



2025:AHC:170678-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 876 of 2025

Md. Tarique

.....Appellant(s)

Versus

Union Of India Through Secretary, Ministry Of
Finance And 5 Others

.....Respondent(s)

Counsel for Appellant(s)	: Siddharth Khare, Sr. Advocate
Counsel for Respondent(s)	: A.S.G.I., Gyan Prakash Shrivastava

Court No. - 21

HON'BLE MANOJ KUMAR GUPTA, J.
HON'BLE ARUN KUMAR, J.

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Umang Srivastava, learned counsel for the appellant and Sri G.P. Srivastava, Advocate appearing for the respondents no.2, 3, 4, 5 and 6. Sri Bal Mukund, Advocate, has appeared for the respondent no.1.
2. The present intra-court appeal is directed against an order and judgment dated 6.8.2026 by a Single Judge Bench in Writ-A No.9579 of 2025, whereby the writ petition filed by the appellant (hereinafter referred to as the 'writ petitioner'), challenging the orders passed against him for removal from service has been dismissed.
3. The writ petitioner was appointed as Probationary Officer in Central Bank of India after due selection. The Bank conducted an Internal Audit through Regional Branch Manager of Ramkola Branch where the petitioner had worked as Branch Manager from 29.7.2019 to 22.9.2021. An Internal Audit Report in pursuance of the said audit was submitted in September, 2020, wherein number of objections were pointed out and according to petitioner, the objections were duly rectified and a compliance report was submitted by one Dharmendra Pandey on 3.3.2021. Subsequently, a checking report of the Audit Compliance of RBIA was obtained from Ratnesh Ranjan, then posted as Senior Manager at Branch Office Padrauna. He submitted an adverse report on 28.10.2021 stating that adequate compliance had not been made. In pursuance of the said report, a memo dated 2.11.2021 was served on the petitioner seeking his explanation as to why disciplinary action be not taken against him. The writ petitioner submitted a reply on 27.11.2021. However,

it was not found to be satisfactory and consequently another memo was issued to him on 27.1.2023, whereby departmental proceedings were instituted against him. It contained the articles of charge in Annexure-1 and 2 thereto. On the same day, the Regional Manager of the Bank appointed Ratnesh Ranjan, Senior Manager, Branch Office Padrauna as Inquiry Officer. He conducted enquiry into the charges and examined one Ashutosh Vikram, Branch Manager, Ramkola Branch in support of the charges against the petitioner. The Inquiry Officer thereafter submitted an enquiry report and the enquiry report was made available to the writ petitioner alongwith a covering letter dated 8.9.2023. The writ petitioner submitted a detailed objection thereto. On 8.11.2023, A.G.M., Stressed Assets Management/Disciplinary Authority passed an order dismissing the writ petitioner from service. The petitioner aggrieved thereby filed an appeal before the appellate authority, which was dismissed vide order dated 3.7.2024 but the order of penalty of dismissal from service, which disentitled the petitioner from future employment, was substituted by a penalty of removal from service. The petitioner filed a review petition under Regulation 18 of the Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976 before the General Manager, Central Bank of India, Central Office, Mumbai. However, it was rejected vide order dated 5.3.2025. Aggrieved by the aforesaid orders dated 8.11.2023, 3.7.2024 and 5.3.2025, the writ petitioner filed the writ petition giving rise to the instant appeal.

4. Sri Ashok Khare, learned Senior Counsel appearing for the writ petitioner submits that the writ petitioner had filed detailed objection to the enquiry report. However, the same was not considered while passing the order of punishment. It is submitted that the learned Single Judge has not recorded any specific finding in the order and judgment under challenge as to whether the objections filed by the writ petitioner against the enquiry report have been considered or not though the said plea was specifically taken. He submits that the writ petitioner has not examined himself in defense, and therefore, as per Regulation 6(17) of the Regulations, 1976, the Inquiry Officer was required to call the writ petitioner in the witness-box to enable him to explain the circumstances appearing against him in the evidence. The Inquiry Officer failed to follow the mandate of Regulation 6(17), therefore, the entire enquiry stands vitiated. He submits that the view taken by learned Single Judge that Regulation 6(17) of the Regulations, 1976 is not a

mandatory provision and that the petitioner having been supplied with the entire documentary evidence and given full opportunity to lead evidence, the requirement of said provision was adequately met, is contrary to a recent judgment of the Supreme Court in **K. Prabhakar Hegde Vs. Bank of Baroda, in Civil Appeal No.6599 of 2025 (arising out of SLP (Civil) No.6358 of 2022)**.

5. On the other hand, Sri G.K. Srivastava, Advocate appearing for the respondent-Bank submits that the disciplinary authority has adequately considered the objections filed by the writ petitioner against the enquiry report. He further submits that the provisions of Regulation 6(17) of the Regulations, 1976 are not mandatory but only directory in nature and the learned Single Judge has rightly rejected the contention that the enquiry would be vitiated for violation of the said regulation.

6. We have considered the rival submissions and perused the impugned judgment and the record.

7. Regulation 6(17) of the Regulations, 1976 is as follows:-

"6 (17). The inquiring may after the officer employee closed his evidence and shall if the officer employee is not getting himself examined, generally questioning on the circumstances appearing against him in the evidence for purposes of enabling the officer employee to explain any circumstances appearing in the evidence against him."

