GAHC010063562019

2026:GAU-AS:12311

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WP(C) No. 2035 of 2019

Sri Subhash Chandra Koch
S/o- Late Gauri Kanta Koch,
R/o- Sharma Building, Arunudoy Path,
Narayan Nagar, Bharalumukh,
Guwahati- 781009, Assam.

.....Petitioner

-Versus-

1. The State Bank of India,
Represented by the Chief General Manager and the Appellate Authority, North Eastern Circle, G.S. Road, P.O- Assam Sachivalaya, Dispur, Guwahati- 781006.

2. The Disciplinary Authority and General

Manager (Network-I) State Bank of India North Eastern Circle, G. S. Road, P.O.- Assam Sachivalaya, Dispur, Guwahati- 781006.

3. The Appointing Authority and General

Manager (Network II) State Bank of India Local Head Office, North Eastern Circle, G. S. Road, P.O.- Assam Sachivalaya, Dispur, Guwahati- 781006.

4. The Inquiring Authority, State Bank of

India Local Head Office, NE Circle, A block, 5th floor, G. S. Road, P.O. Assam

Sachivalaya, Guwahati- 781006.

……. Respondents

– B E F O R E –

HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

For the Petitioner(s) **:** Mr. S Bharali, Advocate.

For the Respondent(s) **:** Mr. G Jalan, Advocate.

Date on which judgment
is reserved **: 20.08.2026**

Date of pronouncement
of judgment **: 26.08.2026**

Whether the pronouncement
is of the operative part
of the judgment ? **: No.**

Whether the full judgment
has been pronounced **: Yes.**

JUDGMENT & ORDER (CAV)

Heard Mr. S Bharali, learned counsel appearing for the petitioner. Also heard Mr. G Jalan, learned counsel appearing for the respondents.

2] By way of this writ petition under Article 226 of the Constitution of India, the writ petitioner is putting to challenge, *inter alia*, the impugned Enquiry Report dated 11.01.2018 of the Enquiring Authority as well as the impugned order dated 31.01.2018 passed by the Disciplinary Authority (respondent No. 2), whereby the services of the petitioner were dismissed in

terms of Rule 67 (j) of the State Bank of India Officers' Service Rules, 1992 (hereinafter referred to as the "Service Rules, 1992") and also the subsequent order of the Appellate Authority (respondent No. 1) dated 11.06.2018, whereby the appeal filed by the petitioner was dismissed.

3] The brief facts of the case, as projected by the petitioner, are that he was posted as Branch Manager of the State Bank of India, Goreswar Branch, during the period from 06.01.2008 to 31.03.2010. While he was so posted, a Memorandum of Charge-sheet dated 10.07.2012 was issued against him alleging commission of certain acts of misconduct in discharge of his official duties.

4] On the basis of the aforesaid allegations, six charges were framed against the petitioner, which read as under: —

> ***"ALLEGATION NO.1***
>
> *There were deposits made without valid consideration, as stated below, by way of cash in your joint account with Smt. Dipa Koch No. 10044332725 maintained at Pandu Port branch, a non-home branch, which did hot commensurate with your known source of income. Smt. Dipa Koch being a housewife and having no independent source of income of her own, could not had contributed to such deposits.*
>
> *i) A cash deposit of ₹93,000.00 was made on 20-10-2008 at Pandu Port branch.*
>
> *ii) A cash deposit of 6,000.00 was made on 24-10-2008 at Pandu Port branch.*
>
> *iii) A cash deposit of 2,50,000.00 was credited in your joint account on 28-05-2009 at Pandu Port branch.*
>
> *iv) A cash deposit of 2,50,000.00 was made on 08-08-2009 at Pandu-Port branch.*
>
> ***ALLEGATION NO.2***
>
> *There were deposits made without valid consideration, as stated below, by way of cash and transfer in your*

joint account with Smt. Dipa Koch No. 10044332725 maintained at Pandu Port branch, a non-home branch, which did not commensurate with your known source of income. Your ID No.. 1952862 was used in following cases during the period when you were posted as Branch Manager at Goreswar branch. Smt. Dipa Koch being a housewife and having no independent source of income of her own, could not had contributed to such deposits.

i) A cash deposit of ₹2,000.00 was made on-24-10-2008 at Goreswar branch. The entry was made under your ID.

ii) A cash deposit of ₹20,000.00 was made on27-03-2009 at Goreswar branch. The entry was made under your ID.

iii) A cash deposit of ₹8,000.00 was made on 31-03-2009 at Goreswar branch. The entry was made under your ID.

vi)An amount of ₹18,000.00 was credited on 30-05-2009 at Goreswar branch. The entry was made using your ID:

v) An amount of ₹2,00,000.00 was diverted to your joint account on 06-06-2009 from the loan account No.30761090144 of Shri Horeswar Rajbongshi under your own ID.

vi) An amount of ₹80,200.00 was credited in your joint account on by cheque belonging to A/C No.30510526927 of M/s. Trade India Associates, a business firm al Goreswar. Similarly, an amount of 1,00,000.00 was deposited in your joint account by cheque from the same business firm on 05-05-2009. Both the entries were made under your ID.

