

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.20499 OF 2004

ORDER:

This writ petition is filed questioning the impugned termination proceedings issued by the respondents, dated 27.09.2004 against the petitioner.

Heard the learned counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

The brief facts of the case are as under:

While the impugned termination proceedings were issued, the petitioner was working as cashier in the 1st respondent bank. His date of superannuation is 30.09.2004. During his tenure as Cashier, on certain allegations that he has misappropriated cash balance of Rs.5,19,612/- in collusion with the incharge Manager-M.Jagadeeswararao, and basing on preliminary enquiry report, he was placed under suspension vide proceedings dated 25.06.2004. On 12.08.2004, he was issued charge memo, framing the following charges;

- i) That he has misappropriated the Bank Cash Balance of Rs.5,19,612/- for his personal use by colluding with Manager, thereby committed gross misconduct in terms of Agreement/Award;
- ii) That, he has drawn amounts under suspense due to A/C. in violating the instructions, thereby committed gross misconduct in terms of Agreement/Award;
- iii) That he has altered the I.PO's with a *mala fide* intention to show the payments on high side by colluding with Manager, thereby committed gross misconduct in terms of Agreement/Award;
- iv) That he has maintained heavy cash balances in excess of the limit prescribed to the Branch, thereby committed gross

misconduct in terms of Agreement/Award;

- v) That he has drawn cash from current A/C with SBH Venkatapuram in spite of having sufficient cash balance in the bank with a *mala fide* intention, thereby committed gross misconduct, in terms of Agreement/Award;
- vi) That he has failed to maintain the Cash Denomination Register of the Branch from 20.12.2003 onwards with a *mala fide* intention, thereby committed gross misconduct in terms of Agreement/Award;

The case of the petitioner is that though he addressed letters to the 2nd respondent requesting him to furnish the documents, referred to in the charge memo, he was not supplied those documents. The Enquiry Officer vide notice dated 28.08.2004, directed the petitioner to appear before him on 06.09.2004. The petitioner sent a letter to the Enquiry Officer expressing his inability to appear on 06.09.2004. Further, the Enquiry Officer directed him to appear on 13.09.2004. On 13.09.2004 the petitioner appeared before the Enquiry Officer and expressed his inability to prepare the reply and requested time. The Enquiry Officer, without giving any opportunity to the petitioner, submitted his report dated 17.09.2004, finding guilty on the part of the petitioner of the charges alleged. Basing on the enquiry report, the petitioner was issued show cause notice dated 20.09.2004, for which, the petitioner submitted his explanation on 24.09.2004. The grievance of the petitioner is that without giving any opportunity to submit his explanation and without supplying the documents relied upon by the enquiry officer, the respondents erroneously terminated the services of the petitioner with effect from 27.09.2004 just three days before his date of superannuation.

The respondents filed counter denying the contentions of the petitioner. It is contended that the 1st respondent Bank is not a State or instrumentality of the State within the meaning of Article 12 of the

Constitution of India. It is stated that while the petitioner was working as Cashier in Venkatapuram Branch, he had committed several illegalities, irregularities and misappropriated the cash balance of the Branch to the tune of Rs.5,19,612/- After conducting preliminary enquiry, ordered enquiry against the petitioner. The final order of dismissal was passed based on the full fledged inquiry. Instead of submitting his explanation to the charge memo, the petitioner sent a letter on 19.08.2004 requesting to furnish preliminary inquiry report. The respondents vide letter dated 20.08.2004 informed him that there is no provision to furnish the preliminary enquiry report. But the petitioner again sent a letter dated 23.08.2004 requesting to furnish preliminary enquiry report, which is nothing but to drag on the matter and to avoid facing of inquiry as he was going to retire by 30.09.2004. The respondents appointed an Enquiry Officer vide memo dated 27.08.2004 and directed the petitioner to submit his explanation to the Enquiry Officer. The Enquiry Officer issued notice on 28.08.2004 directing the petitioner to appear before him on 06.09.2004 and submit his explanation and produce any defence. The petitioner addressed a letter dated 02.09.2004 to the Enquiry Officer requesting him to adjourn the matter. The Enquiry Officer vide notice dated 06.09.2004 informed the petitioner that the enquiry was fixed on 13.09.2004. However, the petitioner did not submit any explanation. In the absence of any explanation by the petitioner, basing on the records, completed the enquiry and submitted his report on 17.09.2004 holding that the petitioner is guilty of all the charges leveled against him, and fixed the liability to the tune of Rs.3,03,412/- after giving credit to the amounts remitted by the petitioner. Basing on the said report, the respondents issued a show cause notice dated 20.09.2004 to the petitioner proposing to inflict the punishment of dismissal from service, for which the petitioner submitted a vague explanation. Thereafter, the matter was placed before the persons-in-charge committee and the Committee in the meeting held on 27.09.2004 resolved to terminate

