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

+ **W.P. (C) 2018/2003**

ISHWAR PAL SINGH Petitioner
Through **Mr. Ashok Bhalla, Adv.**

versus

PUNJAB NATIONAL BANK & ORS. Respondents
Through **Mr. Pranav Sharma, Adv.**

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

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J U D G M E N T
24.02.2020

1. The petitioner joined the Respondent No. 1-Bank (hereinafter referred to as “the Bank”) on 29th December, 1980, and was promoted as Manager on 13th January, 1990.
2. By a terse order, dated 5th December, 1995, the petitioner was suspended from service. The order of suspension stated that a detailed charge-sheet would follow.
3. Two questionnaires, in tabular format, were issued to the petitioner, by the Bank, on 6th May, 1996 and 24th September, 1996, seeking the petitioner’s explanation regarding certain perceived irregularities in the advancing, of credit facilities, to M/s Whats Fashion. The petitioner submitted tentative responses to the said

communications, and also sought documents, to submit a more detailed response.

4. On 26th November, 1997, the petitioner was issued a charge-sheet, by the Zonal Manager of the Bank, who was his disciplinary authority. The charge-sheet called upon the petitioner to submit a statement of defence, thereto, within 15 days. The charge-sheet contained a single Article of Charge against the petitioner, dealing with credit facilities sanctioned in favour of Whats Fashions, on the petitioner's recommendation. It was alleged, in the charge-sheet, that, by the following facts/omissions, the petitioner had failed to conduct proper pre-sanction appraisal, and to exercise post-sanction controls/follow-up, thereby jeopardizing the interests of the Bank:

(i) Though Whats Fashion was a new borrower, and had opened a Current Account, with the Bank, only on 14th December, 1994, the Confidential Report, from the previous bankers of Whats Fashion, was not obtained.

(ii) Despite the fact that Whats Fashion was new to the export business, no market reports, regarding its integrity/capabilities/work, were obtained. Neither was inspection of the books of Whats Fashion carried out, to verify the correctness of the figures contained in its Balance Sheet.

(iii) Facilities were extended to Whats Fashion on the strength of photo copies of orders, unauthenticated by the buyers.

(iv) No efforts were made to ascertain as to why the guarantor, Krishan Lal Adlakha, was offering his property for equitable mortgage, despite having no personal or business connections with Whats Fashion.

(v) The title deeds of the immovable property, submitted by Whats Fashion to the Bank, contained various irregularities. There was no certification or mention of stamp duty. The signatures of the Sub-Registrar, on the last page, were missing, despite the Title Deeds purporting to be originals.

(vi) Though the Title Deeds were deposited on 30th December, 1994, and facilities were sanctioned on 10th January, 1995, legal opinion was obtained only on 12th January, 1995.

(vii) The petitioner did not ensure timely sending of Letter of Acknowledgement, and did not take due care to ensure receipt Acknowledgement Due Card.

(viii) Despite legal opinion having been obtained by the Bank to the said effect, the original copy of the Sale Deed, documentary proof of physical possession of the property by the owner and documents regarding the identity of the guarantor, such as passport/ration card/identity card, were not sought by the petitioner.

(ix) The documents were executed on 14th January, 1995 and, on the same day, packing credit of ₹ 10 lakhs was disbursed, by crediting the entire proceeds to the current account of Whats Fashion, without obtaining any proforma invoice/Bills/receipts. Self cash withdrawals were allowed, thereby obviating the possibility of ensuring or verifying any use of the funds.

(x) ₹ 10 lakhs were disbursed, by the petitioner, on 14th January, 1995, and ₹ 73,900/- was disbursed on 17th January, 1995, on the strength of photo copies of export orders, without insisting on submission of the original signed export orders from the buyers. This was contrary to the terms of the sanction.

(xi) Packing Credit No. 7/1995 (for ₹ 73,900/-) was allowed, on 17th January, 1995, against a photo copy of the export order, which contained alterations in the dates of shipment, despite a dissenting note put up by the Officer, Loans. Out of the said Packing Credit of ₹ 73,800/-, cash withdrawals of ₹ 70,000/- were allowed, without verifying end-use.

(xii) Packing Credit No 5/95, against which the total disbursement of ₹ 4,61,250/-, was made against Letter of Credit of US \$ 17,700, was allowed, without maintaining any margin. In this case, too, substantial cash withdrawals were permitted, without verification of in-use.

(xiii) In respect FOBP (Foreign Outward Bills Purchased) No 1/95 for US \$ 15,000, drawee-wise policy was not obtained, and Confidential Report of the buyer was not taken.

(xiv) For FOBP No. 2/95, for US \$ 6056, documents were purchased despite discrepancies being pointed out by the Foreign Exchange Office, on account of which the Foreign Exchange is purchased the documents under reserve and advised the Bank to obtain an indemnity from the party. No such indemnity was, however, obtained.

(xv) Proceeds, in respect of purchase of export documents under FOBP No. 1/95, 2/95 and 3/95 were allowed to be withdrawn/utilised by the borrower, instead of adjusting overdue Packing Credits.

(xvi) ECGC (Export Credit Guarantee Certificate), was not obtained within the stipulated period.

(xvii) Inventory checking was not done. Details of unpaid stocks were not called for.

These alleged infractions, it was observed, amounted to failure, on the part of the petitioner, to discharge his duties with utmost devotion and diligence and in ensuring that the Bank's interest was protected which, in turn, constituted 'misconduct', in terms of Regulation 3(1), read with Regulation 24 of the PNB Officer Employees (Conduct)

Regulations, 1977 (hereinafter referred to as “the Conduct Regulations”).

5. Conduct of disciplinary proceedings, in the Bank, is governed by the Punjab National Bank Officer Employees’ (Discipline & Appeal) Regulations, 1977 (hereinafter referred to as “the Discipline and Appeal Regulations”). Regulations 6 and 7 thereof, which governed the conduct of disciplinary proceedings for imposition of major penalties, read thus:

“6. PROCEDURE FOR IMPOSING MAJOR PENALTIES

(1) No order imposing any of the major penalties specified in clauses (f), (g), (h), (i) and (j) of Regulation 4 shall be made except after an enquiry is held in accordance with this regulation.

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an officer employee, it may itself enquire into, or appoint any other Public servant (herein after referred to as the inquiring authority) to enquire into the truth thereof.

Explanation: When the Disciplinary Authority itself holds the inquiry in sub regulation (8) to sub regulation (21) to the inquiring authority shall be construed as a reference to Disciplinary Authority.

(3) 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 of the allegations, 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), or within such extended time as may be granted by the said Authority, a written statement of his defence.

(4) On receipt of the written statement of the officer employee, or if no such statement is received within the time specified, an enquiry may be held by the Disciplinary Authority itself, or if it considers it necessary so to do appoint under Sub-regulation (2) an Inquiring Authority for the purpose.

Provided that it may not be necessary to hold an inquiry in respect of the articles of charge admitted by the officer employee in his written statement but shall be necessary to record its findings on each such charge.

(5) The disciplinary authority shall, where it is not the inquiring authority, forward to the inquiring authority

i) a copy of the articles of charges and statements of imputations of misconduct or misbehaviour;

ii) a copy of the written statement of defence if any, submitted by the officer employee:

iii) a list of documents by which and list of witnesses by whom the articles of charge are proposed to be substantiated,

iv) a copy of statements of the witnesses, if any;

v) evidence proving the delivery of the articles of charge under sub-regulation (3);

vi) a copy of the order appointing the 'presenting officer' in terms of sub-regulation (6)

(6) Where the Disciplinary Authority itself enquires or appoints an inquiring authority for holding

an inquiry, it may, by an order, appoint a public servant to be known as the 'Presenting Officer' to present on its behalf the case in support of the articles of charge.

(7) The officer employee may take the assistance of any other officer employee but may not engage a legal practitioner for the purpose, unless the presenting officer, appointed by the Disciplinary Authority is a legal practitioner or the Disciplinary Authority, having regard to the circumstances of the case so permits.

NOTE: The officer employee shall not take the assistance of any other officer employee who has two pending disciplinary cases on hand in which he has to give assistance.

(8)(a) The Inquiring Authority shall by notice in writing specify the day on which the officer employee shall appear in person before the inquiring authority.

(b) On the date fixed by the Inquiring Authority, the officer employee shall appear before the Inquiring Authority at the time, place and date specified in the notice.

(c) The Inquiring Authority shall ask the officer employee whether he pleads guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the Inquiring Authority shall record the plea, sign the record and obtain the signature of the officer employee concerned thereon.

(d) The Inquiring Authority shall return a finding of guilt in respect of those articles of charge to which the officer employee concerned pleads guilty.

(9) If the officer employee does not plead guilty, the Inquiring Authority shall adjourn the case to a later date not exceeding 30 days or within such extended time as may be granted by the Inquiring Authority

(10) (a) The Inquiring Authority shall, where the officer employee does not admit all or any of the articles of charge, furnish to such officer employee a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be proved.

(b) The Inquiring Authority shall also record an order that the officer employee may for the purpose of preparing his defence-

(i) inspect within five days of the order or within such further time not exceeding five days as the Inquiring Authority may allow, the documents listed;

(ii) submit a list of documents and witnesses that he wants for the inquiry:

(iii) be supplied with copies of statements of witnesses, if any, recorded earlier and the Inquiring Authority shall furnish such copies not later than three days before the commencement of the examination of the witnesses by the Inquiring Authority:

(iv) give a notice within ten days of the order or within such further time not exceeding ten days as the Inquiring Authority may allow for the discovery or production of the documents referred to in item (ii).

NOTE: The relevancy of the documents and the examination of the witnesses referred to in item (ii) shall be given by the officer employee concerned.

(11) The Inquiring Authority shall, on receipt of the notice for the discovery or production of the documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept with a requisition for the production of the documents, on such date as may be specified.

(12) On receipt of the requisition under sub-regulation (11), the authority having the custody or possession of the requisitioned documents, shall arrange to produce the same before the Inquiring Authority on the date, place and time specified in the requisition;

Provided that the authority having the custody or possession of the requisitioned documents may claim privilege if the production of such documents will be against the public interest or the interest of the bank. In that event, it shall inform the Inquiring Authority accordingly.

(13) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses produced by the Presenting Officer shall be examined by the Presenting Officer and may be cross-examined by or on behalf of the officer employee. The Presenting Officer shall be entitled to re-examine his witnesses on any points on which they have been cross examined, but not on a new matter, without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.

(14) Before the close of the case, in support of the charges, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the charge sheet or may itself call for new evidence or recall or re-examine any witness. In such case the officer employee shall be given opportunity to inspect the documentary evidence before it is taken on record, or to cross-examine a witness, who has been so summoned. The Inquiring Authority may also allow the officer employee to produce new evidence, if it is of the opinion that the production of such evidence, is necessary in the interests of justice.

(15) When the case In support of the charges is closed, the officer employee may be required to state his defence, orally or in writing, as he may prefer. If

the defence is made orally it shall be recorded and the officer employee shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(16) The evidence on behalf of the officer employee shall then be produced. The officer employee may examine himself in his own behalf, if he so prefers. The witnesses produced by the officer employee shall then be examined by the officer employee and may be cross-examined by the Presenting Officer. The officer employee shall be entitled to re-examine any of his witnesses on any points on which they have been cross-examined, but not on any new matter without the leave of the Inquiring Authority.