ALLEGATION NO.3

There were deposits made without valid consideration, as stated below, by way of cash in your Joint account with Smt. Dipa Koch No. 10044332725 maintained at Pandu Port Branch which did not commensurate with your known source of income. Smt. Dipa Koch being a housewife and having no independent of her own, could not had contributed to such deposits:

1. A cash deposit of 1,00,000.00 was made on 22-04-2009 at Goreswar branch.

II. A cash deposit of ₹1,50,000.00 was made on 08-08-2009 at Goreswar branch.

III. A cash deposit of 55,000.00 was made on 30-05-2009 at Goreswar branch.

ALLEGATION NO.4

It is observed that an amount of 2,70,000.00 had been disbursed in Term Loan Account. No. 30784409642 of Shri Hareswar Rajbongshi on 05/06/2009 and credited to his Savings Bank account No. 30761090144. On 06-06-2009 you No. 30761090144 of Sri Rajbongshi by ₹200000.00 and diverted/ transferred this amount had debited the Savings Bank Account of 2200000.00 to your joint account no. 10044332725 with your wife, Smt. Dipa Koch, under your ID No. 1952862. Thus, you had misappropriated the bank's fund and defrauded the Bank by such act of misappropriation.

ALLEGATION NO.5

The above irregularity was glaring example of total misuse of official powers vested on you by the Bank.. Taking advantage, of your position as Branch Manager, you had resorted to embezzlemem of funds from borrowers accounts to your own joint account with malafide intention.

ALLEGATION NO.6

Due to alleged lapses/ irregularities on your part as mentioned in allegation no.1, you have defrauded the bank and the bank has suffered a loss of 13,32,200.00."

5] Pursuant to the charge-sheet, the petitioner submitted his reply. As the disciplinary authority was not satisfied with the explanation furnished by him, a departmental enquiry was instituted. The Enquiry Officer submitted his report on 29.12.2012, which was forwarded to the petitioner by the disciplinary authority by letter dated 30.01.2013 for submission of his comments. Thereafter, the appointing authority, by letter dated 24.04.2013, proposed to impose upon the petitioner the major penalty of dismissal from service and afforded him an opportunity of personal hearing on 04.05.2013 in respect of the proposed penalty. The appointing authority, by order dated 31.05.2013, thereafter imposed the penalty of dismissal from service. The petitioner preferred an appeal before the appellate

authority, which, by order dated 20.11.2013, dismissed the appeal and affirmed the order of dismissal.

6] Aggrieved thereby, the petitioner approached this Court by way of WP(C) No. 3748/2014, principally contending that he had not been afforded an opportunity to cross-examine Shri Hareswar Rajbongshi, an account holder of the Bank, in whose account the petitioner had allegedly deposited an amount of Rs.2,00,000/-. This Court, by judgment and order dated 07.06.2016, upon consideration of the matter, noticed that the petitioner ought to have been afforded an opportunity to produce and examine the said witness, whose evidence could have a bearing upon the outcome of the disciplinary proceedings. Accordingly, this Court considered it appropriate to dispose of the writ petition by directing the respondents to conduct/continue the disciplinary proceedings by examining the said witness. It was further directed that the petitioner be given notice to appear on the date fixed for examination of the said witness and that the Enquiry Officer thereafter submit a fresh enquiry report and bring the proceedings to their logical conclusion. Consequently, the earlier enquiry report dated 01.06.2013 and the appellate order dated 20.11.2013 were set aside. This Court further clarified that the disciplinary proceedings would continue from the stage of examination of the aforesaid witness and would be completed within three months from the date of receipt of the certified copy of the order. In view of the aforesaid direction, the respondents were also directed to reinstate the petitioner in service, with liberty to

place him under suspension until completion of the disciplinary proceedings and final decision thereon.

7] It appears that the respondents preferred a writ appeal against the aforesaid judgment and order of the learned Single Judge. However, subsequently, on 28.04.2017, the respondents sought permission to withdraw the writ appeal with liberty to pursue the remedy of review. The writ appeal was accordingly dismissed as withdrawn by order dated 28.04.2017.

8] As the petitioner was not reinstated in terms of the order dated 07.06.2016, he was compelled to institute Cont.Cas(C) No. 383/2017 alleging non-compliance with the aforesaid order. During the pendency of the contempt proceeding, the petitioner was reinstated in service. It was also brought to the notice of the Court that the disciplinary proceedings had, in the meantime, been concluded and a final order of dismissal from service had been passed. In view thereof, the contempt proceeding was closed by order dated 23.03.2018.

9] In continuation of the disciplinary proceedings pursuant to the judgment and order dated 07.06.2016, the petitioner's witness, Shri Hareswar Rajbongshi, was examined on 14.07.2017. On the same date, the Presenting Officer supplied the prosecution documents, marked as P.Ex-1 to P.Ex-9, and the petitioner submitted his defence document, marked as Defence Exhibit-1. Upon taking the aforesaid documents on record, the proceedings continued in respect of charge Nos. 2 and 4. Thereafter, the enquiry was treated as concluded and the matter was posted for submission of written briefs.