8. In **K. Prabhakar Hegde (supra)**, the same regulation came up for consideration before the Supreme Court. The Supreme Court has held that the regulation uses both 'may' and 'shall' in the same regulation. The use of work 'shall' in the second part of Regulation 6(17) indicates that in the event, the employee has not examined himself as a witness in support of his defence, it was mandatory duty of the Inquiry Officer to examine him on the circumstances appearing against him in the evidence for the purposes of enabling the delinquent employee to explain circumstances appearing in the evidence against him. In case of infraction of the aforesaid mandatory requirement, the proceedings would stand vitiated. It has also been held that in case there is violation of the said provision, the disciplinary proceedings would stand vitiated and the same cannot be upheld even on the ground that the delinquent employee has failed to demonstrate any prejudice to him. The relevant observations in **K. Prabhakar Hegde (supra)** are as follows:-

"53. Interestingly, Regulation 6(17) as well as Rule 8(19) refers to both 'may' and 'shall'. While the first part of Regulation 6(17) refers to 'may', the second part refers to 'shall'. To enable the charged officer to explain circumstances in the evidence appearing against him, the provision confers a discretion on the Inquiry Officer as well as imposes a mandatory duty on him. It is discretionary for the Inquiry Officer, to put questions to the charged officer if he is himself a witness for the defence, whereas, if the charged officer has not examined himself as a witness for the defence, the mandate of the law is that the Inquiry Officer shall generally question the charged officer on the circumstances appearing in the evidence against him.

54. The use of 'may' and 'shall' in the same provision does imply that Regulation 6(17) means what it says. The words 'may' and 'shall' have been used to mean 'may' and 'shall', respectively, and we cannot possibly conceive of any rule of construction which would lead us to assume that the framers intended that 'shall' in the second part of Regulation 6(17) should also be read and understood as 'may'. Use of the word 'shall', in our opinion, is deliberate to denote that it is not interchangeable with 'may'; if it were so, the framers would have straightaway used 'may' instead of 'shall' having known that 'may' has been used in the first part. Couching of the provision in such language with 'may' and 'shall' having distinct connotations and consequences and bringing about different outcomes in the course of one and the same inquiry unhesitatingly signals that while the first part of Regulation 6(17) is directory, the second part thereof is mandatory.

55. We, therefore, unhesitatingly hold that the Inquiry Officer by not generally questioning the appellant on the circumstances available in the evidence, which were unfavourable or adverse to such officer, failed to perform a mandatory duty. Any such circumstance, which was unfavourable or adverse to the appellant, should have been excluded from the Inquiry Officer's consideration. It would not commend acceptance that though the Inquiry Officer acted in derogation of the 1981 Regulations, nevertheless, his action must to be upheld on the specious ground that the appellant has failed to demonstrate prejudice. Neither Sunil Kumar Banerjee (supra) nor Alok Kumar (supra) examined the issue from our standpoint and in view of the trio – the Constitution Bench decisions in Tulsiram Patel (supra), Olga Tellis (supra) and A.R. Antulay (supra) - which were rendered after Sunil Kumar Banerjee (supra) and were not noticed in Alok Kumar (supra), the ratio of the latter decisions may not bind us. Alok Kumar (supra) relied on Haryana Financial Corporation v. Kailash Chandra Ahuja. In Ram Prakash Singh (supra), we have

considered the entire issue of the prejudice theory threadbare and articulated, as per our understanding, how incomplete reading of the Constitution Bench decision in B. Karunakar (supra) has resulted in dilution of its ratio. True it is, the High Court was bound by Sunil Kumar Banerjee (supra) and Alok Kumar (supra) but, in our opinion, the said decisions cannot come to the aid of the respondent."

(emphasis supplied)

9. It is not disputed that the writ petitioner had not examined himself in support of his defence. Consequently, as held by the Supreme Court, it was the duty of the Inquiry Officer to have examined the writ petitioner for eliciting responses from him in relation to the adverse circumstances appearing against him. Admittedly, the said procedure has not been followed, and therefore, as held by the Supreme Court, the enquiry would stand vitiated as a whole. Accordingly, the view taken by learned Single Judge in this regard does not commend acceptance.

10. The other issue as to whether the reply of the petitioner to the enquiry report has been duly considered or not does require consideration, inasmuch as we have held that the enquiry itself stands vitiated for violation of Regulation 6(17) of the Regulations, 1976.

11. In the result, the impugned orders dated 8.11.2023, 3.7.2024 and 5.3.2025 are quashed. The judgment and order under challenge in appeal is set aside. The appeal, accordingly, succeeds and is allowed. The matter is remitted back to the disciplinary authority for starting the enquiry from the stage of the examination of the petitioner, as stipulated under Regulation 6(17) of the Regulations, 1976. The disciplinary authority will take decision with regard to service benefits, to which, the writ petitioner would be entitled to.

September 23, 2025

Anil

(Arun Kumar,J.) (Manoj Kumar Gupta,J.)