(17) The Inquiring Authority may, after the officer employee closes his evidence, and shall, if the officer employee has not got himself examined generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the officer employee to explain any circumstances appearing in the evidence against him.

(18) The Inquiring Authority may, after the completion of the production of evidence, hear the Presenting Officer, if any appointed, and the officer employee, or permit them to file written briefs of their respective cases within 15 days of the date of completion of the production of evidence, if they so desire.

(19) If the officer employee does not submit the written statement of defence referred to in sub-regulation (3) on or before the date specified for the purpose or does not appear in person, or through the assisting officer or otherwise fails or refuses to comply with any of the provisions of these regulations, the inquiring authority may hold the inquiry ex-parte.

(20) Whenever any Inquiring Authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction

therein, and is succeeded by another Inquiring Authority which has, and which exercises, such jurisdiction, the Inquiring Authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor, and partly recorded by itself;

Provided that if the succeeding Inquiring Authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary-in the interest of justice it may recall, examine, cross-examine and re-examine any such witnesses as herein before provided.

(21) (i) On the conclusion of the inquiry, the Inquiring Authority shall prepare a report which shall contain the following:

- (a) a gist of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) a gist of the defence of the officer employee in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and the reasons therefor.

Explanation— If, in the opinion of the Inquiring Authority, the proceedings of the inquiry establish any article of charge different from the original article of charge, it may record its findings on such article of charge;

Provided that the findings on such article of charge shall not be recorded unless the officer employee has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The Inquiring Authority, where it is not itself the Disciplinary Authority, shall forward to the Disciplinary Authority the records of inquiry which shall include—

(a) the report of the inquiry prepared by it under clause (i);

(b) the written statement of defence, if any, submitted by the officer employee referred to in sub-regulation (15);

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs referred to in sub-regulation (18), if any; and

(e) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry.

7. Action on the inquiry report:

(1) The Disciplinary Authority, if it is not itself the Inquiring Authority, may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Regulation 6 as far as may be.

(2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in

Regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in regulation-8, make an order imposing such penalty.

(4) If the Disciplinary Authority having regard to its findings on or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned.”

6. On receiving the aforesaid charge-sheet, the petitioner wrote, to the Disciplinary Authority (hereinafter referred to as ‘the DA’), on 20th December, 1997 and 12th January, 1998, requesting that he be furnished the list of documents and witnesses, whereby the allegations, in the charge-sheet were proposed to be substantiated. It was submitted that, owing to the non-supply of the list of documents and witnesses, the petitioner was handicapped from inspecting the documents required for his defence and, consequently, was not in a position to submit his reply to the charge-sheet.

7. The petitioner also appealed, on 16th January, 1998, against the letter, dated 5th December, 1995 *supra*, whereby he had been placed under suspension.

8. *Vide* letter dated 2nd February, 1998, the Chief Manager of the Bank responded to the petitioner’s representation, dated 12th January, 1998 *supra*, informing the petitioner that the Discipline and Appeal Regulations did not contemplate providing the petitioner with a list of documents/witnesses, at that stage. The petitioner was, therefore, advised to submit his reply, to the charge-sheet, on or before 15th February, 1998. The petitioner was, nevertheless, permitted to visit the

office of the Bank and refer to the relevant record, for which purpose he was directed to intimate the date of his visit to the Chief Manager, Branch Office, Daryaganj, Delhi.

9. *Vide* letter, dated 7th March, 1998, the Chief Manager of the Bank informed the appellant that his appeal, dated 16th January, 1998, against his suspension, had been rejected by, the Appellate Authority, who had decided not to revoke the petitioner's suspension at that stage.

10. On 16th June, 1998, the petitioner again represented, to the DA, submitting that, despite his earlier representations, as well as personal visits, undertaken by him, various documents (enumerated in the letter) had not been provided to him for inspection. The DA was, therefore, requested to direct the Branch to make the said documents available for inspection by the petitioner, along with the seizure memo of the CBI, relevant to the matter. The petitioner submitted that he was in need of these documents, in order to submit his reply to the charge-sheet.

11. The writ petition avers that, without responding to these communications of the petitioner, the DA, *vide* Order dated 27th June, 1998, informed the petitioner that it had been decided to hold an enquiry, against him, under the Discipline and Appeal Rules, on the charges contained in the charge-sheet dated 26th November, 1997 *supra*. Accordingly, an Enquiry Officer (hereinafter referred to as "EO") and a Presenting Officer (hereinafter referred to as "PO") were

appointed. The PO was also directed, *vide* endorsement on the said Order, to collect and supply the requisite documents, as per Regulation 6.5 of the Discipline and Appeal Regulations, to the EO immediately, so that the EO could initiate enquiry proceedings without delay.

12. Enquiry proceedings commenced on 22nd August, 1998. The record of proceedings, of the said date, may be reproduced thus:

“28.10.1998
10.30 A.M.

The following are present: –

- | | | | |
|----|--------------|---|----|
| 1. | N. R. Ohri | - | EO |
| 2. | H. N. Mangal | - | PO |
| 3. | I. P. Singh | - | CO |

The proceedings could not be held on 14.10.98, as EO was on leave on account of urgent personal work, notice of today's enquiry was sent to CSO and PO.

EO to PO - Please submit the list of documents, witnesses along with 2 sets of attested photocopies of the management documents.

PO - I submit the list of 40 management documents and 3 management witnesses.

The list of documents and witnesses is marked as Ex. M-1, the documents are taken on record and marked as Ex. M-2 to M-45. One set of the documents along with the list of witnesses and documents has been provided to CSO and received by him.

EO to PO - Do you want to inspect these documents?

CO

Yes.

CO is advised to inspect the documents at B/O Daryaganj. PO to arrange for inspection on 29.10.98 at B/O Daryaganj at 10.30 A. M. sharp. Proceedings will now be held at B/O Daryaganj tomorrow, both parties please note for compliance.”

13. On 10th April, 1999, the petitioner addressed a representation, to the DA, complaining that

- (i) the EO had, without due justification, disallowed certain documents, which were mentioned/discussed in the report, of the Investigating Officer (hereinafter referred to as “IO”), whose report constituted the basis of institution of disciplinary proceedings against the petitioner,
- (ii) certain documents, allowed by the EO, though supplied, were not attested as being true copies of the original,
- (iii) two of the documents, i.e., the copy of the passport and the investigation report, were incomplete,
- (iv) four documents, demanded by the petitioner, had been disallowed, by the EO, in violation of Regulation 12 of the Discipline and Appeal Regulations, which permitted disallowing, only of those documents, as were claimed to be privileged by the custodian thereof,
- (v) certain documents, though allowed, could not be provided on account of non-availability, and
- (vi) certain documents, though allowed, were yet to be supplied.

The petitioner also complained of bias, on the part of the EO, which, according to him was apparent from the manner in which the EO was conducting the proceedings. Consequent on the above submissions, the petitioner prayed that the enquiry be entrusted to the Central Bureau of Investigation (CBI), or to the Central Vigilance Commission (CVC).

14. *Vide* communication dated 20th April, 1999, addressed by the Chief Manager of the Zonal Office of the Bank, the petitioner was informed that the above representation, dated 10th April, 1999, submitted by him, had been rejected by the DA.

15. The writ petition makes no reference to any further proceedings, conducted by the EO, and draws attention, next, to the enquiry report, dated 23rd July, 1999, submitted by the EO on the conclusion of enquiry. The enquiry report noted that proceedings, in the enquiry were conducted on 28th October, 1998; 29th October, 1998, 3rd November, 1998, 26th November, 1998, 27th November, 1998, 24th December, 1998, 4th January, 1999, 29th January, 1999, 5th February, 1999, 23rd February, 1999, 8th March, 1999, 16th March, 1999, 26th March, 1999, 23rd April, 1999, 10th May, 1999, 14th May, 1999 and 21st May, 1999. It was further noted that a list of management documents and witnesses was tendered by the PO, which was exhibited as Exhibit M-1 and the list of defence documents, tendered by the petitioner, was exhibited as Exhibit D-1. Documents, sought to be relied upon by the management were exhibited as Exhibits M-2 to

M-41, and documents cited by the petitioner in his defence, were exhibited as Exhibits D-2 to D-53.

16. The enquiry report refers, thereafter, in detail, to the oral and documentary evidence available. It is observed, in the enquiry report, that the bank produced two witnesses, namely MW-1 J.K. Mamtani, Senior Manager (Credit), Zonal Office, Delhi and MW-2 S.P. Dixit, who were examined, and cross examined. No witness was produced by the petitioner, in his defence.

17. The enquiry report, thereafter, sub-divides the various allegations, against the petitioner, thus :

“(a) The borrower was new to the bank and he had opened the Currant Account on 14.12.1994. The Confidential Report from his previous Banker was not obtained.

(b) That the borrower was also new to the export-business. No market report was obtained with regard to integrity/capabilities/worth. Further, inspection of books was not carried out to verify the correctness of the figures given in the Balance-Sheet.

(c) The request for facilities was considered on the strength of photo-copies of the Orders which did not bear any authentication from the buyers.

(d) No efforts were made to ascertain as to why Shri Krishna Lai Adlakha, the alleged guarantor, having no personal connection with the firms in offering his property for equitable mortgage.

(e) The Title Deeds of the immovable property submitted to the Bank was full of apparent irregularities, such as, there was no mention or certification of stamp duty, no signatures of sub-Registrar on the last page and instead it mentioned as "Signed". Though the Title Deeds were allegedly original,

this gave, enough reasons for suspicion, but Shri Singh failed to notice the same.

(f) The Title Deeds were deposited on 30.12.1994, prior to sanction of facilities, i.e on 10.01.1995. Legal opinion was obtained only on 12.01.1995. He did not ensure timely sending of letter of acknowledgement. Further, no care. was taken upon non-receipt of acknowledgement due card,

(g) As per legal opinion, original copy of Sale Deed, documentary proof of physical possession of the property by the owner and about the identity of Shri Adlakha, i.e. Pass-port/ration-card/identity card etc. were not obtained by him .

(h) The documents were executed on 14.01.1995. Disbursement of Packing Credit of Rs.10 lac was made on the same day by crediting the entire proceeds to firm's Current A/c without obtaining any proforma Invoice/Bills/Receipts and self-cash withdrawals were allowed and thus, end-use of funds were not ensured/verified . To quote :—

<u>Date</u>	<u>Cheque No.</u>	<u>Amount (Rs.)</u>
14.01.95	964861	2 lac
17.1.95	964866	1 lac

(i) He allowed disbursement of Rs. 10 lac under four Packing Credits No. 1/95 to 4/95 on 14.01.1995 and Rs.73,900/- under Packing Credit No .7/95 on 17.01.1995 on the strength of photo-copy of export-order without taking/insisting on submission of original signed export order from the buyer -in violation of sanction,

(j) Packing Credit No.7/95 was allowed against photo-copy of the order with alterations in the dates of shipment despite a dissenting note put up by Officer-Loans; Cash withdrawals of Rs.70,000/- out of the Packing Credit of Rs.73,800/- advanced were allowed and end-use were not verified.

(k) PC No.5/55 under which total disbursement of Rs.4,61,250/- was made against letter of Credit of US\$.17,700/- was

allowed without maintaining any margin. Substantial, cash withdrawals were permitted and and-use were not verified.