the services of the petitioner and to recover the misappropriated amount from him and accordingly, communicated the order of removal dated 27.09.2004 to the petitioner and therefore, it is contended that the writ petition is not maintainable and is liable to be dismissed.

The writ petitioner-Ch.Laxman Rao was appointed initially in the District Cooperative Central Bank as Supervisor. His date of birth as per records was 03.09.1946. On attaining the age of 58 years, he was due for retirement on superannuation on 30.09.2004. He was working as a Cashier in the respondent bank. One M.Jagadeswararao was the Branch Manager of the Branch at Venkatapuram where the petitioner was working as a Cashier. When the Bank was inspected, several acts of irregularities, illegalities and misappropriation of amounts were noticed and it is alleged that the petitioner-cashier along with the Branch Manager Jagadeswararao colluded together and committed the alleged acts, on the basis of which, six charges, referred to supra, were framed. Enquiry Officer was appointed for holding regular enquiry and on the basis of his report, the petitioner-cashier was dismissed from service, vide proceedings in Rc.No.2399/Estt/F.No.102/2004-05, dated 27.09.2004 i.e. just 3 days before his superannuation.

The contention of the writ petitioner is that the enquiry was conducted in a posthaste manner with the pre-judge mind and even without affording reasonable opportunity to the writ petitioner to put forth his case during the enquiry and hence the same is vitiated.

It is further contended that almost in every charge the allegation is that the petitioner being cashier has colluded with the Branch Manager and committed to the acts of omission and commission as contained in the charges. The writ petitioner and also the Branch Manager Jagadheeswararao were suspended from service on 25.06.2004. Since the material that was sought to be relied upon in the enquiry against both the writ petitioner-cashier as well as the

Branch Manager was one and the same, the enquiry was not conducted jointly and when the enquiry against the petitioner-cashier was completed by September, the enquiry against the Branch Manager against whom same set of charges were made went on till March, 2006 and ultimately the Branch Manager was dismissed from service on 21.03.2006. Even with regard to furnishing copies of report dated 25.06.2004 and preliminary enquiry report dated 06.08.2004, which was flatly refused to the writ petitioner, on persistent demand by the Branch Manager-Jagadheeswararao, he was given permission to peruse the same on a prescribed date.

It is submitted that the record clearly shows that the opportunities that were afforded to the Branch Manager during the enquiry were not made available to the petitioner-cashier and even though the charges were grave on the face of it, the regular departmental enquiry was concluded within less than a month in so far as the writ petitioner is concerned. Admittedly, the charge memo was issued to the petitioner on 12.08.2004 and the enquiry was concluded by 13.09.2004 and final orders were passed on 27.09.2004.

A perusal of the report of the Enquiry Officer shows that the enquiry was concluded in a posthaste manner, even without there being any evidence adduced. The petitioner was not given effective opportunity to put forth his case.

As already stated, the charge memo is dated 12.08.2004. The petitioner was given 7 days time to answer to the said charges from the date of receipt of the charge memo. Within the time provided i.e. on 19.08.2004, the writ petitioner gave representation to the enquiry officer stating that for giving explanation to the charges, the preliminary enquiry report and the report mentioned in the charge memo, which are referred to in the charge memo as references 1 and 2 and which are dated 25.06.2004 and 06.08.2004 need be furnished to him.