10] Upon submission of the written briefs by the respective parties, the Enquiry Officer submitted his report holding charge Nos. 2 and 4 to have been proved. The Disciplinary Authority, agreeing with the findings of the Enquiry Officer, by order dated 16.08.2017, called upon the petitioner to submit his comments. At that stage, the petitioner, by letter dated 14.09.2017, brought to the notice of the Disciplinary Authority that although this Court had set aside the earlier enquiry report and directed continuation of the disciplinary proceedings from the stage of examination of the aforesaid witness, the Enquiry Officer had recorded findings only in respect of two charges out of the total six charges. The petitioner accordingly contended that the enquiry had not been completed in terms of the direction of this Court.

11] The Disciplinary Authority, noticing that no findings had been recorded in respect of charge Nos. 1, 3, 5 and 6, by letter dated 26.10.2017 remitted the matter to the Enquiry Officer for completion of the enquiry in respect of the remaining charges and for submission of a complete report in respect of all the charges contained in the charge-sheet dated 10.07.2012. The petitioner, upon noticing that the remand was confined to charge Nos. 1, 3, 5 and 6, raised an objection by letter dated 16.12.2017. It was contended that the six charges were interconnected and that continuation of the enquiry only in respect of charge Nos. 1, 3, 5 and 6, while allowing the findings already recorded in respect of charge Nos. 2 and 4 to remain undisturbed, would cause serious prejudice to him. According to the petitioner, the Enquiry Officer, having already recorded

findings of guilt in respect of charge Nos. 2 and 4, would approach the remaining charges with a pre-determined mind and the petitioner would consequently be deprived of a fair opportunity to defend himself.

12] The disciplinary proceedings thereafter continued. The Enquiry Officer ultimately submitted a further report holding the petitioner guilty of all the charges. The said report was forwarded to the petitioner by the Disciplinary Authority for his comments. The petitioner submitted his response thereto. The Disciplinary Authority, upon consideration of the enquiry report, the petitioner's statement of defence and the materials available on record, held that the petitioner had failed to discharge his duties with utmost integrity, honesty, devotion and diligence and had thereby violated Rules 51 and 54 of the Service Rules, 1992. By order dated 31.01.2018, the Disciplinary Authority imposed upon the petitioner the penalty of "Dismissal" in terms of Rule 67(j) of the Service Rules, 1992. It was further directed that the period of suspension of the petitioner would be treated as period not spent on duty. The petitioner preferred an appeal under Rule 69(1) and (2) of the Service Rules, 1992. The appellate authority, by order dated 11.06.2018, dismissed the appeal and affirmed the penalty of dismissal from service. Aggrieved thereby, the petitioner has approached this Court by the present writ petition.

13] Mr. S Bharali, learned counsel appearing for the petitioner, submits that the disciplinary proceedings conducted after the earlier enquiry report had been set aside by this Court were conducted in complete disregard of the principles of

natural justice and Rule 68 of the Service Rules, 1992. It is submitted that the respondents proceeded with a pre-determined approach and failed to afford the petitioner a fair and reasonable opportunity of defence. He submits that on 14.07.2017, when the petitioner's witness was examined and cross-examined, the Enquiry Officer recorded that the enquiry was over. Thereafter, the Enquiry Officer submitted a report recording findings only in respect of charge Nos. 2 and 4. It was only after the petitioner pointed out the aforesaid defect that the Disciplinary Authority remitted the matter to the Enquiry Officer, but even then confined the remand to charge Nos. 1, 3, 5 and 6. According to the learned counsel, such partial remand was itself impermissible because the charges were interconnected and the findings already recorded in respect of charge Nos. 2 and 4 were likely to influence the Enquiry Officer while considering the remaining charges.

14] Learned counsel further submits that when the matter was taken up on 16.12.2017, the petitioner informed the Enquiry Officer that his defence representative was not available and sought an adjournment. The matter was accordingly fixed for 20.12.2017, with a direction to the petitioner to appear along with his defence representative and witness. However, on 20.12.2017, the petitioner, owing to illness, could not appear. In his absence, the Presenting Officer produced two witnesses, namely, Shri Diganta Kumar Rabha, Branch Manager, Pandu Port Branch, and Shri Tultul Kumar Das, Branch Manager, Goreswar Branch. The said witnesses were examined and documents marked as P.Ex-10 and P.Ex-11

were introduced through them. As the petitioner was absent, he had no opportunity to cross-examine the said witnesses. It is submitted that though the Enquiry Officer subsequently stated that the evidence of those two witnesses could not be relied upon as they had not been subjected to cross-examination, the documents exhibited through them were nevertheless taken into consideration. Learned counsel submits that merely furnishing copies of the documents subsequently could not cure the fundamental defect arising from the denial of an opportunity to cross-examine the witnesses through whom the documents had been introduced.

15] Learned counsel further submits that the petitioner's witness, Shri Hareswar Rajbongshi, after giving evidence in favour of the petitioner, submitted a letter dated 09.01.2018 retracting his earlier statement. The said letter was admittedly received after the petitioner had submitted his written brief and after the evidentiary stage of the enquiry had concluded. The letter was never furnished to the petitioner and no opportunity was afforded to him to explain the circumstances in which the witness had allegedly retracted his evidence. The witness was also not recalled for examination or cross-examination.