(l) For FOBP No.1/95, for US\$. 50,000/- drawee-wise Policy was not obtained and confidential Report of the Buyer was not taken.

(m) FOBP No.2/95 for US\$. 6,056/-, documents were purchased despite discrepancies pointed out by Foreign Exchange Office on account of which Foreign Exchange Office purchased the documents under reserve and advised the Branch to obtain an indemnity from the party which was not obtained.

(n) that the proceeds in respect of purchase of export documents under FOBP No.1/95, 2/95, and 3/95 were allowed to be withdrawn/utilised by the borrower instead of adjusting overdue PCs No.1/95, 2/95 and 4/95.

(o) ECGC Cover was not obtained within the stipulated period.

(p) Inventory checking was not done and details of unpaid stocks was not called for.”

18. Having thus categorized the allegations, against the petitioner, as contained in the charge-sheet dated 26th November, 1997, the enquiry report proceeds to set out, in detail, the gist of the evidence, led by the bank as well as the gist of the evidence led by the petitioner. Thereafter, the EO has embarked on a detailed analysis of the aforesaid evidence, in an itemized manner, resulting in the following findings :

“FINDINGS :- In view of the above Assessment, my findings are as under :-

<u>Charges</u> <u>PROVED</u>	<u>CHARGES</u> <u>PARTLY PROVED</u>	<u>CHRGES</u> <u>NOT</u> <u>PROVED</u>
Charge – I a,b,c,d,f,h,I,j,l,m.	<u>CHARGE-1</u> g, k,n, and p	<u>CHARGE-1</u> e and o

Thus, the Article of Charge that Shri I.P. Singh recommended for sanction of credit facilities in favour of M/s. Whats Fashion without proper pre-sanction Appraisal, disbursed the facilities in violation of bank's norms and failed to exercise post-sanction control and follow-up; putting bank's funds in jeopardy stands PROVED."

19. The aforesaid enquiry report, dated 23rd July, 1999, of the EO, was forwarded, to the petitioner, by the DA, under cover of letter dated 28th July, 1999, inviting his comments thereon.

20. The petitioner submitted his comments, in response to the findings of the EO, as contained in the above enquiry report dated 23rd July, 1999, *vide* communication dated 21st August, 1999. No copy thereof, has, however, been filed by the petitioner.

21. *Vide* order dated 23rd September, 1999, the suspension, of the petitioner, was revoked. Consequent there, the petitioner rejoined duties, with the Bank, on 23rd September, 1999.

22. *Vide* communication dated 30th September, 1999, the Manager (DAC), Zonal Office, informed the petitioner that the Zonal Manager of the Bank, in his capacity as DA of the petitioner, had decided to impose, on the petitioner, the major penalty of "reduction to three stages lower in the time scale of pay for a period of three years with further directions that he will not earn increments of pay during the period of such reduction and on the expiry of such period the reduction will have the effect of postponing the future increments of his pay". The communication also enclosed a detailed order, dated 25th

September, 1999, issued by the DA, in which the DA had examined, in detail, the findings of the IO, and expressed his complete agreement therewith.

23. The petitioner appealed, against the above order, dated 25th September, 1999, of the DA, *vide* appeal dated 13th November, 1999.

24. On the petitioner's appeal, the General Manager of the bank, as Appellate Authority, passed a detailed order dated 24th March, 2000, wherein, after considering, *seriatim*, the various allegations against the petitioner, the findings of the IO and decision of the DA thereon, the following conclusion has been arrived at :

“6. I have examined the various points raised by Shri Singh in his appeal along with records of the case. The appellant has mainly submitted that he acted as per the directions of his official superior and the Sanctioning Authority was satisfied about the capacity, capability and credit worthiness of borrower. The records reveal that there were various lapses on the part of the appellant in discharging of his duties as Manager (Loans). While there is merit in some of the points raised by Shri Singh, there is no denying the fact that as Manager (Loans), he cannot escape his responsibility by taking defence that he was working under instructions of the Chief Manager. Taking an overall view of the matter, in my opinion, ends of justice would be met by imposing upon Shri Singh major penalty of 'Reduction to one stage lower in time scale of pay for one year with further directions that he will not earn increments of pay during the period of such reduction and on expiry of such period, the reduction will have the effect of postponing the future increments of pay' instead of the penalty imposed by the Disciplinary Authority. However; he will not be paid salary/wages for the period of his suspension except the subsistence allowance paid/payable to him.”

25. The aforesaid order, dated 24th March, 2000, of the Appellate Authority, was communicated, to the petitioner, by the Senior Manager, (DAC), Zonal Office of the Bank, *vide* communication dated 4th April, 2000.

26. The petitioner preferred a review petition, on 26th August, 2000, to the Chairman and Managing Director (CMD) of the bank, challenging the aforesaid order, dated 24th March, 2000, of the Appellate Authority. *Vide* order dated 18th October, 2000, communicated to the petitioner *vide* letter dated 19th October, 2000, the CMD rejected the review petition of the petitioner and confirmed the appellate order dated 24th March, 2000.

27. Aggrieved and dissatisfied by the proceedings, initiated against him, resulting in the imposition, on him, of the penalty of reduction to one stage, lower in the time scale of pay for one year, without increments during the period of reduction and with the effect of postponing future increments of his pay, the petitioner has approached this court, by way of the present writ petition, seeking issuance of a writ of certiorari, quashing the order, dated 24th March, 2000, of the Appellate Authority, as well as the entire proceedings, leading up to the passing of the said order, starting with the charge-sheet dated 26th November, 1997. The petitioner has also prayed for quashing of his suspension, during the period 5th December, 1995 to 23rd September, 1999.

Rival Submissions and Analysis

28. In order to avoid duplication, submissions of learned Counsel, advanced orally in Court and tendered in writing, would be dealt with, during the course of the findings that follow.

Scope of interference

28. It would be appropriate, at the outset, to analyse the scope of interference, by a writ Court exercising powers under Article 226 of the Constitution of India, with disciplinary proceedings, and the findings returned therein, or punishment imposed as a consequence thereof.

29. There are authorities galore, which expound on the scope of interference, by writ courts, with disciplinary proceedings, and orders of punishment, passed by disciplinary authorities/appellate authorities. We need search no further than the recent decision, of the Supreme Court in *State of Karnataka v. N. Gangaraj*¹, which encapsulates, by reference to its earlier decisions in *State of Andhra Pradesh v. S. Sree Rama Rao*², *B.C. Chaturvedi v. U.O.I.*³, *U.O.I. v. H.C. Goel*⁴, *High Court of Judicature at Bombay through its Registrar v. Shashikant S. Patil*⁵, *State Bank of Bikaner and Jaipur v. Nemi Chand*

¹ 2020 SCC OnLine SC 185

² AIR 1963 SC 1723

³ (1995) 6 SCC 749

⁴ (1964) 4 SCR 781

⁵ (2000) 1 SCC 416

*Nalwaya*⁶, *U.O.I. v. G. Gunayuthan*⁷, *Bank of India v. Degala Suryanarayana*⁸ and *U.O.I. v. P. Gunasekaran*⁹, practically all the relevant indicia, which govern the exercise of the power of judicial review, by writ courts, in such cases. Paras 7 to 11, 13 and 14 of the report in *N. Gangaraj*¹ deserve to be reproduced, *in extenso*, thus :

“7. We find that the interference in the order of punishment by the Tribunal as affirmed by the High Court suffers from patent error. *The power of judicial review is confined to the decision-making process. The power of judicial review conferred on the constitutional court or on the Tribunal is not that of an appellate authority.*

8. In *State of Andhra Pradesh v. S. Sree Rama Rao*, a three Judge Bench of this Court has held that *the High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated.* The Court held as under:

“7. ...*The High Court is not constituted in a proceeding under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to*

⁶ (2011) 4 SCC 584

⁷ (1997) 7 SCC 463

⁸ (1999) 5 SCC 762

⁹ (2015) 2 SCC 610

review the evidence and to arrive at an independent finding on the evidence....”

9. In ***B.C. Chaturvedi v. Union of India***, again, a three Judge Bench of this Court has held that *power of 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 eyes of the court. The Court/Tribunal in its power of judicial review does not act as an appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence.* It was held as under:

“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.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co-extensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In ***Union of India v. H.C. Goel***, this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

10. In ***High Court of Judicature at Bombay through its Registrar v. Shashikant S. Patil***, this Court held that *interference with the decision of departmental authorities is permitted if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry while exercising jurisdiction under Article 226 of the Constitution.* It was held as under:

“16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. *Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence*

and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.”

11. In *State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya*, this Court held that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be ground for interfering with the findings in departmental enquiries. The Court held as under:

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the

order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (vide **B.C. Chaturvedi v. Union of India - , Union of India v. G. Gunayuthan - , and Bank of India v. Degala Suryanarayana - , High Court of Judicature at Bombay v. Shahsi Kant S Patil,**

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13. In another judgment reported as **Union of India v. P. Gunasekaran**, this Court held that *while reappreciating evidence the High Court cannot act as an appellate authority in the disciplinary proceedings. The Court held the parameters as to when the High Court shall not interfere in the disciplinary proceedings:*

“13. Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience.”

14. On the other hand learned counsel for the respondent relies upon the judgment reported as **Allahabad Bank v. Krishna Narayan Tewari, (2017) 2 SCC 208**, wherein this Court held that if the disciplinary authority records a finding that is not supported by any evidence whatsoever or a finding which is unreasonably arrived at, the Writ Court could interfere with the finding of the disciplinary proceedings. We do not find that even on touchstone of that test, the Tribunal or the High Court could interfere with the findings recorded by the disciplinary authority. It is not the case of no evidence or that the findings are perverse. The

finding that the respondent is guilty of misconduct has been interfered with only on the ground that there are discrepancies in the evidence of the Department. The discrepancies in the evidence will not make it a case of no evidence. The Inquiry Officer has appreciated the evidence and returned a finding that the respondent is guilty of misconduct.”

30. From the above extracted passages, the following definitive guiding principles may be said to emanate:

- (i) A writ court, exercising power of judicial review over the decision of the disciplinary or appellate authority, does not sit in appeal over the said decisions.
- (ii) The power of judicial review, vested in the writ court, is confined to the decision making process. It is intended to ensure that the aggrieved individual has received fair treatment at the hands of the authorities below, and is not intended to ensure that the conclusion of the authorities below is necessarily correct in the eyes of the court.
- (iii) The writ court is, therefore, required to determine, essentially, whether
 - (a) the enquiry was held by a competent authority,
 - (b) the enquiry was held according to the procedure prescribed in that regard and
 - (c) principles of natural justice were, or were not, violated.

(iv) So long as some evidence exists, on the basis of which the disciplinary or appellate authorities have proceeded, and the said evidence reasonably supports the conclusion arrived at by the said authorities, the writ court would not review or reassess the evidence and arrive at its independent finding thereon. At the same time, the finding of the disciplinary/appellate authority must be based on some evidence. If so, the adequacy, sufficiency or even reliability of the evidence, is not open for examination by the writ court.

(v) Technical stipulations, contained in the Evidence Act, 1872, and the standards of proof contemplated therein, do not apply to disciplinary proceedings.