On the next day i.e. on 20.08.2004 the writ petitioner was informed that time for furnishing the explanation is extended till

27.08.2004, but his request for furnishing enquiry reports is not considered favourably.

On 23.08.2004 the writ petitioner again filed a petition stating that unless the preliminary enquiry report dated 25.06.2004 and the enquiry report dated 06.08.2004, which are referred to in the charge memo are furnished, he is not in a position to give explanation to the charges. The writ petitioner has reiterated his request for furnishing the copies of the two reports and sought time to offer his explanation.

Vide Memo in Rc.No.1930/Estt/F.No.102/2004-05, dated 27.08.2004, the 2nd respondent informed the petitioner about the appointment of the enquiry officer and directing him to approach before the enquiry officer and submit his explanation, which reads as under:

“The attention of Sri Ch.Laxman Rao is drawn to the reference cited, wherein he was directed to submit his explanation to the Charge Memo. But, he has failed to submit his explanation to the charge memo even after providing sufficient time. As such, it has been decided to hold an enquiry into the charges in order to provide him a reasonable opportunity to defend the charges leveled against him. Therefore, he is finally directed to submit his explanation to the charges to the Enquiry Officer and submit a copy of the same to the undersigned immediately.

The enquiry will be conducted by Sri Vanam Venkateswararao, Deputy General Manager (Banking). He is therefore called upon to appear before the Enquiry Officer on the date, time and place communicated by him. He may provide the witness/witnesses for examination and cross examination and other evidence if any before the Enquiry Officer. However, he shall furnish the list of witnesses to be provided to Enquiry Officer well in advance.

Failure to appear before the Enquiry Officer will be construed that he has no intention to avail the opportunity provided for and further action as deemed fit will be taken without further reference to him”

What is noticed from the above is that without there being any explanation of the delinquent-writ petitioner, the Disciplinary Authority has appointed an Enquiry Officer, calling upon the writ petitioner to submit his explanation to the charges directly to the Enquiry Officer. Once the articles of charges are framed, the delinquent/writ petitioner is required to be given sufficient time for furnishing his explanation and after considering the explanation, the Disciplinary Authority finds that the charges against the delinquent employee are groundless, the Disciplinary Authority can dispose of the matter without there being any regular enquiry. Only when the explanation of the delinquent employee is found to be not satisfactory, a regular departmental enquiry need to be initiated. In the instant case, even though the writ petitioner has repeatedly requested for furnishing him the copies of the two reports which form the basis of the charges, the same were not furnished to him and no reasonable opportunity was afforded to the writ petitioner to offer his explanation. As already stated, the charge memo itself is dated 12.08.2004 and within 15 days from that day, a regular departmental enquiry has been ordered vide proceedings, referred to above, dated 27.08.2004.

Even after the enquiry commenced, it is apparent on the face of the record that no reasonable opportunity was afforded to the writ petitioner to put forth his case before the enquiry officer. When the enquiry officer was appointed on 27.08.2004, he issued notice to the writ petitioner on the next day, i.e. on 28.08.2004 fixing the date of enquiry as 06.09.2004. The writ petitioner has informed the enquiry officer that due to ill-health, he is not able to appear before him on 06.09.2004 and submitted a medical certificate in support of his request.

On 06.09.2004 the Enquiry Officer issued second notice calling upon the writ petitioner to appear before him on 13.09.2004 acceding to the request of the writ petitioner to grant time.

On 13.09.2004 on which day the enquiry was posted for

appearance of the delinquent/writ petitioner, it appears that the writ petitioner appeared before the enquiry officer and offered his explanation in so far as charge No.2 is concerned. However, with regard to the charge Nos.1, 3, 4, 5 and 6 he requested time to offer his explanation.

Only on the basis of what happened on 13.09.2004, the Enquiry Officer Vanam Venkateswararao has submitted his report finding that all the six charges against the writ petitioner are proved.