16] It is therefore submitted that the Enquiry Officer, by relying upon the said undisclosed letter to discredit the petitioner's sole defence witness, relied upon material behind the back of the petitioner and thereby caused grave prejudice to him. The petitioner had specifically approached this Court in the earlier round of litigation for the purpose of examining the said witness, and the subsequent reliance upon an undisclosed

retraction letter to negate the evidence of that witness, without affording the petitioner an opportunity to deal with it, rendered the entire enquiry unfair. He further submits that Rule 68 of the Service Rules, 1992 requires reasonable notice regarding the evidence and materials to be relied upon by the management. In support of the aforesaid submission, the learned counsel for the petitioner relies upon the following decisions: —

(i) ***Samarandra Kishore Endow v. State Bank of India***, reported in ***(1992) 1 GLR 407***;

(ii) ***Kashinath Dikshita v. Union of India***, reported in ***(1986) 3 SCC 229***;

(iii) ***Santosh Kumar Singh v. Union of India***, reported in ***(2018) 6 GLR 232***; and

(iv) ***Hiren Chandra Talukdar v. State of Assam***, reported in ***(2016) 4 GLR 170***.

17] Per contra, Mr. G Jalan, learned counsel appearing for the respondents, while vehemently opposing the submissions made on behalf of the petitioner, submits that the disciplinary proceedings were conducted fairly and transparently and that the petitioner was afforded adequate opportunity at every stage. It is contended that the petitioner was fully aware of the date of enquiry but, without sufficient justification, remained absent on 20.12.2017. The Presenting Officer and the prosecution witnesses were present on that date and the proceedings were accordingly continued. It is submitted that the documents marked as P.Ex-10 and P.Ex-11 were not

documents newly created for the purpose of the enquiry, but were documents already forming part of the records. It is further pointed out that on the subsequent date of hearing, i.e. 26.12.2017, the petitioner was supplied the minutes of the proceedings held on 20.12.2017 and specifically stated that he was satisfied with the proceedings. He further admitted the genuineness of the documents and stated that he had no objection to their being taken on record. Learned counsel therefore submits that the petitioner, having expressly accepted the genuineness of the documents and having stated that he was satisfied with the proceedings, cannot subsequently contend that the documents were introduced in violation of the principles of natural justice. Reliance is placed upon the judgment of the Apex Court in ***State Bank of Patiala v. S.K. Sharma***, reported in ***(1996) 3 SCC 364***.

18] It is further submitted that the subsequent retraction letter dated 09.01.2018 was relevant only for assessing the credibility of the petitioner's witness and was not the sole basis for holding the petitioner guilty. According to the respondents, even if the said letter were to be excluded from consideration, the remaining materials on record were sufficient to establish the charges against the petitioner.

19] Learned counsel further submits that where the Disciplinary Authority agrees with the findings of the Enquiry Officer, it is not necessary for the Disciplinary Authority to independently record elaborate reasons beyond expressing its concurrence. Reliance in this regard is placed upon the decision

of the Apex Court in ***K.L. Tripathi v. State Bank of India***, reported in ***(1984) 1 SCC 43***.

20] I have given my thoughtful consideration to the submissions advanced by the learned counsel appearing for the parties and have carefully perused the materials available on record. The authorities cited at the Bar have also been duly considered.

21] The controversy in the present case has to be examined keeping in mind the peculiar course of the disciplinary proceedings and, in particular, the directions issued by this Court in the earlier round of litigation.

22] The earlier enquiry proceedings were set aside by this Court with a specific direction that the disciplinary proceedings would continue from the stage of examination of Shri Hareswar Rajbongshi, whose evidence was considered material to the defence of the petitioner. The direction was not merely to permit the petitioner to produce the witness as a matter of formality; rather, the very purpose of the remand was to afford the petitioner an effective opportunity to establish his defence by examining the said witness and thereafter for the Enquiry Officer to submit a fresh report.

23] Pursuant to the aforesaid direction, Shri Hareswar Rajbongshi was examined on 14.07.2017. The petitioner thereafter submitted his defence. The Enquiry Officer, however, treated the enquiry as concluded and submitted a report recording findings only in respect of charge Nos. 2 and 4. The petitioner brought this defect to the notice of the Disciplinary

Authority. The Disciplinary Authority thereafter remitted the matter to the Enquiry Officer for consideration of the remaining charge Nos. 1, 3, 5 and 6. The petitioner objected to such partial remand on the ground that the charges were interconnected and that the findings already recorded in respect of charge Nos. 2 and 4 could prejudice the consideration of the remaining charges.

24] This Court need not determine whether the aforesaid objection, by itself, is sufficient to vitiate the subsequent proceedings, since the enquiry is otherwise found to be fundamentally flawed on account of the reliance placed by the Enquiry Officer on material which was not disclosed to the petitioner.