(vi) The disciplinary authority is the sole judge of facts, though the appellate authority has co-extensive power to re-appreciate evidence, as well as interfere with the punishment awarded. The writ court will not correct an error of fact of the disciplinary authority, howsoever grave. The exercise of assessment of facts and re-appreciation of evidence, has, however, necessarily to stop at the stage of the appellate authority. The writ court is required to forbear from doing so.

(vii) The writ court can, however, interfere where

(a) the Enquiry Officer is not competent to enquire into the charges,

- (b) the disciplinary authority is not competent to pass the order of punishment,
- (c) the disciplinary proceedings are not in accordance with the procedure prescribed in that regard,
- (d) the principles of natural justice have been violated,
- (d) the decision(s) of the authorities below is/are vitiated by extraneous considerations,
- (e) the decisions of the authorities are arbitrary or capricious, or
- (f) the conclusions of the authorities below are such as no reasonable person, conversant with the facts would arrive at and are, consequently, perverse.

(viii) The writ court can interfere with the quantum of punishment if it shocks the conscience of the court, applying the principles of Wednesbury unreasonableness.

31. In *Allahabad Bank v. Krishna Narayan Tiwari*¹⁰, the Supreme Court held, additionally, that a writ court could interfere with the decision of the disciplinary/appellate authority, where the decision(s) were vitiated by non-application of mind, or were unreasoned. In the said case, the Supreme Court held that the appellate authority had “added insult to injury”, by mechanically reproducing the findings of the disciplinary authority, thereby evidencing non-application of mind on its part.

¹⁰ (2017) 2 SCC 308

32. In respect of delinquent bank employees, a distinct jurisprudence has developed, which may be reflected in the following passages, from *Chairman and Managing Director, United Commercial Bank v. P. C. Kakkar*¹¹, *Lalit Popli v. Canara Bank*¹² and *State Bank of India v. Ramesh Dinkar Punde*¹³:

“A bank officer is required to exercise higher standards of honesty and integrity. He deals with the money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in *Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik* [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194] it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious.”

(*P. C. Kakkar*¹¹, para 14)

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

(*Lalit Popli*¹², para 20)

“Confronted with the facts and the position of law, learned counsel for the respondent submitted that leniency may be shown to the respondent having regard to long years of

¹¹ (2003) 4 SCC 364

¹² (2003) 3 SCC 583

¹³ (2006) 7 SCC 212

service rendered by the respondent to the Bank. We are unable to countenance such submission. As already said, the respondent being a bank officer holds a position of trust where honesty and integrity are inbuilt requirements of functioning and it would not be proper to deal with the matter leniently. The respondent was a Manager of the Bank and it needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer so that the confidence of the public/depositors is not impaired. It is for this reason that when a bank officer commits misconduct, as in the present case, for his personal ends and against the interest of the bank and the depositors, he must be dealt with iron hands and he does not deserve to be dealt with leniently.”

(**Ramesh Dinkar Punde**¹³, para 21)

33. On the aspect of susceptibility, to disciplinary proceedings, to attack in judicial review, on the ground of violation of the principles of natural justice, whether contained in the applicable statutory provisions, or at common law, a caveat has been entered, by a line of authorities of the Supreme Court, the most well-known of which is, probably, **State Bank of Patiala v. S. K. Sharma**¹⁴, which held that perceived infraction of the principles of natural justice could vitiate disciplinary proceedings only if, as a consequence of such infraction, prejudice was shown to have resulted to the delinquent officer. Helpfully, for all of whom Article 141 of the Constitution of India enjoins the duty to faithfully follow the law laid down by the Supreme Court, **State Bank of Patiala**¹⁴ neatly sets out, in para 33 (of the report), the principles enunciated therein, thus (even while clarifying that the said principles were not meant to be exhaustive):

¹⁴ (1996) 3 SCC 364

“(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.

(2) A substantive provision has *normally* to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.

(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — “no notice”, “no opportunity” and “no hearing” categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing

considering all things. Now, this very aspect can *also* be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of the said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it *or* that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of punishment), keeping in mind the approach adopted by the Constitution Bench in ***B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704]***. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice — or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action — the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of *audi alteram partem*) and violation of a facet of the said rule, as explained in the body of the

judgment. In other words, a distinction must be made between “no opportunity” and no *adequate* opportunity, i.e., between “no notice”/“no hearing” and “no fair hearing”. (a) In the case of former, the order passed would undoubtedly be invalid (one may call it ‘void’ or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (*audi alteram partem*). (b) But in the latter case, the effect of violation (of a facet of the rule of *audi alteram partem*) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. [It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.]

(6) While applying the rule of *audi alteram partem* (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of State or public interest may call for a curtailing of the rule of *audi alteram partem*. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.”

34. *State Bank of Patiala*¹⁴ continues to be followed, till as late as *Manisha Jaiprakash v. U.O.I.*¹⁵.

¹⁵ (2019) 10 SCC 115

The statutory mandamus

35. In view of the legal position, enunciated hereinabove, it becomes essential, at the outset, to examine the statutory position, as contained in the Discipline and Appeal Regulations.

Nature of punishment – minor or major?

36. Before doing so, I deem it appropriate to deal, at the outset, with a submission, advanced by Mr. Bhalla, to the effect that the punishment, awarded to his client by the appellate authority, was a “minor punishment”. It was sought to be contended that the penalty, which ultimately came to be awarded to the petitioner, was covered by clause (e) of Regulation 4 of the Discipline and Appeal Regulations, which dealt with minor penalties. A bare reading of Regulation 4 makes it apparent that this submission is not correct. Clauses (a) to (d) of Regulation 4 deal with “Minor Penalties”, whereas clauses (f) to (j) deal with “Major Penalties”. Clause (e) covers “reduction to a lower stage in the time scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting the Officers pension”, whereas clause (f) covers “reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the officer will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay”, and is made subject to clause (e). At a bare

glance, it becomes apparent that, where the reduction of pay is “without cumulative effect”, the penalty would be minor, whereas, where the reduction of pay is with cumulative effect, the penalty would be major. In the present case, the disciplinary authority awarded the penalty of “reduction to three stages lower in the time scale of pay for a period of three years with further directions that he will not earn increments of pay during the period of such reduction and on the expiry of such period the reduction will have the effect of postponing the future increments of his pay”, whereas the appellate authority reduced the penalty to “reduction to one stage lower in the time scale of pay for one year with further directions that you will not earn increments of pay during the period of such reduction and on expiry of such period the reduction will have the effect of postponing the future increments of pay”. By stipulating that the reduction in pay would have the effect of postponing future increments of pay, the reduction was, in either case, cumulative. Reduction of pay, to a lower time scale, with cumulative effect, is, expressly, a “major penalty”, covered by clause (f) of Regulation 4 of the Discipline and Appeal Regulations. The number of stages by which the pay is reduced is irrelevant. Irrespective of the number of stages, reduction of pay with cumulative effect is, definitively and statutorily, a “major penalty”. No doubt, reduction of pay by one stage in the time scale is a lesser penalty than reduction by three stages in the time scale; in either case, however, the penalty is major.

37. Indeed, the appellate order, dated 4th April, 2000, itself states that the modified punishment, as awarded by the appellate authority, was a major penalty.

38. Mr. Bhalla is, therefore, not correct in asserting that his client was, ultimately, awarded a minor penalty.

Compliance with Regulations 6 and 7 of the Discipline and Appeal Regulations

39. Regulation 6 of the Discipline and Appeal Regulations conceives the following procedure, for imposing major penalties (to the extent it impacts the case at hand):

(i) Sub-Regulation (1) completely prohibits imposition of any major penalty, except after an enquiry, held in accordance with Regulation 6.

(ii) The DA is required to communicate in writing, to the officer/employee concerned, a charge-sheet, containing the articles of charge against him, along with a statement of the allegations on which they are based. [Sub-regulation (3)]

(iii) The employee is required to submit a written statement of his defence, within 15 days of receipt of the charge-sheet, or within such extended time as may be granted by the DA. [Sub-Regulation (3)]

(iv) On receipt of such statement of defence, the DA may either himself enquire into the allegations in the charge-sheet, or may appoint an EO for the purpose. [Sub-regulation (4)]

(v) Where the DA appoints an EO, the DA shall forward, to the EO, copies of the charge-sheet, and the written statement of defence of the charged employee thereto, along with, *inter alia*, a list of documents, and of witnesses, by which, and by whom, the articles of charge were proposed to be substantiated, and a copy of statements of the witnesses, if any. [Sub-Regulation (5)]

(vi) The DA is required to appoint a PO. [Sub-Regulation (6)]

(vii) The EO is required to fix the date and time of hearing, and to inform the DA accordingly. On the said day, the EO is required to ask the charged employee whether he pleads guilty to any of the charges against him and is also required to return a finding of guilt, in respect of those charges, to which the employee pleads guilty. [Sub-Regulation (8)]

(viii) If the employee does not plead guilty, the EO has mandatorily to adjourn the case by not more than 30 days. [Sub-Regulation (9)]

(ix) In such a case, the IO shall furnish, to the employee, a list of documents, and the list of witnesses, by which, and by whom, respectively, the charges, against the employee, are

proposed to be proved. The IO is also required to record an order that the employee may

- (a) inspect the documents listed,
- (b) submit a list of documents and witnesses, that he desires for the enquiry,
- (c) give a notice, for discovery or production of the documents desired by the charged officer,

(x) On receipt of notice for discovery or production of documents, the EO is required to forward the notice, or copies thereof, to the authority in whose custody or possession the documents are kept, with a requisition for production of the documents, on a specified date. On receipt of such requisition, the authority, having custody or possession over the requisitioned documents, is required to arrange for production of the documents before the EO on the specified date, place and time, subject to the right, of such authority, to claim privilege, in case production of the documents is against public interest or the interest of the Bank. [Sub-regulations (11) and (12)]

(xi) On the date fixed for inquiry, the oral and documentary evidence, against the charged office, is required to be produced by or on behalf of the DA.

(xii) Thereafter, the management witnesses (i.e., the witnesses of the Bank), produced by the PO, are required to be examined by the PO, whereafter the charged officer would be afforded an opportunity of cross-examination. [Sub-regulation (13)]

(xii) Once the case of the management is closed, the charged officer may be required to submit his written statement of defence. [Sub-Regulation (15)]

(xiii) Thereafter, the defence evidence is permitted to be produced. The CO is permitted to cross-examine himself, if he so desires, and produce his defence witnesses, whose cross-examination would be permitted to the PO. [Sub-Regulation (16)]

(xiv) Once production of evidence is thus completed, the EO is required to hear the PO and the CO, or permit them to file written briefs within fifteen days. [Sub-Regulation (18)]

(xv) On conclusion of the inquiry, the EO is required to submit his inquiry report, and to forward a copy thereof to the DA, with the records of the case. [Sub-Regulation (21)]

40. Regulation 7 of the Discipline and Appeal Regulations deals with the action to be taken on the aforesaid inquiry report. The DA is empowered, under the said Regulation, either (i) to remit the case to the EO for a fresh or further inquiry, or, (ii) if he disagrees with the findings of EO, record his reasons for such disagreement as well as his own finding on charge/charges concerned, or (iii) having regard to his findings, pass an order imposing penalty on the Charged Officer or, in the alternative, exonerating the officer concerned.