As noticed from the above, the first date of appearance of the delinquent charged officer/writ petitioner before the enquiry officer was 06.09.2004. The observations made by the Enquiry Officer in his report dated 17.09.2004 would clearly demonstrate as to how the enquiry was conducted into the charges which were by all means serious and grave. The enquiry officer, in his report, made the following observations:

“I as an Enquiry Officer, served a notice to Sri Ch.Laxmana Rao, charge sheeted employee through Rc.No.1930/Est/F.No.102/2004-05/1946, dated 28.08.2004 in which directed him to attend the enquiry before Enquiry Officer on 06.09.2004 at 11.00 A.M at the premises of the District Co-operative Central Bank Limited, Branch Office, Venkatapuram and he permitted to produce any evidences and witnesses in his offense and intimated in the notice. In case of his failure to present himself before Enquiry Officer on the said date; time and place. The enquiry will be conducted ex parte. Accordingly, I visited the Branch Venkatapuram on 06.09.2004 and take up the enquiry before Management Representative Sri V.Vasanth Rao, Branch Manager. But the charge sheeted employee Sri Ch.Laxmana Rao was informed through his letter dated 02.09.2004 and it was reached Enquiry Officer through Branch Manager Venkatapuram as enquiry date 06.09.2004 at 11-00 A.M in which his body condition is not good due to ill-health, and using medicines as per directions of the doctor and not in a position to move and attend before Enquiry Officer. He

stated that after health condition is good he wants to meet Enquiry Officer and submit details relating to charge memo and produced medical certificate for the period 02.09.2004 to 10.09.2004.

As such with the consultancy of the Management Representative and decided to give one more chance to C.S.E. So, again the enquiry date was fixed on 13.09.2004 for which a second and final notice was issued on 06.09.2004 in which the C.S.E was directed to attend the enquiry on 13.09.2004 at 11.00 A.M at District Co-operative Central Bank Limited, Branch Office, Bhadrachalam.

Accordingly, the enquiry was taken up on 13.09.2004 at Bhadrachalam Branch at 11.00 A.M the charge sheeted employee Sri Ch.LaXMANA Rao attended at 11.30 A.M before Enquiry Officer and not submitted explanation to the (6) charges and not given depositions to the charges except (2nd) charge.

He stated that, he is not in position to submit his deposition to the charges (1) (3) (4) (5) and (6) because not prepared to give reply and his general condition is not good and requested to give time to him.

Enquiry Officer opinion is that the C.S.E intentionally avoided to submit Explanation to the charges, even though he has provided sufficient time.

The Enquiry Officer was decided not to give some more time to charge sheeted employee because the time short and Ch.Laxmana Rao, C.S.E is going to be retired by end of September, 2004 on superannuation.

The Enquiry Officer, decided to finalize the report on proof of records and facts.

Record of enquiry conducted by Sri V.Venkateswara Rao, Enquiry Officer into the charges framed against Sri Ch.Laxmana Rao.”

It is evident from the above that even without there being any oral and documentary evidence that was produced either by the presenting officer or the charged officer/the writ petitioner, only on the basis of the records that were available, the Enquiry Officer found the writ petitioner

guilty of all the six charges and held the same to be proved. It may be recalled that the basis of the charges was two reports dated 25.06.2004 and 06.08.2004 and in spite of requesting copies thereof, the same were not furnished to the writ petitioner for offering his explanation. The request of the writ petitioner to provide him the copies of the said two reports was specifically rejected. The writ petitioner was not even informed that he is at liberty to inspect the records before offering his explanation even though the reports could not have been furnished. On this aspect, a decision of the Hon'ble Supreme Court in ***State of U.P. v. Shatrughan Lal***^[1] needs to be referred to, where in the Hon'ble Supreme Court at paras 4, 5, 6 and 7 held as under:

“4. Now, one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence. In departmental proceedings where charge-sheet is issued and the documents which are proposed to be utilised against that person are indicated in the charge sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him. see: Chandrama Tewari v. Union of India,; [1988]1SCR1102 ; Kashinath Dikshita v. Union of India and Ors.,; (1986)1ILLJ468SC and State of Uttar Pradesh v. Mohd. Sharif,; (1982)1ILLJ180SC .