25] It is apparent from the enquiry proceedings that on 16.12.2017 the petitioner informed the Enquiry Officer that his defence representative was not available and sought an adjournment. The matter was accordingly fixed for 20.12.2017 with a direction to the petitioner to appear along with his defence representative and witnesses. On 20.12.2017, the petitioner was absent. The Presenting Officer, however, appeared along with two prosecution witnesses, namely, Shri Diganta Kumar Rabha and Shri Tultul Kumar Das. The proceedings were continued in the absence of the petitioner. The said witnesses were examined and documents marked P.Ex-10 and P.Ex-11 were introduced.

26] The first question which arises for consideration is whether the reliance upon P.Ex-10 and P.Ex-11, which were

introduced through the said two prosecution witnesses examined on 20.12.2017 in the absence of the petitioner, vitiates the disciplinary proceedings.

27] It is true that the two prosecution witnesses, namely, Shri Diganta Kumar Rabha and Shri Tultul Kumar Das, were examined on 20.12.2017 when the petitioner was absent and, consequently, the petitioner had no opportunity to cross-examine them. The Enquiry Officer, conscious of this position, did not take into consideration the statements of the said witnesses while arriving at its findings. To that extent, the grievance of the petitioner cannot be said to be without substance. However, the position with regard to P.Ex-10 and P.Ex-11 stands on a different footing. The said documents, though exhibited through the aforesaid prosecution witnesses, were thereafter furnished to the petitioner along with the minutes of the proceedings dated 20.12.2017. On 26.12.2017, when the petitioner was present, he was specifically asked whether he had received the proceedings and whether he was satisfied therewith. The petitioner answered in the affirmative. He was further specifically asked with regard to the documents marked P.Ex-1 to P.Ex-11 and categorically stated that he had no doubt regarding the genuineness of the documents and accepted the same.

28] In the aforesaid circumstances, the fact that the oral testimony of the two prosecution witnesses was not taken into consideration cannot, by itself, render P.Ex-10 and P.Ex-11 incapable of consideration. The petitioner's express admission as to the genuineness of the documents removes the

requirement of proving their authenticity through the testimony of the witnesses who had exhibited them. The petitioner, having thereafter accepted the documents as genuine, cannot contend that the documents were wholly inadmissible merely because the witnesses through whom they had been exhibited were not subjected to cross-examination.

29] At the same time, an admission regarding the genuineness or authenticity of a document cannot necessarily be treated as an admission of the truth of every fact or assertion contained therein. The evidentiary value of the documents would depend upon their nature, contents and the purpose for which they were relied upon. The question, therefore, is not whether the documents could at all be taken on record, but whether their contents were capable of establishing the particular facts for which reliance was placed upon them, having regard to the other evidence available on record.

30] In the present case, however, the Enquiry Officer did not rely upon the statements of the two prosecution witnesses who had been examined in the petitioner's absence. The petitioner was subsequently furnished with P.Ex-10 and P.Ex-11 and expressly accepted their genuineness. No objection was raised by him to the documents being taken on record. Thus, insofar as the introduction and consideration of P.Ex-10 and P.Ex-11 are concerned, the petitioner has failed to demonstrate any prejudice sufficient to vitiate the disciplinary proceedings. The first question is accordingly answered against the petitioner.

31] The second question that arises for consideration, however, stands on an entirely different footing, namely, whether the Enquiry Officer was justified in taking into consideration the letter dated 09.01.2018, purportedly submitted by Shri Hareswar Rajbongshi retracting the evidence earlier given by him in favour of the petitioner, without furnishing a copy thereof to the petitioner or affording him an opportunity to explain or controvert the same. The enquiry report discloses that after the petitioner had submitted his written brief on 08.01.2018, the Enquiry Officer received a letter dated 09.01.2018 from Shri Hareswar Rajbongshi, the witness whom the petitioner had examined pursuant to the specific direction of this Court. By the said letter, the witness purportedly retracted the evidence which he had earlier given in favour of the petitioner. Admittedly, the said letter was never furnished to the petitioner during the disciplinary proceedings. The petitioner was not informed that his witness had allegedly retracted his evidence. No opportunity was afforded to the petitioner to respond to the contents of the letter. The witness was not recalled for examination or cross-examination. Nevertheless, the Enquiry Officer took the said letter into consideration while assessing the credibility of the witness and ultimately treated his evidence as unreliable.

32] The significance of the aforesaid letter cannot be understated. The petitioner's examination of Shri Hareswar Rajbongshi was not an incidental event in the disciplinary proceedings. It was the very subject matter of the earlier litigation before this Court. This Court had interfered with the

earlier disciplinary proceedings because the petitioner had not been afforded an effective opportunity to examine the said witness. The proceedings were specifically remitted so that the petitioner could examine him and the Enquiry Officer could consider his evidence while arriving at a fresh conclusion.

33] Having regard to the aforesaid background, once the witness subsequently addressed a letter retracting his earlier evidence, and the Enquiry Officer intended to rely upon that letter while assessing the witness's credibility, elementary fairness required that the said material be brought to the notice of the petitioner and that he be afforded an opportunity to deal with it.

34] The respondents contend that the said letter was merely an internal communication and was considered only for the purpose of assessing the credibility of the witness. The contention cannot be accepted. The test is not whether the letter was formally treated as an independent piece of substantive evidence. The relevant question is whether the material was taken into consideration in arriving at an adverse conclusion against the delinquent officer and whether the delinquent was afforded an opportunity to meet the same. The answer is clearly in the negative.