41. The procedure, as contemplated by Regulations 6 and 7 of the Discipline and Appeal Regulations, therefore, envisages *submission, by the charged officer, of his written statement of defence, consequent on receipt of the charge-sheet*. It is only *after* such written statement of defence is filed by the charged officer, that copies of the charge-sheet, the written statement of defence of the charged officer and a list of the documents and witnesses, by which, and by whom, the articles of charge were proposed to be substantiated, are forwarded, by the DA, to the EO.

42. Even at that stage, the charged officer does not receive the list of documents of witnesses, sought to be relied upon by the management, let alone copies of such documents. Once the EO receives, from the DA, copies of the charge-sheet, the written statement of defence of charged officer and, a list of documents and witnesses on which the management proposes to rely, and copies of statement of the witnesses, if any, and the PO has been appointed, the EO is required to fix a date and time of hearing. On the said date, the charged officer is given an opportunity to plead, or not, guilty. It is only in the event that the charged officer does not plead guilty that, in respect of the charges, regarding which the charged officer does not plead guilty, the EO is required to furnish, to the charged officer, a list of management documents and management witnesses. At that stage, the EO is required to permit the charged officer to inspect the list of documents and to submit a list of documents and witnesses that he, i.e. the charged officer, desires, for the inquiry. Once such list of

documents is furnished by the charged officer, the EO has to issue a notice for discovery or production thereof. The said notice is required to be forwarded, to the authority, in whose custody or possession the document is kept, who has to arrange for production the document before the EO on the specified date, place and time, subject to his right to claim prevail age. Thereafter, on the date fixed for inquiry, oral and documentary evidence, on which the management proposes to rely, is required to be produced before the EO, setting into motion the exercise of examination, cross-examination and re-examination of the witnesses.

43. The procedure followed in the present case, prior to commencement of the recording of evidence, by the EO, of the MWs, is thus set out, on the very first page of the enquiry report, dated 23rd July, 1999, submitted by the EO:

“The preliminary hearing in the matter was held on 22.08.1998 wherein the officers of appointment of Enquiry Officer and Presenting Officer were marked as Exhibit E-1 and E-3. The Charge sheet dated 26.11.97 was marked as Ex. E-2. The Charged Officer was questioned about the admission of the charges and he confirmed having received the charge sheet and denied all the charges as contained therein. As such, the Presenting Officer was advised to present the case on behalf of the management in Order to substantiate the charges. The enquiry proceedings were held on 28.10.98, 29.10.98, 3.11.98, 26.11.98, 27.11.98, 24.12.98, 4.1.99, 29.1.99, 5.2.99, 23.2.99, 8.3.99, 16.3.99, 26.3.99, 23.4.99, 10.5.99, 14.5.99 and 21.5.99. The Presenting Officer produced list of management documents and witnesses. The same was taken on record and marked as Ex. M-1 and the documents contained therein were marked as M-2 to M-41. The Charged Officer was given the opportunity to inspect his documents from the original and he confirmed having done so on record. The defence gave a list of defence documents which was

taken on record as D-1. After examining the relevancy of the documents, the defence documents were taken on record from D-2 to D-53. The consent letter and appointment letter of DR was marked as D-54. Subsequently, additional defence documents were submitted by the defence. The same were taken on record and were marked s D-55 and D-62.”

44. The above passage as extracted from the enquiry report makes it apparent that the EO, in the procedure adopted by him for conducting the inquiry against the petitioner, acted in accordance with regulations 6 and 7 of the Discipline and Appeal Regulations.

Competence of the Zonal Manager to issue the charge-sheet and of the General Manager to act as appellate authority

45. A preliminary objection, to the initiation of disciplinary proceedings against his client was taken, by Mr. Bhalla, by contending that the aforesaid charge-sheet, dated 26th November, 1997, was issued by an incompetent authority. The proceedings, before the authorities below, do not disclose any objection, having been taken, by the petitioner, to the competence, of the Zonal Manager, to issue the charge-sheet to the petitioner. Even otherwise, the objection of Mr. Bhalla, in this regard, misses the wood for the trees. The charge-sheet was issued by the Zonal Manager, as DA. Mr. Bhalla does not dispute the fact that the Zonal Manager was competent to issue the charge-sheet. He is objection is that the Zonal Manager, who issued the charge-sheet, was of the rank of General Manager, whereas the charge-sheet ought to have been issued, to the petitioner, by the Zonal Manager in the rank of Assistant General Manager, or Deputy General Manager. In other words, the objection of Mr. Bhalla appears to be

that the officer, who issued the charge-sheet was superior in rank to the officer who was competent to do so. The specific contention to this effect, as advanced in para 6 of the written submissions, filed by the petitioner, reads thus:

“That the charge sheet was void *ab initio* as it was issued by the Zonal Manager in the rank of General Manager, whereas, as per Schedule of Discipline Appeal Regulations, the charge sheet could have been issued to the petitioner only by the Zonal Manager in the rank of Assistant General Manager/Dy. General Manager.”

A bare glance at the charge-sheet, dated 26th November, 1997, reveals that it was issued by the “Zonal Manager”. Once the charge-sheet was issued by the Zonal Manager, and, in his written submissions, the petitioner acknowledges the fact that the Zonal Manager was competent to issue the charge-sheet, and in the absence of any such objection having been taken in the proceedings before the authorities below, I am not inclined to decapitate the proceedings *ab initio*, as Mr. Bhalla would desire, solely on the ground that the Zonal Manager was not *sufficiently junior* in rank. It is not the case, of Mr. Bhalla, that the disciplinary authority, i.e. the Zonal Manager, who issued the charge-sheet, was either equal, or subordinate, in rank, to his client, i.e. the delinquent officer. Besides, in response to this submission, as contained in the Grounds in the writ petition, the Bank has, in its counter-affidavit, pointed out that the Zonal Manager, in the Delhi zone, happened to be of the rank of General Manager, and, as the Zonal Manager was the designated Disciplinary Authority, he issued the charge-sheet. In that view of the matter, I am of the opinion that the issuance of the charge-sheet, to the petitioner, by the Zonal

Manager, cannot be said to be vitiated merely because the Zonal Manager, of the Delhi Zone, happened to be of the rank of General Manager.

46. Objection, to the jurisdiction of the General Manager of the Bank to act as Appellate Authority, has also been taken, in the written submissions of the petitioner, on the ground that the disciplinary authority, and the appellate authority, were of the same rank, i.e., both were of the rank of General Manager. Though, hypertechnically viewed, this submission may appear attractive, on a holistic appreciation of the factual and legal position, it fails to impress. The Discipline and Appeal Regulations, admittedly, designated the Zonal Manager as the DA, and the General Manager as the Appellate Authority. In the present case, admittedly, the charge-sheet was issued by the Zonal Manager, and the appellate order was issued by the General Manager. The Bank is justified in contending, in its counter-affidavit, that, therefore, it acted in accordance with the mandate of the Regulations. It has further been explained, in this regard, that the disciplinary authority was at the zonal level, and the appellate authority was at the Head Office level. Be that as it may, once the officers, who discharge their functions as DA, and appellate authority, qua the charge-sheet issued to the petitioner, were of the ranks stipulated in the Discipline and Appeal Regulations, the objection, of the petitioner, amounts to mere hair-splitting. Be it noted, in this connection, that the petitioner has not chosen to call, into question, the legality of any of the provisions of the Discipline and Appeal Regulations, and remains, therefore, bound thereby.

47. Besides, the appeal, dated 13th November, 1999, of the petitioner, was itself addressed to the “General Manager (Admn)”, referring to him as Appellate Authority. It cannot, therefore, lie in the mouth of the petitioner to contend, at this stage, that the General Manager was not competent to function as appellate authority.

48. The objection, of the petitioner, to the competence, of the General Manager, to have functioned as Appellate Authority is also, therefore, in my view, without merit.

Re. furnishing of documents and list of witnesses

49. Mr. Bhalla drew my attention to the letter, dated 12th January, 1998, addressed, by his client, to the DA, complaining that, till then, his client had not been furnished the list of documents and witnesses, as a result whereof inspection of the documents, and submission of reply to the charge-sheet at been prejudiced. To this, the Bank responded, on 2nd February, 1998, that there was no provision, in the applicable Regulations, requiring supply, to the petitioner, of the list of documents and witnesses at that stage of the disciplinary proceedings. In view of the regulatory regime, chalked out by Regulation 6 of the Discipline and Appeal Regulations, the response, of the Bank, was perfectly in order. Regulation 6 contemplates furnishing of the list of documents and list of witnesses only in sub-Regulation (10)(a) thereof, after sub-Regulations (2) to (9) of Regulation 6 stand exhausted and worked out. The procedure

envisaged by Regulation 6 contemplates service, by the DA, on the delinquent employee, of the charge-sheet, submission of written statement, by the employee, by way of response thereto, and appointment of EO by the DDA, to enquire into the charges against the employee, and it is only at that stage that the DA forwards, to the EO, a copy of the charge-sheet, the written statement of defence, the list of documents and list of witnesses, by which the articles of charge were proposed to be substantiated, and copies of the statements of the witnesses, if any. The EO so appointed, has, thereafter, to fix a date for appearance, before him, of the charged officer, on which date the charged officer either pleads guilty to the charges against him, or not guilty thereto. Where the charged officer pleads not guilty, the EO is required, under Sub-Regulation (10)(a) of Regulation 6, to furnish, to the charged officer, the list of documents and list of witnesses. The Bank was, therefore, perfectly correct in stating, in its letter dated 2nd February, 1998, addressed to the petitioner, that the applicable Regulations did not contemplate supplying, to the petitioner, the list of documents/witnesses at that stage of the proceedings, i.e., before submission, by the petitioner, of his written statement of defence. The grievance, voiced by Mr. Bhalla on this score is, therefore, devoid of substance.

50. Mr. Bhalla has also invited my attention to the communication, dated 16th June, 1998, addressed, by the petitioner, to the DA, consequent on receipt of the charge-sheet, wherein various documents have been cited, of which inspection was sought by the petitioner. Mr. Bhalla contends that the said documents were required, by his client,

for his defence, to the charges against him, which was seriously prejudiced as a result of the failure, on the part of the Bank, to make the said documents available to him. Answering this submission, Mr. Arun Birbal, appearing for the Bank, draws my attention to the Note, below Sub-Regulation (10) of Regulation 6 of the Discipline and Appeal Regulations, which requires the charged officer to indicate the relevancy of the documents sought by him for his defence. Mr. Birbal submits that the petitioner, while seeking inspection of a whole host of documents, never indicated the relevancy thereof. Having perused the Note below Regulation 6(10) of the Discipline and Appeal Regulations, it is obvious that the submission of Mr. Birbal merits acceptance. The communication, dated 16th June, 1998, from the petitioner to the DA, does not indicate as to how the documents, of which the petitioner was seeking inspection, were relevant for the petitioner's defence. Indeed, this aspect has not been clarified, by the petitioner, even in the writ petition. Mr. Bhalla, during arguments in Court, too, has advanced no submissions regarding the relevancy of the said documents, or the manner in which his client was prejudiced, as a result of non-furnishing thereof.