5. In High Court of Punjab & Haryana v. Amrik Singh,; (1995)1ILLJ656SC , it was indicated that the delinquent officer must be supplied copies of documents relied upon in support of the charges. It was further indicated that if the documents are voluminous and copies cannot be supplied, then such officer must be given an opportunity to inspect the same, or else, the principles of natural justice would be violated.

6. Preliminary inquiry which is conducted invariably on the back of the delinquent employee may, often, constitute the whole basis of the charge-sheet. Before a person is, therefore, called upon to submit his reply to the charge sheet, he must, on a request made by him in that behalf, be supplied the copies of the statements of witnesses recorded during the preliminary enquiry particularly if those witnesses are proposed to be examined at the departmental trial. This principle was reiterated in *Kashinath Dikshita v. Union of India and Ors.*: (1986)11LLJ468SC (supra), wherein it was also laid down that this lapse would vitiate the departmental proceedings unless it was shown and established as a fact that non-supply of copies of those documents had not caused any prejudice to the delinquent in his defence.

7. Applying the above principles to the instant case, it will be seen that the copies of the documents which were indicated in the charge sheet to be relied upon as proof in support of articles of charges were not supplied to the respondent nor was any offer made to him to inspect those documents.”

In view of the above, I have no hesitation in holding that the action of the respondents in conducting preliminary enquiry, initiation of departmental enquiry, conducting enquiry by the enquiry officer and his reaching to a conclusion and its acceptance by the Disciplinary Authority was all done in posthaste manner without affording even basic opportunity to the writ petitioner to submit his explanation. The report of the Enquiry Officer which was submitted on 17.09.2004 was accepted by the Disciplinary Authority on 27.09.2004.

When a charge memo was issued, a reasonable time is required to be given to the charged officer to offer his explanation. Thereafter, the disciplinary authority is required to consider his explanation and proceed in the matter by appointing enquiry officer, if there is any need there for. The enquiry officer is required to give notices to the charged employee giving sufficient time to appear before him and offer his explanation. Documents and witnesses are needed to be produced

and an opportunity should be given to the charged employee to cross examine the witnesses. After conclusion of the enquiry, the report is required to be submitted to the disciplinary authority and it is required to be served on the delinquent employee and reasonable opportunity of at least 15 days is required to be given to the charged officer to offer his explanation with regard to the proposed punishment which in the instant case was dismissal from service. Nothing of the above has been followed in the instant case. The report of the enquiry officer dated 17.09.2004 was served on the delinquent and he was required to offer his explanation on the proposed punishment of dismissal from service within 3 days. The final orders are came to be passed on 27.09.2004 dismissing the writ petitioner from service, who was due to retire from service on attaining the age of superannuation on 30.09.2004.

The following observations of the Disciplinary Authority in dismissing the writ petitioner vide proceedings dated 27.09.2004 clearly demonstrate the conduct of the Enquiry Officer as well as the Disciplinary Authority.

“The Employee, even after availing sufficient opportunities he has failed to submit his explanation to the Charge Memo. As such, it has been decided to hold an Enquiry into the charges in order to provide him a reasonable opportunity to defend himself. An Enquiry was ordered appointing Sri VANAM VENKATESWAR RAO, DGM (Offg) as Enquiry Officer, by directing the Charge Sheeted Employee to submit his explanation to the charges to Enquiry Officer under a copy to the General Manager, DCC Bank Ltd., Khammam vide reference 7th cited (which is dated 12.08.2004).

The Enquiry Officer has issued notices to the Employee for appearing before him to defend his case. The Employee appeared before the Enquiry Officer at last on 13.09.2004 and participated in the Enquiry proceedings.