35] The Enquiry Officer expressly took note of the subsequent retraction and treated the witness as not bona fide and unreliable on that basis. Thus, the letter formed part of the reasoning by which the petitioner's defence evidence was discredited. Once the material was used for such purpose, the

petitioner was entitled to know of its existence and contents and to have an opportunity to explain or controvert it.

36] The principle of *audi alteram partem* is not confined to the initial stage of the enquiry. It operates throughout the disciplinary process wherever material adverse to the delinquent is proposed to be relied upon. A delinquent officer cannot be expected to meet material of which he has no knowledge. The position is particularly serious in the present case because the letter was received after the petitioner had submitted his written brief. Thus, the evidentiary stage had effectively come to an end. The petitioner had already formulated and presented his defence on the basis of the material then available to him. The subsequent receipt of a letter from his witness retracting his evidence materially altered the evidentiary position. The petitioner was entitled to an opportunity to address that changed situation.

37] The Enquiry Officer could not, without informing the petitioner, take the subsequent retraction into consideration and then use it to discard the evidence of the witness whose examination had been specifically directed by this Court.

38] The prejudice caused to the petitioner is also apparent from the record itself. The Enquiry Officer treated Shri Hareswar Rajbongshi as an unreliable witness on account of the subsequent letter. Thus, the very evidence which the petitioner had been permitted to adduce pursuant to the order of this Court was effectively neutralised on the basis of material which was never disclosed to him. The respondents seek to contend

that the remaining evidence was sufficient to establish the charges. That contention cannot cure the procedural infirmity at the enquiry stage. The Court, while exercising judicial review, is not required to substitute its own assessment of the evidence for that of the disciplinary authority. However, where the decision-making process itself is found to have been fundamentally unfair and the delinquent has been denied an opportunity to meet material relied upon against him, the question of sufficiency of the remaining evidence cannot retrospectively validate the defective procedure.

39] The reliance placed by the respondents on ***S.K. Sharma*** (supra) is well founded insofar as the general principle is concerned. It is undoubtedly settled that every procedural irregularity in a disciplinary enquiry does not, by itself, render the enquiry or the consequential order of punishment invalid. The Court is required to examine the nature of the procedural requirement alleged to have been violated and, where the complaint relates to a facet of the principles of natural justice, whether the delinquent officer has, in fact, suffered prejudice or has been denied a fair hearing. However, the factual setting in ***S.K. Sharma*** (supra) is materially different from the present case. In that case, the material relied upon against the delinquent was within his knowledge; he had been associated with the preliminary investigation, was aware of the factual basis of the allegations, and had not disputed the facts or questioned the credibility of the persons or the material upon which the charges were founded. It was in that background that the Apex Court held that the absence of a particular

opportunity of cross-examination had not caused real prejudice. In the present case, the position is entirely different. The material relied upon by the Enquiry Officer to discredit the petitioner's defence witness came into existence only after the petitioner had completed his evidence and submitted his written brief. The letter dated 09.01.2018, by which the witness purportedly retracted his earlier evidence, was admittedly never disclosed to the petitioner. He was neither informed of the retraction nor afforded any opportunity to explain or controvert its contents, or to seek recall of the witness. The said material was nevertheless taken into consideration by the Enquiry Officer for the specific purpose of assessing the credibility of the very witness whose examination had been permitted pursuant to the earlier order of this Court. The prejudice, therefore, is not founded upon the mere denial of a formal procedural opportunity. It arises from the fact that material adverse to the petitioner's defence was introduced after closure of the evidence, remained undisclosed to him, and was thereafter used to discredit his defence evidence without affording him an opportunity to meet it. In such circumstances, the petitioner cannot be said to have had a fair and effective opportunity to defend himself. The principle in ***S.K. Sharma*** (supra), therefore, while applicable as to the test to be applied, does not assist the respondents on the facts of the present case.

40] In the present case, the prejudice is not illusory or technical. The petitioner was kept completely unaware of the subsequent retraction of his sole defence witness. The material

was received after closure of evidence and after submission of his written brief. It was thereafter relied upon by the Enquiry Officer to discredit that witness. The petitioner was not afforded any opportunity to explain the circumstances of the retraction, to challenge its contents, or to seek recall of the witness. The omission therefore goes to the fairness of the decision-making process itself.

41] It is trite law that a disciplinary enquiry is quasi-judicial in nature and must conform to the requirements of fairness and reasonable opportunity. The Enquiry Officer is required to act fairly and objectively and cannot rely upon material which has not been disclosed to the delinquent where such material is capable of influencing the determination of guilt.

42] The requirement of a reasonable opportunity to defend is also embedded in the procedure prescribed for a disciplinary enquiry under Rule 68 of the Service Rules, 1992. Rule 68 (xiv) specifically provides that before the closure of the case in support of the charges, the enquiring 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 an event, the officer is required to be given an opportunity to inspect the documentary evidence before it is taken on record and to cross-examine a witness who has been so summoned. The provision, thus, expressly safeguards the delinquent's right to meet subsequent evidence introduced into the enquiry. Rule 68 (xvi) similarly provides that after the case in support of the charges is closed, the evidence on behalf of the officer may be

produced, and his witnesses may be examined, with the Presenting Officer being afforded an opportunity of cross-examination. The scheme of the rule therefore mandates that parties are made fully aware of the material being brought on record and are afforded an opportunity to deal with it.