51. Prejudice, as has been noted hereinabove, has been held, by the Supreme Court, to be the gold standard, by which the sustainability of the arguments, regarding violation of the prescribed procedure for conducting of the disciplinary proceedings, is required to be gauged. Apart from the fact that no specific prejudice, to the petitioner defence, has been demonstrated to have resulted, as a consequence of non-furnishing of the documents cited in the communication dated

16th June, 1998 *supra*, the Enquiry Report of the EO, too, does not indicate that the petitioner raised any such grievance during the enquiry proceedings. I am not inclined, therefore, to accept the submission, of Mr. Bhalla, that the enquiry proceedings were vitiated on account of non-supply, to the petitioner, of documents necessary for the petitioner's defence.

52. It cannot, therefore, be said that there was any procedural infraction, on the part of the EO, in conducting the inquiry proceedings, against the petitioner, vis-à-vis the procedure specified in the Discipline and Appeal Regulations.

On merits

53. On the merits of the findings of the authorities below, Mr. Bhalla has placed reliance on Regulation 3 of the Conduct Regulations, to contend that, where the employee of the Bank was acting as per the directions of his superior, it could not be alleged that the employee had acted otherwise than on the basis of his best judgment. He has also placed reliance, in this context, on Regulation 24. Mr. Bhalla has also sought to contend that the orders of the disciplinary and appellate authorities were unreasoned.

54. It has already been noticed, earlier in this judgment, that the circumstances, in which a writ court would interfere with the findings of the EO, the DA, or the Appellate Authority, are extremely limited. The writ court does not sit as a court of appeal over the said findings.

It is only where the findings are perverse, in that no reasonable person, acquainted with the facts, would arrive at the said findings, or are returned without examining the evidence before the EO, or the DA, that the writ court can interfere. On findings of fact, the DA is the final authority. Absent “legal perversity”, howsoever erroneous the findings of fact may appear, the writ court is legally circumscribed from interfering therewith. It may be reiterated that it is only where the error transgresses the boundaries of mere error, into the realm of perversity, that the writ court would be concerned. These, however, are only some of the indicia, to be borne in mind by the writ court, while exercising judicial review over the findings of the DA.

55. Keeping the above principles in mind, a comparative assessment of the various charges, against the petitioner, vis-à-vis the findings of the EO and the DA thereon, reveals the following picture:

	Allegation	Finding of EO	Finding of DA
(a)	What Fashion was a new customer. Confidential Report, from the previous banker, was not obtained.	• Ex. M-2 indicated that Current Account was opened, by What Fashion, with the Bank on 14th December, 1994, and loan application was submitted on 16th December, 1994 (Ex. M-3). • Ex. M-4 and Ex. B-4 indicated that Syndicate Bank was the earlier banker of What Fashion. • No Confidential	• It was a matter of record that no report was obtained from Syndicate Bank, as required by the guidelines of the Bank. • The contention, of the petitioner, that What Fashion was not availing any credit facility, and as such, confidential Report was obtained, was not tenable.

		Report had been obtained from Syndicate Bank. • Petitioner's contention that responsibility to obtain Confidential Reports was of Mr B. B. Gandhi, was not acceptable, as he had visited the party along with the petitioner. • Hence, the charge was proved.	
(b)	Despite being the new borrower, no market report, regarding the integrity/capability/work, of What Fashion, was obtained. Inspection of the books of What Fashion was also not carried out, to verify the correctness of the figures in the balance sheet.	• It was evident, from Ex. M-9, that no market report had been obtained, regarding the integrity/capability/work of What Fashion, as the column, regarding the Market Report, was left blank therein. • The reliance, by the petitioner, on the Confidential Report, dated 30th December, 1994, of What Fashion, sent to the Zonal Office, was not relevant, as the said Confidential Report did not form part of the documents pertaining to the recommendations, by the petitioner, for sanction of credit facilities to What Fashion. • The petitioner had admitted being a signatory to the said Confidential Report. • The petitioner had also failed to comply with	• It was a matter of record that no market report, of What Fashion had been obtained, as the column in the Confidential Report of What Fashion, to this effect, had not been filled up, and had been left blank. • Regarding inspection of books, the contention, of the petitioner, that the columns, relating to the figures in the Balance Sheet, had been duly filled in, in the Confidential Report originally sent to the Zonal Office, was not tenable, as the market report of the guarantor had been reflected in place of What Fashion and its proprietor.

		the guidelines, of the Bank, as contained in Ex. M-17. • The difference, in Ex. M-4, under the head 'Assets and Liabilities' in the Capital Account and investment of the Proprietor of What Fashion, in the same document, indicated that inspection of the Books of What Fashion had not been carried out, to verify the correctness of the figures given in the Balance Sheet. The difference in figures was clear, and was not disputed by the petitioner. • The contention, of the petitioner, that verification of the Books of What Fashion ought to have been done by V. B. Gandhi, was not tenable, as the petitioner had not refer to any evidence, indicating that he had brought this fact to the notice of Mr. Gandhi, who had advised him to ignore the same. • The allegation was, therefore, proved.	
(c)	The request for facilities was considered on the strength of photo copies of orders, which were not authenticated by the buyers.	• It was clear, from Ex. M-14, that the facilities, which was sanctioned, were based on photo copies of Orders, which were not authenticated by the buyers.	• It was a matter of record that the request for grant of facilities was considered on the strength of photo copies of the orders which did not bear any authentication from the

		• As per Ex. M-24, advance to be granted against a firm order, and genuineness of the order was required to be verified. • The petitioner sought to contend that the orders were fax messages, and thus, there was no need for authentication thereon by the buyers, as the fax messages themselves had been authenticated/signed by the buyers, for which purpose the reference was made to Ex. D-24 and D-25. However, perusal of the said exhibits did not show that they were signed by the buyer. Rather, Ex. D-24 was stamped by Joginder Singh Sethi, the proprietor of What Fashion. • The petitioner's contention was not, therefore, accepted. It was important for the petitioner, as per the guidelines of the Bank, to determine the genuineness of the Orders. • The petitioner's submission that the matter had earlier been referred to the Zonal Office, which had examined the documentation, was not supported by any documentary evidence. In any event, the	buyers against bank rules. • The contention, of the petitioner, that the authentication was obtained, is contrary to the record as the same had not been signed by the buyers but had been stamped by the borrower.
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		petitioner, as Manager (Loans), had necessarily to look into the aspect of having confirmed orders on record, duly authenticated, and to satisfy itself about the genuineness of the orders. Verification of the genuineness of the orders was also essential, as the Bank had to ensure that the goods were exported to the buyer as per street specifications laid down by the buyer, for compliance by the exporter, i.e. What Fashion. • Ex. M-33 revealed that the Bank had pointed out that there were discrepancies as per the terms and conditions of the photo copies of the Order is submitted, in compliance, therewith, by What Fashion.	
(d)	No efforts were made to ascertain as to why Shri Krishna Lal Adlakha, the alleged guarantor, despite having no personal connection with the firms, offered his property for equitable mortgage.	• The management had been able to prove the said charge, by oral evidence of MW-1, who stated that it was essential to know this feature. • The petitioner sought to contend that there were no guidelines, in support of the said allegation. • O-50, Chapter-IX(g) page-9, made it clear that all formalities were required to be	• The contention of the petitioner, that no evidence had been produced by the management, to support, that he was required to find out the relationship between the guarantor and borrower, is not tenable. • The liability of the guarantor was co-existence with that of the borrower and no person would take pecuniary obligation of others unless he had some kind

		completed in order to prove the intention relating to the documents of title. • Thus, the intention of the guarantor to deposit the title deeds had essentially to be gathered. • Hence, the contention of the petitioner was not maintainable and the charge was proved.	of relationship or consideration with the borrower. • Therefore, it was incumbent upon the petitioner to find out the relationship between the borrower and the guarantor.
(e)	The title deeds of the immoveable property submitted to the Bank were full of apparent irregularities. There was no certification of stamp-duty, no signatures of sub-Registrar on the last page and instead it mentioned as "Signed". Though the title deeds were allegedly original, this provided enough reasons for suspicion, but the petitioner failed to notice the same.	• The management had substantiated the said charge through the oral evidence of MW-4 and by way of Ex-M-14, which highlighted the discrepancies. • The petitioner contested the said charges, on the basis of opinion given by the legal advisors, exhibited as Ex. M-23 and Ex-D-19. • Perusal of the said two documents confirmed that the original sale deed was deposited with the Bank and the same was genuine. • The charge, therefore, was not proved.	
(f)	The title deeds were deposited in the Bank on 30.12.1994, prior to the sanction of facilities i.e. on 10.01.1995 and legal opinion was obtained only on 12.01.1995. The petitioner failed to send the	• Ex-M-10 indicated that the title deed was deposited on 30.12.1994. • Ex-M-12 and Ex-M-23 clearly proved that facilities were sanctioned on	• It is evident that the advance has been made subsequent to the date on which the equitable mortgage has been created which is contrary to the Bank's guidelines. • Acknowledgement card

	acknowledgement letter in time and no care was taken by him in regard to the non-receipt of 'acknowledgment due card'.	10.01.1995 and legal opinion was obtained on 12.10.1995 respectively. • Petitioner submitted that he had submitted the title deed to the Loans Department on 30.12.2014 to prepare a loan proposal of M/s Whats Fashion. • An important document like title deed could not be kept loose and unentered in the relevant document register. • Petitioner also submitted that he was not aware of any rule which prohibited the acceptance of such title deeds for being kept in safe custody, and that the legal opinion was obtained in time and before disbursement. • In this case, the advance had been made subsequent to the date on which the equitable mortgage had been created, which was not in accordance with Ex-M-19 and O-50, Chapter-11(7) – Clause 8(b). • Deposition of MW-1 clearly proved that letter of acknowledgement was sent on 11.02.1995 (MEX-21), exactly after one month of	was sent on 11.2.95 i.e. after one month and it was not ensured that the AD card has been received back. • Had the CSO followed up the matter as per Bank's guidelines, the factual position would have come to notice much earlier.
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		sanction of loan. • On perusal of Ex-M-22, it is clear that Chapter-IX (page 9) categorically stated under sub-clause (g), that acknowledgment should be sent to the customer via registered post and the postal acknowledgment should be duly scrutinized. • Having not followed the matter pertaining to the acknowledgement and sending the same after one month, does not confirm the spirit of procedural guidelines.	
(g)	As per legal opinion, original copy of sale deed, documentary proof of physical possession of the property and identity documents i.e. passport/ration card etc. of Sh. Adlakha, were not obtained.	• Ex-M-23 clearly indicated the legal opinion obtained in this regard. • Petitioner, on the other hand, relied on Ex-M-23 and O-19, which proved that original copy of the sale deed was deposited in the Bank. • Fact of physical possession of the property, was established by Ex-D-3 and M-10. • Relying on the legal opinion attained in this regard, the contention of the petitioner, with regard to the genuineness of the sale deed, was accepted.	• The petitioner had failed to ensure identification of Sh. Adlakha, guarantor suggested by Bank's advocate. • The petitioner prepared the CR of Sh. Adlakha, but it had come to notice that he never stayed at the said address.