The Charge Sheeted Employee stated to the

Enquiry Officer that he is not in a position to submit his deposition to the charges (1) (3) (4) (5) and (6) because he has not prepared to give reply and his general condition is not good and requested to give some more time.

The Enquiry Officer opined that, the Charge Sheeted Employee is intentionally avoiding to submit explanation to the charges, even after sufficient time was given to him.

The Employee is due for retirement on superannuation by 30th September 2004. So, the Enquiry Officer has decided to finalize the report on proof of records and facts, since the incumbent is going to retire in this month.

The Enquiry Officer based on the material evidence and facts all the (6) charges were proved besides fixing financial liability pertaining to Charge No.1 balance of misappropriated cash balance of Rs.3,03,412/- he along with incharge Manager Sri M.Jagadeeswar Rao are jointly and severally liable to make good with interest @21% from 25.06.2004 to the date of remittance on outstanding balance, Charge No.2, he has made liable for Rs.100/- balance under suspense due to together with interest @21% from 31.03.2003 for each transaction from the date of withdrawal to remittance and Charge No.4 he along with incharge Manager Sri M.Jagadeeswar Rao are made jointly severally to make good an amount of Rs.55,120/- sustained loss as interest for maintaining heavy cash balance from 01.01.04 to 24.06.04.”

From the above, it is noticed that even before the Enquiry against Sri M.Jagadheeswararao, Branch Manager is concluded or taken up, the Enquiry Officer gave finding that the writ petitioner along with the Branch Manager are jointly and severally liable to make good amounting of Rs.3,03,412/-.

As has been held by the Hon'ble Supreme Court in ***State of U.P. v. Shatrughan Lal*** (1 supra), the petitioner was not given effective opportunity which falls foul of the cardinal principles of natural justice

that a person against whom an action is proposed to be taken has to be given an opportunity of hearing which should not be a mere pretence. Serious allegations of misappropriation of more than Rs.5 lakhs was alleged and the specific charge was that the writ petitioner being cashier, colluded with the Branch Manager-Jagadheeswararao in committing the said acts. While opportunities were afforded to the Branch Manager, who has ultimately been dismissed from service on 21.03.2006, the same were not extended to the writ petitioner, against whom the dismissal orders were passed as long back as on 27.09.2004. In spite of repeated requests from the writ petitioner to provide him with the two material documents which were the basis of the charges, the same were not furnished and within a month the entire process, such as framing the articles of charges, calling upon the charged officer to offer his explanation, consideration thereof by the Disciplinary Authority, rejection of the explanation, appointment of the Enquiry Officer, appearance before the Enquiry Officer, adducing oral and documentary evidence before the Enquiry Officer, conducting and concluding the enquiry, acceptance thereof, issuance of final show cause notice, calling for the explanation from the charged officer as to why he should not be dismissed from service and issuance of final dismissal order were all done in between 12.08.2004 to 27.09.2004 i.e. within hardly 45 days. The entire process seems to be a pre-judge exercise and the department was inclined to pass the dismissal order before the writ petitioner retired on attaining the age of superannuation on 30.09.2004. Such a procedure cannot be countenanced and it amounts to invidious discrimination. An employee who had been in service of the Bank for long years was dismissed from service just 3 days before his retirement by completing the entire process within less than 2 months.

In ***B.C.Chaturvedi v. Union of India***^[2] the Hon'ble Court observed in paras-6, 7, 12 and 13 as under:

“6. Having regard to the respective contentions, the first question that arises for consideration is whether the order dismissing the appellant from service is invalid in law for non-supply of the inquiry report. True, in Ramzan Khan's case a Bench of three Judges to which one of us (K. Ramaswami, J.) was a member, had held that the delinquent is entitled to the supply of the inquiry report. It was contended for the appellant therein that after Amendment to Article [311\(2\)](#) of the Constitution by Constitution (42nd Amendment) Act, 1976, the need to supply the inquiry report was obviated. Rejecting the contention, it was held that the supply of the copy of the inquiry report is inconsistent with fair procedure and non-supply thereof violates the principles of natural justice. Therefore, copy of the inquiry report is required to be supplied to the delinquent officer. However, it was held that the said ratio was prospective in operation. The judgment therein was rendered on November 20, 1990.