43] ***In Tirlok Nath v. Union of India,*** reported in ***1960 Supreme(SC) 263***, the Apex Court held that a delinquent must have access to material which is relevant to the charge and necessary for an effective defence. Relevant paragraph of the aforesaid judgment read as under: -

> *"Had he decided to do so, the documents would have been useful to the appellant for Cross examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, will have exercised his right under the rule and asked for an oral inquiry to be held. The reefer, in our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the first information report and the statements recorded at the Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the Inquiry. The inquiry held must, in these circumstances, be regarded as one in violation cot only of r. 55 but also of Art. 311 (2). Accordingly we quash the order of removal of the appellant from service passed by the Chief Commissioner of Delhi. The costs of this appeal shall be paid by the respondent to the appellant."*

44] The aforesaid principle was reiterated by the Apex Court in ***Kashinath Dikshita*** (supra), wherein the Apex Court, upon finding that the delinquent had sought copies of the statement of witnesses and other documents that were relied upon in the disciplinary proceedings, emphasized that the delinquent is entitled to have access to the documents and statement that

are relevant to the charges and that are necessary to enable him to effectively cross-examine the witnesses and make his defence. It was further observed therein that the denial of such documents must be examined in the context of whether the delinquent was thereby deprived of a reasonable opportunity of defending himself, and such a question of whether there has been a denial of reasonable opportunity necessarily depends upon the facts and circumstances of the peculiar case. Relevant paragraphs of the aforesaid judgment read as under: -

> *"11. Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents, it is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself. We do not consider it necessary to quote extensively from the authorities cited on behalf of the parties, beyond making passing reference to some of the citation, for, whether or not there has been a denial to afford a reasonable opportunity in the backdrop of this case must substantially depend upon the facts pertaining to this matter."*

45] It is also apposite to refer to the decision of the Apex Court in ***Santosh Kumar Singh*** (supra), wherein the Apex Court, having applied the aforesaid principles enunciated in ***Tirlok Nath*** (supra) and ***Kashinath Dikshita*** (supra), held

that non-furnishing of relevant documents deprived the delinquent of an effective opportunity to cross-examine the witnesses and to establish his defence in the facts of that case wherein relevant documents, including earlier statements of a material witness and the investigator's report, had not been furnished to the delinquent. The Apex Court further emphasized that an Enquiry Officer, while acting in a quasi-judicial capacity, is required to function as an independent adjudicator and cannot assume the role of the Presenting Officer or otherwise act in a manner designed to secure a particular result. It was in this context that the Apex Court held the Enquiry to be vitiated where the procedure adopted had materially affected the fairness of the adjudication.

46] In ***Hiren Chandra Talukdar*** (supra), in the context of that case where the Enquiry Officer had considered documents that were not included in the list of documents and also examined a person who was not named as a witness, it was held that evidence, whether documentary or oral, which is sought to be relied upon in a departmental enquiry must be made known to the delinquent in advance so that he is not taken by surprise. The Apex Court, accordingly, held this requirement as a facet of fair procedure and, consequently, of the principle of natural justice. Relevant paragraphs of the aforesaid judgment read as under: -

> *"23. It is necessary that evidence, both documentary and oral, which are sought to be relied upon in a departmental enquiry against a Government servant, should be made known to him in advance so that the Government servant, who is proceeded against, is not*

taken by surprise. This is a facet of fair procedure and by extension a part of the principles of natural justice."

47] The aforesaid decisions, read together undoubtedly, do not lay down an inflexible proposition that every departure from the prescribed procedure would invariably vitiate a disciplinary proceeding. However, what flows from the aforesaid decisions is that the delinquent must have a reasonable and effective opportunity to meet the material which is proposed to be relied upon against him. Where material is introduced or comes to the knowledge of the Enquiry Officer subsequently and is thereafter used in a manner adverse to the delinquent, fairness requires that such material be disclosed to him and that he be afforded an opportunity to deal with the same.

48] The facts of the present case fall squarely within this principle. The letter dated 09.01.2018 was not a part of the material available to the petitioner at any relevant point of time of the enquiry proceeding nor when he submitted his written brief on 08.01.2018. The letter admittedly came into existence after the evidentiary stage had concluded and purported to retract the evidence which the witness had earlier given in support to the petitioner's defence. The Enquiry Officer thereafter took the letter into consideration and, on that basis, treated the witness as unreliable. The petitioner, however, was never informed of the said letter nor was a copy thereof furnished to him. He was not afforded an opportunity to explain the circumstances in which the witness had purportedly retracted his evidence to controvert the contents of the letter or to seek to recall the witness for the purpose of further

examination. Thus, the material which was subsequently used to discredit the petitioner's defence witness was never placed before the petitioner. The distinction between the present case and the cases where the Court has declined to interfere on account of the absence of demonstrated prejudice is therefore material. In the present case, the petitioner was not merely denied access to a document which was material to the proceeding; the said undisclosed material went directly to the credibility of the sole defence witness whose examination had been specifically permitted pursuant to the earlier order of this Court. The material was received after the petitioner had completed his evidence and submitted his written brief and was thereafter used by the Enquiry Officer to discard that evidence. In such circumstances the prejudice to the petitioner is inherent in the procedure accepted. The petitioner cannot be accepted to demonstrate what explanation he would have offered to a document of which he had no knowledge or what course he would have adopted had the alleged retraction been disclosed to him. What is material is that he was denied the opportunity to deal with a subsequent development which directly affected his defence.