		• Submission in regard to identification of Sh. KL Adlakha was not accepted as the CR of the guarantor (M-10) had been prepared and signed by the petitioner himself. • It had been confirmed that the documents to identify Sh. Adlakha, were not obtained, and it was incumbent upon the petitioner to ensure such identification. • To the extent of failure to obtain proper identity proof of Sh. Adlakha, therefore, the allegation stood proved.	
(h)	Despite documents executed on 14.01.1995, disbursement of packing credit of Rs. 10 lac was made on the same day by crediting the entire proceeds, without, obtaining any proforma invoice/bills and verifying end use of funds.	• The management had placed its reliance on Ex-M-27, M-14 and guidelines as contained in Ex-M-24 along with deposition of MW-1. • The petitioner contended that the orders were to be executed during the month of January/February, 1995, and any delay would have caused failure in execution of the export orders. • It is evident from Ex-M-24 (Chapter No.5, Page-7(18), that the disbursement has to be in stages. • The contention of the petitioner that it was	• The contention of the petitioner, that there was no stipulation regarding disbursement of PC in phases was not tenable, as before release of such a huge amount, he failed to verify, whether the party had adequate capacity to execute four orders at one stage.

		the duty of the other department to verify the end-use of funds, is not maintainable in view of the deposition made by MW-1.	
(i)	Disbursement of Rs. 10 lac under four packing credit No. 1/95 to 4/95 on 14.01.1995 and of Rs. 73,900/- under Packing credit No. 7/95 on 17.01.1995, was done on the strength of photo copy of export order.	• The management has placed reliance on Ex-M-24, M-24, (Clause 14 to 21), MEX-38, M-218 and the oral deposition of MW-1. • Petitioner contends that this charge is absolutely incorrect because computerized fax messages were on record as Ex-D-50. • It was the petitioner's contention that the correct date of PCL 7/95 is 19.9.1995 and not 17.01.1995. • On examination, the contention of the petitioner was found not to be maintainable, as fax messages were not covered under the clause. • Perusal of M-12, i.e. the sanction letter categorically stated that PC was to be opened against each LC/confirmed order. • The contention, of the petitioner, that the genuineness was approved because advance payment was received, could not be accepted as receiving of advance payment, was no substitute for	• It was a matter of record that disbursement was made on the basis of photocopies of the orders. • The contention of the petitioner that the computerized fax messages could contain signatures etc. was not tenable. • One of the reasons for rejection, the ECGC, the claim, was that the orders against which PC advances had been granted were not confirmed orders, and were not authenticated/signed by the buyer.

		the requirement of obtaining original orders. • Perusal of Ex-D-24 and D-25 did not show that the same had been authenticated by the buyer. • M-28 also revealed that the Loans Officer had categorically pointed out the expiry of the order under reference, but the petitioner had still allowed the PC to be availed.	
(j)	Packing credit No. 7/95 was allowed against photo copy of the order with alteration in the dates of shipment, despite, a dissenting note put up by the Officer-Loans. A cash withdrawal of Rs. 70,000 out of Packing Credit of Rs. 73,800 was allowed and end-use was not verified.	Same findings as of (i)	• Regarding PC No. 7/95, it was specifically mentioned that the date of shipment had elapsed on 15.3.95 and that the letter on record was not from the buyer but from the borrower.
(k)	Disbursement of Rs. 4,61,250/- under PC No. 5/95, was allowed without maintaining any margin and substantial cash withdrawals were permitted without verifying the end-use.	• The allegation, on facts, stood established by Ex-M-29. • According to the petitioner, 25% margin was duly maintained as the LC was for Rs.6,20,000, approximately and amount disbursed was Rs. 4,61,250. • As regards withdrawals, the petitioner had submitted that he was not concerned. As regard end-use, the	• The end use of the funds so credited in the Current Account had not been verified and the amount of PC was released and no margin was maintained.

		petitioner contended that the same stood verified from the fact that the shipment was duly made and documents were sent for collection under FOBP No. 3/95 dated 3.4.95. • The contention of the petitioner regarding maintenance of proper margin was found, on verification, to be tenable. • The contention of the petitioner, with regard to allowing substantial cash withdrawals, without verifying end use, is not maintainable. MW-1, had confirmed in his oral deposition, that end-use had to be verified by the Loans Department. • Ex-M-29 indicated that inventories were not checked at regular intervals. • The allegation, therefore, stood proved to the extent of failure, on the petitioner's part, regarding cash withdrawals and verification of end-use.	
(1)	For FOBP No. 1/95, for USD 50,000, drawee-wise policy was not obtained and confidential report of the buyer was not taken.	• Petitioner has based its case on Ex-M-31, which was signed by the petitioner. • Petitioner contended, <i>per contra</i>, that the Bank had lodged its	• As regards the contention of the petitioner that the ECBC was obtained by the party, it is a matter of record that in case of FOBP 1/95 for USD 15,000 drawee-policy and also CR of the buyer

		claim to the ECGC <i>vide</i> Ex-M-36 and that the claim was rejected on 09.04.1997, <i>vide</i> Ex-M-38. • Perusal of Ex-M-38 made it clear that the same related to PC's granted on 14.1.95 and 19.5.95, whereas the PC under reference was granted on 22.02.1995 and as such was not subject matter covered under Ex-M-38. • Ex-M-14 indicated that drawee-wise policy was not obtained and CR of the buyer was not obtained, and in view of this, contention of the petitioner was not tenable.	were not obtained, in contravention of the terms of sanction.
(m)	FOBP No. 2/95 for USD 6056, was purchased despite discrepancies indicated by the Foreign Exchange Office.	• The Bank relied on Ex-M-32, the voucher for FOBP 2/95 signed by the petitioner, Ex-M-33, <i>vide</i> which FEO has pointed out certain discrepancies and advised the Branch to obtain indemnity from the party. • The petitioner contends that FOBP 2/95 was purchased in due course and proceeds thereof were received in due course on 12.12.1995. • After perusing Ex-M-32, it is evident that the petitioner had signed the said	

		voucher and that the FEO had pointed out certain discrepancies to the Branch on 20.03.1995. • These discrepancies should have been take note of by the Branch at the time of forwarding the documents to FEO, which they drastically failed. • The Branch had definitely put the Bank's funds at stake by not obtaining indemnity from the party as suggested by the FEO vide Ex-M-38.	
(n)	That the proceeds in respect of purchase of export documents under FOBP No. 1/95, 2/95 and 3/95 were allowed to be utilized by the borrower instead of adjusting overdue against PC No. 1/95, 2/95 and 4/95.	• The petitioner has tried to justify his stand, by stating that FOBP No. 1/95 for USD 15,000 was purchased on 22.02.1995, by creating a FOBP entry of Rs. 4.65 lac. • Petitioner contended that the terms of sanction, provided that FOBP proceeds will be first utilized towards adjustment of relative packing credit accounts. • Ex-M-25, para no.5, clearly indicated that packing credit advances are required to be adjusted by proceeds of relative export bills. • On examining the	• The proceeds in respect of purchase of FOBP No. 1/95 and 2/95 were allowed to be withdrawn by the borrower instead of adjusting overdue packing credit, thereby putting Bank's funds into jeopardy.

		sanction letter, it is clear that FOBP proceeds will be first utilized towards adjusting relative packing credit, and in view thereof, the contention of the petitioner is not tenable. • However, in regard, FOBP 3/95, petitioner cannot be held responsible for the same, as he was on leave.	
(o)	ECGC cover was not obtained within the stipulated period.	• The management relied on Ex-M-14 and on the other hand, petitioner relied on D-6, D-7, D-8, 9 and 10, which alleges to prove that ECGC cover was duly obtained. • Perusal of the defence exhibits indicated that the policy was duly obtained by the party under which the Bank had also preferred the claim. • The charge, therefore, was not proved.	
(p)	Inventory was not checked and details of unpaid stocks not called for.	• According to the petitioner, various officials of the Branch checked the inventory, and it was the responsibility of the checking officers. • After examining the documents, it was apparent that the inventories were not regularly checked and	

		the aspect of unpaid stocks was also not looked into. • Petitioner relied on Ex-M-14, M-32 (a,b&c), M-38, D-19, D-33, D-38 and D-39 etc., in this regard. • The contention of the petitioner had due weightage and therefore he cannot be held wholly responsible for the entire loss amounting to Rs. 19.53 lac.	
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56. The above tabular analysis of the allegations against the petitioner, the observations of the EO, and the findings of the DA thereon, reveal that, for each and every allegation, the EO and the DA have, each, examined the evidence, perused the exhibits, and, after reference thereto, arrived at their conclusions, item- and allegation-wise. The findings of the DA, though much more brief than those of the IO, have also examined each aspect of the allegations against the petitioner, seriatim. The Enquiry Report reveals, further, that, before embarking on his own observations and conclusions, regarding the ingredients of the charge against the petitioner, the EO has set out, in detail, the depositions of the witnesses, the particulars of the evidence and, separately, the gist of the submissions of the Bank and of the petitioner. The DA, too, has set out, in the impugned order, dated 25th September, 1999, all the submissions, of the petitioner, in response to the Enquiry Report, and has dealt with the submissions on merits.

Clearly, there has been complete, and thorough, application of mind, both by the EO as well as by the DA.

57. The Order, dated 24th March, 2000, of the appellate authority also sets out, in para 5, the various submissions of the petitioner, in the appeal, seriatim. Thereafter, the appellate authority, after observing that the main submission of the petitioner was that he had acted as per the directions of his official superior, and to the satisfaction of the sanctioning authority, regarding the capacity, capability and creditworthiness of Whats Fashion, goes on to observe that the record revealed, nevertheless, lapses, on the part of the petitioner, in discharge of his duties as Manager (Loans). The Appellate authority has held that, even if, on some of the points, there was merit in the submissions of the petitioner, the petitioner could not escape his responsibility, by claiming to have acted under the instructions of the Chief Manager. Following thereon, the appellate authority has, on taking an overall view of the matter, opined that the ends of justice would be met by imposition, on the petitioner, of the major penalty of reduction to one stage lower in the time scale of pay, for one year, with cumulative effect. This reveals, additionally, that the Appellate Authority independently applied his mind to the merits of the case of the petitioner, and exercised his discretion in reducing the punishment, as originally awarded by the DA.

58. Due care, caution and circumspection has been accorded, to the case of the petitioner, as well as to the submissions advanced by him in defence to the allegations against him, by the EO, the DA and the

appellate authority, and, in my view, the petitioner could not hope for anything better. The Supreme Court has, in the judgments already cited hereinabove, specifically held that the degree of care and caution, required to be exercised by an official of a Bank, as a person who holds public monies in trust in fiduciary capacity, is much higher than that required to be exercised by other government officials. It is expected, of an official of a bank, especially of a managerial stature, that he takes all precautions to ensure that the affairs of the bank or conducted in such a manner as to minimise losses and maximise returns and, thereby, secure the monies of the investing public, which the bank holds in trust. Commercial – rather, financial – prudence has necessarily to guide the exercise of discretion, of every official of the Bank. Want of due care, by a Bank official, is itself a serious lapse, actionable at law by recourse to disciplinary proceedings, irrespective of whether, as a consequence thereof, actual loss has, or has not, resulted.

59. In my view, therefore, the grievance, of the petitioner, regarding the punishment awarded to him, as reduced by the appellate authority and, later, confirmed by the reviewing authority, is without substance. If anything, the petitioner has been treated with leniency, considering that he was an official of the Bank, holding a responsible position of Manager (Loans), at the time. This Court is, in fact, entirely unable to fathom how the petitioner can at all claim to be aggrieved by the punishment ultimately awarded to him. This writ petition, on the face of it, appears merely to be by way of a second – rather, a fourth – bite at the cherry.