7. A question thereafter had arisen whether the ratio would be applicable to the order passed earlier to the judgment. On reference to the Constitution Bench, to which two of us (K. Ramaswamy & B.P. Jeevan Reddy, JJ.) were members, it was held in *Managing Director, ECIL, Hyderabad v. B. Karunakar and Ors*: (1994) 1 LLJ 162 SC that the relief granted in Ramzan Khan's case was erroneous and that the ratio in Ramzan Khan's case would apply to the punishment imposed by the disciplinary authority after the date of the judgment. Since the controversy is no longer *res integra*, the appellant is not entitled to the benefit of Ramzan Khan's ratio as admittedly he was dismissed from service on October 29, 1986 and the order of dismissal from service is valid.

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 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 re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held that 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 never 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 reappreciate 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* : (1964) 1 LLJ 38 SC , 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.”

The learned counsel for the petitioner further relied upon a decision of the Hon'ble Supreme Court in **Roop Singh Negi v. Punjab National Bank**^[3] wherein it was held at paras-14 and 15 as under:

“14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left. “

Following the above decisions of the Hon'ble Supreme Court in

State of U.P. v. Shatrughan Lal, B.C.Chaturvedi v. Union of India and ***Roop Singh Negi v. Punjab National Bank*** (1 to 3 supra), it is held that the enquiry conducted against the writ petitioner was not proper and it vitiates the entire proceedings and the same cannot be sustained.

The learned counsel appearing for the respondents contending that a writ petition under Article 226 of the Constitution of India do not lie, since the respondent Bank do not answer the description of a State, in support of this contention, the learned counsel relied upon the decision of the Hon'ble Supreme Court in ***General Manager, Kisan Sahkari Chini Mills Ltd. v. Satrughan Nishad***^[4] wherein the Hon'ble Supreme Court in para-8 held as under:

“For coming within the purview of Article 12 the form in which the body is constituted, namely, whether it is a society or a cooperative society or a company, is not decisive. The real status of the body with respect to the control of Government would have to be looked into. The various tests laid down in *Ajay Hasia*, (1981) 1 SCC 722 would have to be applied and considered cumulatively. There can be no hard and fast formula and in different facts/situations, different factors may be found to be overwhelming and indicating that the body is an authority under Article 12 of the Constitution in this context, bye-laws of the Mill would have to be seen.”

In the said decision, the Hon'ble Supreme Court further observed that only when a person or body performs a public function or discharges public duty, Article 226 of the Constitution could be invoked. In that particular case, since the appellant was a Mill engaged in manufacture and sale of sugar which did not involve any public function, the jurisdiction of the High Court under Article 226 of the Constitution cannot be invoked.

The learned counsel for the respondents further relied upon a decision of the Hon'ble Supreme Court in ***S.S.Rana v. Registrar, Co-***

op.Societies^[5] wherein it was held that the Kangra Central Co-operative Bank Limited, a Co-operative Society, is not 'State' and the termination of the services of the Branch Manager were not shown to have violated any mandatory provisions of the Act or Rules and hence the writ petition was held to be not maintainable.

On the other hand, the learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in **U.P.State Coop.Land Development Bank Ltd. V. Chandra Bhan Dubey**^[6] wherein the Hon'ble Supreme Court held that the U.P.State Cooperative Land Development Bank though a cooperative society registered under the U.P.Cooperative Societies Act, 1965 is constituted under the Uttar Pradesh Cooperative Land Development Bank Act, 1964 and it is certainly an extended Arm of the State and thus an instrumentality of the State or Authority as mentioned under Article 12 of the Constitution of India. The Hon'ble Supreme Court has referred to several authorities on the subject and also referred to a Full Bench decision of this Court in *Sri Konaseema Coop.Central Bank Ltd. V. N.Seetharama Raju* {AIR 1990 AP 171}. The observations of the Hon'ble Supreme Court made in paras 26, 27 and 28 which are relevant, reads as under:

