualification and unrebuttable evidence. However, the disciplinary authority described that the evidence of inquiry officer report established that the charges leveled in the charge-sheet against the petitioner had stood proved, therefore, the petitioner was asked to submit his comments.

49. Vide letter dated 30.03.2007, inquiry report dated 02.11.2005 was supplied to petitioner. On receipt of which, the petitioner sought time upto 30.04.2007 and thereafter, petitioner requested further time for 15 days to submit the comments.

50. Meanwhile, the petitioner filed CWP No.3482/2007, *inter alia*, challenging the show cause notice dated 17.01.2007 which was disposed of by this Court vide order dated 11.05.2007 with liberty to the petitioner to assail the order of competent authority / appellate authority as to what goes to the core.

51. Accordingly, the petitioner on 12.05.2007, submitted his comments to the show cause notice dated 17.02.2007. The disciplinary

authority vide its order dated 18.02.2008 inflicted punishment of dismissal from the bank, under Regulation 4(g) of Punjab & Sind Bank Officers, Employees (Discipline and Appeal) Regulation, 1981, as amended from time to time.

52. Being aggrieved, against the said punishment, the petitioner filed appeal on 31.03.2008, which was not decided by the appellate authority despite the lapse of considerable period.

53. At last, the petitioner, filed third CWP No.4646/2008 praying therein the directions to respondent No.2 to dispose of the appeal expeditiously. The said writ petition was disposed of by this Court vide order dated 02.07.2008 with directions to dispose of the appeal within four weeks.

54. The petitioner placed under suspension and served with the charge-sheet dated 29.01.1992 followed by another charge-sheet dated 03.06.1992 wherein after holding departmental enquiry he was dismissed from the service vide order dated 02.05.1995 against which the petitioner preferred the appeal; which was also rejected by the appellate authority vide order dated 27.09.1996.

55. Being aggrieved, the petitioner, filed WP(C) No.1739/1997, which was allowed by this Court vide judgment dated 13.05.2003, and liberty was granted to the respondent, if they desire to proceed on the basis of the charges against the petitioner in accordance with law. It is further directed that the question of payment of back wages shall be decided after the decision of the respondent regarding holding of *W.P. (C) 6766/2008*

inquiry and if the decision is taken to hold the inquiry, then after the conclusion of the said inquiry.

56. Thereafter, vide communication dated 23.07.2003, respondent bank advised the petitioner to report for duties at its Zonal Office at Kolkata; to which he reported for duty on 04.08.2003.

57. While supplying the list alongwith the copies of management document, respondent No.3 decided to hold *de-novo* inquiry vide its order dated 18.12.2003. The petitioner was accordingly asked to submit his reply to the charge-sheets dated 21.01.1992 and 03.06.1992. Vide communication dated 09.01.2004, the petitioner sought for annexing the opinion of Shri S.K.Gupta, handwriting expert and also requested respondent No.3 to keep the department proceedings in abeyance in view of the fact that in the intervening period, CBI had registered RC No.64(A)/14-Bombay. The said reply dated 13.01.2004 was duly served upon respondent No.2 on 05.02.2004.

58. It is emerged that the petitioner apprised respondent No.3 on 31.05.2004 about submitting the reply to the charge-sheet and requested for recalling its decision to constituting the inquiry. The said representation was rejected by the respondent No.3. By another representation of the petitioner dated 01.07.2004 to the disciplinary authority to recalling the decision of constituting the inquiry particularly when the bank did not make the payment under bank guarantees to the Customs Department and had itself disputed the veracity of the same. But in way, the inquiry officer without placing

the reliance upon any report of the handwriting expert, independently assessed/evaluated the evidence led before him and opined that no allegations proved against CSO in respect of the charge-sheets dated 21.01.1992 and 03.06.1992 for want of conclusive and un rebuttable evidence.

59. The disciplinary authority disagreed with the findings of the inquiry officer and held that the charges levelled in the charge-sheets had stood proved. Finally, the disciplinary authority vide order dated 18.02.2008 inflicted the punishment of dismissal of the petitioner from service of the bank under Regulation 4(g) of the said Regulation.

60. The appeal of the petitioner was also dismissed vide order dated 31.03.2008. Finally, vide order 29.07.2008 rejected the appeal of the petitioner and confirmed the punishment inflicted upon him.

61. The law has been settled in case of ***B.Karunakar (supra)*** that where the disciplinary authority disagreed with the findings of the inquiry officer, then it is incumbent upon him to record reasons for disagreeing with the reasons of the inquiry officer and communicated to the delinquent employee to afford him an opportunity to submit the inquiry report. Only after receipt of the reply from the delinquent employee, the disciplinary authority is to record his finding whether the charges are proved or not.

62. Admittedly, the opinion of Shri S. K. Saxena has not been relied upon by the respondents. No doubt, while disagreeing with the said report, the disciplinary authority should have recorded the reasons

of not relying upon. But I find no reasons to discard the report of Sh.S. K. Gupta, handwriting expert.

63. Shri Girish Kumar Gupta, Investigating Officer, Mumbai was produced as management witness (MW1). The question was asked by the petitioner whether the signatures on the document MEX-11 and MEX-5 has been done by the same person i.e. the petitioner. He replied the signatures were of the same as per the specimen shown, but are not matching 100%.

64. I find the disciplinary authority as recorded its disagreement while relying upon the fact finding inquiry, inspection report for the year 1984-85, 1985-86; the details of the loss caused to the Branch on account of these fake Bank Guarantees; charge report of Branch Office Peddar Road, Mumbai; copies of the investment payment for the year 1984-85, 1985-86 and the copies of letter from B.O. Peddar Road, Mumbai sent to the Department of Customs in response to their claim for fake B.Gs. and rightly opined that after examining the depositions of the management witness (MW) Shri T. S. Uggal, Senior Manager, who deposed that on 26.04.2005 he had seen the Bank Guarantee with the Customs Department, Mumbai.

65. Also relied upon that the signatures in place of Branch Manager including the signatures of the official under seal and stamp of the bank, appears to be the signature of the charge-sheeted officer. Also relied upon, Shri Girish Kumar Gupta, IO who stated that the signatures on the BGs were same as per the specimen signatures.

Thereafter, the disciplinary authority and the appellate authority confirmed the opinion by not agreeing with the findings recorded by the inquiry officer.

66. The petitioner has been proper opportunity. During inquiry, he was asked to exhibit or lodge any document; he kept his right reserved to bring as the C.S.O. open their defence. Therefore, there is no violation of the natural justice.

67. I find no discrepancy in the impugned orders.

68. Instant petition is accordingly dismissed.

69. No order as to costs.

SURESH KAIT, J

JULY 02, 2012

JG/MK