Re. suspension

60. The prayer, of the petitioner, for setting aside the suspension, of the petitioner, from 5th December, 1995 to 23rd September, 1999 is also, in my view, devoid of substance. Regulation 12(1)(a) of the Discipline and Appeal Regulations empowers the Bank to place an employee under suspension, “where a disciplinary proceeding against him is contemplated or is pending”. The order, dated 5th December, 1995, placing the petitioner under suspension, specifically stated that a detailed charge-sheet would follow. No doubt, the formal charge-sheet, claim to be issued, to the petitioner, on 26th November, 1997; prior thereto, however, the petitioner was given an opportunity to explain the perceived lapses on his part, for which purpose, in less than six months from the petitioner having been placed on suspension, a tabular questionnaire was issued, to the petitioner, on 6th May, 1996. On finding the petitioner’s explanation, to the said allegations, to be unsatisfactory, a formal charge-sheet was issued, to the petitioner on 26th November, 1997.

61. It cannot, therefore, reasonably be contended that the suspension, of the petitioner, was not in contemplation of disciplinary proceedings. The order, dated 5th December, 1995, expressly stated that a formal charge-sheet would follow. This, in my opinion, was more than sufficient to serve as a recital that the suspension was in contemplation of disciplinary proceedings. A formal charge-sheet did, actually, follow the order of suspension, and the suspension order, thereby, stood vindicated.

62. Mr. Bhalla has also contended that the petitioner was selectively suspended. He submits that other officers who were equally, if not more, culpable, in extending financial accommodation to Whats Fashion, were not so suspended. Such selective suspension, he submits, is impermissible in law, and would serve to vitiate the suspension of the petitioner itself. He relies, in this context, on the decision of the Supreme Court in *In re. T. V. Choudhary*¹⁶.

63. This submission, unfortunately, does not merit acceptance, for various reasons.

64. Firstly, it cannot be said that, in respect of the facilities extended to Whats Fashion, the role played by all the officers was identical. Selective suspension may constitute a ground for interference by a court; that, however, would be in a situation in which more than one officer *play identical roles* in the alleged transgression, in that it is impossible to distinguish between the role played by one officer and the role played by another. In such a situation, it may be possible to argue that selective suspension of one, or more of such identically situated officers, violates Articles 14 and 16 of the Constitution of India. Even in such a case, however, the relief – if it may be called that – which, ordinarily, a Court could grant, would be to direct suspension of the other officers, who are identically situated. That, however, would throw up, in turn, several competing considerations, including the *locus standi* of the suspended officer to

¹⁶ (1987) 3 SCC 258

seek suspension of other officers. Ordinarily, even if such an order were to be passed, it would have to be in the presence of the other identically situated officers, after giving them due opportunity of representation. No such situation, obviously, arises in the present case. The petitioner has, as it were, merely tossed, into the air, an argument that the Senior Manager, the Chief Manager and other officers who were also responsible, to one extent or the other, in extending of financial accommodation to Whats Fashion, never had to suffer the ignominy of suspension. As to whether the role played by the petitioner was identical to that played by the Senior Manager, the Chief Manager, and other officers, in the entire imbroglio, is anybody's guess. This Court, exercising jurisdiction under Article 226 of the Constitution of India, is hopelessly incapacitated from returning a finding in that regard, especially on the basis of the material that the petitioner has deigned to place on record.

65. Secondly, it is, by now, an elemental truism that Articles 14 and 16 of the Constitution of India do not contemplate negative equality. One need only refer, in this context, to the following passage from *Basawaraj v. Land Acquisition Officer*¹⁷, followed, recently, in *P. Singaravelan v. District Collector, Tiruppur*¹⁸:

“It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, *if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer*

¹⁷ (2013) 14 SCC 81

¹⁸ 2019 SCC OnLine SC 1641

*any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide **Chandigarh Admn. v. Jagjit Singh [(1995) 1 SCC 745 : AIR 1995 SC 705]** , **Anand Buttons Ltd. v. State of Haryana [(2005) 9 SCC 164 : AIR 2005 SC 565]** , **K.K. Bhalla v. State of M.P. [(2006) 3 SCC 581 : AIR 2006 SC 898]** and **Fuljit Kaur v. State of Punjab [(2010) 11 SCC 455 : AIR 2010 SC 1937]** .)”*

(Emphasis and underscoring supplied)

The petitioner can, therefore, succeed in his attempt at eviscerating his suspension, from service, only by demonstrating that the suspension was itself illegal, or unjustified, and not by piggybacking on the fact of non-suspension of other officers. No sustainable case, warranting any finding, by this Court, holding the suspension, of the petitioner, to be unjustified has, in my view, been made out.

66. Thirdly, whether to place an officer under suspension, or not, is a decision which is complex, and involves several competing – and, on occasion, conflicting – considerations. The nature of the act committed, the role played by the officer therein, vis-à-vis other officers who may be involved in the commission of the said act, the degree of culpability of the officer, the consequences that have ensued

as a result of the commission of the act, the necessity of keeping the officer outside the regular administrative maelstrom, for any period of time, whether before, or during the disciplinary proceedings, seen in the light of the propensity of the officer to interfere with the investigative, or the disciplinary, process – these are all factors, themselves illustrative, rather than exhaustive, which must inform the decision of whether to suspend, or not to suspend, a concerned officer. The prejudice that would result to the administration, were the officer to be allowed to discharge his duties in normal course, has to be weighed, in the balance, against the prejudice caused to the officer, as a result of not being allowed to perform his duties, and suffer the undeniable ignominy of suspension. Any decision, by the administrative authority, to suspend, *en bloc*, all the officers, who may have played any role in the commission of the act concerned, may itself be perilously pregnable to challenge as arbitrary and vitiated by insufficient application of mind. It cannot, therefore, ordinarily lie in the mouth of an officer, who has been suspended, to complain, in a challenge, before a judicial authority, against the order of suspension, that other officers, similarly situated, had not been suspended.

67. Mr. Bhalla has placed reliance, in support of his submission, on *In re. T. V. Choudhary*¹⁶. This decision, in my view, does not advance the cause of the petitioner. The order, of the Supreme Court, was passed on an application, by T. V. Chaudhary, to recall the earlier orders, passed by the Supreme Court in the Special Leave Petition. In the course of its judgment, the Supreme Court referred to an earlier

order, passed by it, on 5th May, 1986, in the proceedings, in which the following observations were to be found:

“It is somewhat surprising that the petitioner alone should have been placed under suspension by the State Government pending contemplated departmental enquiry under Rule 13 of the A. P. Civil Services (Classification, Control and Appeal) Rules, 1963 and not the other two officers T. V. Chaudhary and S. M. Rao Choudhary, the then Managing Director who appears are equally culpable.

... We are afraid, if the State Government does not pass any order placing the other officers under suspension it may become necessary for the court to revoke the suspension of the petitioner at the next hearing.”

It needs no involved legal analysis, to note, even at first glance, that the above observations of the Supreme Court, do not constitute declaration of the law, under Article 141 of the Constitution of India, to the effect that the non-suspension of all other officers who may be involved, to any extent, in the act, for commission whereof a particular officer may have been suspended, would invariably entitle the suspended officer to seek quashing of his suspension. At best, they sound a note of warning to the administration. Significantly, these observations, too, have been made in the face of a positive finding that the two officers, who were not suspended, were “equally culpable”. This Court, in the present case, is unable to return any positive finding that the Senior Manager, or the Chief Manager, of the Bank, were “equally culpable”, vis-à-vis the petitioner, in extending of financial accommodation to Whats Fashion.

68. Mr. Bhalla has also placed reliance on the well-known decision of the Supreme Court in *Ajay Kumar Choudhary v. U.O.I.*¹⁹, to contend that the suspension of the petitioner, having continued for a period in excess of three months, stood vitiated, *ipso facto*, thereby. There can be no manner of doubt that, in *Ajay Kumar Choudhary*¹⁹, a clear, and unequivocal, direction, was issued, by the Supreme Court, to the effect that “the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee”. Was, however, this enunciation, in *Ajay Kumar Choudhary*¹⁹, intended to be declaratory of the law, within the meaning of Article 141 of the Constitution of India, so as to apply to all suspensions, before, during , and after the said enunciation? In the opinion of this Court, the answer, to this poser, has necessarily to be in the negative.

69. On a plain reading of the judgment, it appears that the Supreme Court, while prescribing that orders of suspension should not continue beyond the period of three months, in *Ajay Kumar Choudhary*¹⁹, did not intend the prescription to be declaratory of the law, within the meaning of Article 141 of the Constitution of India. This impression is fortified by a reading of para 21 of the report in *Ajay Kumar Choudhary*¹⁹, which may be reproduced, to advantage, thus:

“We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of

¹⁹ (2015) 7 SCC 291

charges/charge-sheet is served, *a reasoned order must be passed* for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think *this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution*. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, *the imposition of a limit on the period of suspension* has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance *stands superseded in view of the stand adopted by us.*”

(Emphasis supplied)

In my opinion, the very opening words of para-21 of the report in ***Ajay Kumar Choudhary*¹⁹** act as a sufficient marker to indicate that the said decision cannot be used as a guillotine, to decapitate, as it were, all earlier orders of suspension, rendered at any time in the past, *ad infinitum*, which continued for a period of more than three months. The Supreme Court has taken care to quell, pre-emptorily as it were, any possibility of such an interpretation being accorded to its directives, as contained in para-21 of the report (as extracted hereinabove), by clothing the enunciation in the form of a direction, rather than a declaration of the law as it always was.

70. The period of suspension of the petitioner, having commenced on 5th December, 1995, and come to an end on 7th March, 1998, a decade and a half before *Ajay Kumar Choudhary*¹⁹, I am of the opinion that the petitioner cannot seek invalidation, by this Court, of his suspension, to the extent it continued beyond the period of three months, reckoned from 5th December, 1995. The reliance, by Mr. Bhalla, on *Ajay Kumar Choudhary*¹⁹ is, therefore, in my opinion, misplaced.

71. *Ajay Kumar Choudhary*¹⁹ was, in fact, considered, by the Supreme Court, recently, in *State of Tamil Nadu v. Promod Kumar*²⁰. Without going into detail, into the actual issue in controversy in the said case, it is relevant to note that, though the respondent, before the Supreme Court, have been placed under suspension for six years, and had invoked *Ajay Kumar Choudhary*¹⁹, on the basis whereof the High Court had declared the suspension to be illegal, the Supreme Court, in appeal at the instance of the State, did not affirm the view of the High Court, but merely held that further continuance of the suspension was unwarranted.

72. In conjunction with the above, it has to be borne in mind that the appeal, of the petitioner, against his order of suspension, was rejected, by the Chief Manager of the Bank, on 7th March, 1998, and the petitioner did not choose, at that stage, to challenge the order of rejection before any appropriate forum.

²⁰ (2018) 17 SCC 677

73. The challenge, by the petitioner, to his suspension, from service, therefore, fails.

Conclusion

74. Resultantly, I am of the opinion that the prayer, in the present writ petition, is devoid of merit. No occasion arises for this Court either to interfere with the punishment ultimately awarded to the petitioner, or with his placement, under suspension, for the period from 5th December, 1995 to 23rd September, 1999.

75. The writ petition is, therefore, dismissed, with no orders as to costs.

FEBRUARY 24, 2020
Kr/HJ

C. HARI SHANKAR, J.

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