49] The reliance placed by the respondents on ***K.L. Tripathi*** (supra) is clearly distinguishable on the facts of the present case. In ***K.L. Tripathi*** (supra), the materials gathered during the preliminary investigation were subsequently shown to the delinquent officer, the factual basis of the allegations was not disputed by him, and he did not question the veracity or credibility of the persons whose statements or information

formed the basis of the proceedings. He was also afforded an opportunity to furnish his explanation and did not seek an opportunity to cross-examine the persons concerned. It was in that factual setting that the Apex Court held that the absence of a formal opportunity of cross-examination had not caused any real prejudice. Significantly, the Apex Court itself observed that had the delinquent denied any of the facts or questioned the credibility of the persons who had furnished the information against him, refusal to afford an opportunity to cross-examine them or to lead evidence in rebuttal would have been necessary and denial of such opportunity would have been fatal. The facts of the present case stand on an entirely different footing and hence, are of no relevance. In the present case, the petitioner was not a person who had accepted the factual basis of the material relied upon against him or had declined to challenge the credibility of the person concerned, unlike the facts of that case. On the contrary, the very credibility of his defence witness was put in issue by material which came into existence after the closure of the evidence and which was never brought to his notice. Hence, the principle in ***K.L. Tripathi*** (supra) that there must be demonstrable prejudice, does not assist the respondents; rather, the factual distinction recognised in that very decision supports the petitioner's case that, where the credibility of a witness is in issue, an effective opportunity to meet the material affecting such credibility is an essential component of fair play.

50] The cumulative effect of the aforesaid circumstances leads this Court to the conclusion that the disciplinary enquiry,

after the receipt of the retraction letter dated 09.01.2018, was not conducted in accordance with the principles of natural justice. The Enquiry Officer relied upon material adverse to the petitioner without furnishing the same to him and without affording him an opportunity to explain, rebut or otherwise deal with the same. The defect is substantive and has caused demonstrable prejudice to the petitioner.

51] Once the disciplinary enquiry is found to have been vitiated on account of violation of the principles of natural justice, the consequential orders founded upon such enquiry cannot be sustained. The Enquiry Report dated 11.01.2018, the order of dismissal dated 31.01.2018 passed by the Disciplinary Authority and the appellate order dated 11.06.2018 are, accordingly, liable to be interfered with.

52] Accordingly, the Enquiry Report dated 11.01.2018 submitted by the Enquiry Officer (respondent No. 4), the order dated 31.01.2018 passed by the Disciplinary Authority (respondent No. 2), whereby the petitioner was dismissed from service under Rule 67(j) of the Service Rules, 1992, and the appellate order dated 11.06.2018 passed by the Appellate Authority (respondent No. 1) are hereby set aside and quashed.

53] It is, however, noticed that the petitioner attained the age of superannuation on 31.10.2021. Consequently, a direction for reinstatement in service is neither necessary nor feasible at this stage. The petitioner shall be treated as having continued in service, notionally, up to 31.10.2021, for the purpose of determining his service and retiral entitlements.

54] The disciplinary proceedings against the petitioner having been initiated while he was in service, the respondents shall be at liberty, if otherwise permissible under Rule 19(3) of the Service Rules, 1992, to continue and conclude the disciplinary proceedings in accordance with law. Any such proceeding shall be conducted from the stage at which the petitioner is required to be afforded a fair and effective opportunity to adduce and establish his defence, keeping in view the directions contained in the earlier judgment and order dated 07.06.2016 passed in WP(C) No. 3748/2014.

55] In conducting such enquiry, the respondents shall ensure that all material sought to be relied upon against the petitioner is duly disclosed to him and that he is afforded reasonable opportunity to examine and cross-examine witnesses and to respond to any subsequent material which may have a bearing upon the determination of the charges. The disciplinary proceedings shall thereafter be concluded strictly in accordance with law and without being influenced by the findings recorded in the enquiry reports or orders which have been set aside by this Court.

56] The petitioner's retiral and other consequential service benefits shall be determined in accordance with the applicable Rules and shall abide by the final outcome of the disciplinary proceedings, if continued under Rule 19(3). The respondents shall thereafter pass appropriate orders regarding such benefits in accordance with law.

57] The aforesaid exercise shall be completed within a period of four months from the date of receipt of a certified copy of this order.

58] Accordingly, the writ petition stands allowed.

JUDGE

Comparing Assistant

Pranab Kumar Deka

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