"26. A Full Bench of the Andhra Pradesh High Court in *Sri Konaseema Co-operative Central Bank Ltd., Amalapuram and Anr. v. N. Seetharama Raju*: AIR 1990 A.P. 171 was considering the question whether a writ petition lay against a cooperative society and if it does, in what circumstances. After examining various decisions and treatises on the subject it was stated that even if a society could not be characterised as a 'State' within the meaning of Article 12 even so a writ would lie against it to enforce a statutory public duty which an employee is entitled to enforce against the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a 'person', or an 'authority',

within the meaning of Article [226](#) of the Constitution. What is material is the nature of the statutory duty placed upon it, and the Court is to enforce such statutory public duty.

27. In view of the fact that control of the State Government on the appellant is all pervasive and the employees had statutory protection and therefore the appellant being an authority or even instrumentality of the State would be amenable to writ jurisdiction of the High Court under Article [226](#) of the Constitution. It may not be necessary to examine any further the question if Article [226](#) makes a divide between public law and private law. Prima facie from the language of the Article [226](#) there does not appear to exist such a divide. To understand the explicit language of the Article it is not necessary for us to rely on the decision of English Courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article [226](#) while empowering the High Court for issue of orders or directions to any authority or person does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article [226](#) of the Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any Government. Under Clause (1) of Article [367](#) unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article [372](#) apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. "Person" under Section [2\(42\)](#) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporated or not. Constitution is not a statute. It is a fountain head of all the statutes. When the language of Article [226](#) is clear, we cannot put shackles on the High Courts to limit

their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals whether incorporated or not, or even an individual. Right that is infringed may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article [226](#) of the Constitution is so vast, this court has laid down certain guidelines and self-imposed limitations have been put there subject to which High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. High Court does not interfere when an equally efficacious alternative remedy is available or when there is established procedure to remedy a wrong or enforce a right. A party may not be allowed to by-pass the normal channel of civil and criminal litigation. High Court does not act like a proverbial 'bull in china shop' in the exercise of its jurisdiction under Article [226](#).

28. We, therefore, hold that appellant is an authority controlled by the State Government and the service condition of the employees of the appellant particularly with regard to disciplinary proceedings against them are statutory in nature and thus writ petition was maintainable against the appellant. To this extent, we agree with the High Court. However, disciplinary proceedings were held against the respondents in accordance with law with due observance of the rules of natural justice. The judgment of the High Court is, therefore, not correct to that extent.

In the instant case, the respondent is the District Cooperative Central Bank. It is the contention of the respondents that it is the Cooperative Society and the Government has no control over it. The Bank is governed by its own bye-laws and that there are no statutory rules. It is contended that the Bank is managed by a Managing

Committee, which is an elected body and the Government except to have power to appoint a Special Officer, has no other say in the matter. However, the learned counsel for the petitioner submits that the respondent is a Bank which has funded by NABARD and APCOB and as per Section 115-D(3) there is 25% of the paid up share capital and that a representative of the State is also nominated on the Managing Committee and hence, it is a State.

The learned counsel for the petitioner also submits that the perusal of the provisions of Section 115-B & D of the A.P.Cooperative Societies Act, 1964 clearly shows that the respondent Bank answered description of 'State' or 'Instrumentality' and thereby amenable to the writ jurisdiction of the High Court. Section 115-D(2) and (3) are relevant which reads as under:

“Sec.115-D Special provisions applicable to Co-operative Credit Societies:-

Notwithstanding anything contained in the Act, the following provisions shall apply to the Co-operative Credit Societies, namely:-

(1)(a) (b) (c).....

(2) The Co-operative Credit Society shall have autonomy in all financial and internal administrative matters, subject to the guidelines of Reserve Bank of India/National Bank for Agriculture and Rural Development in the following areas:-

- (i) Interest rates on deposits and loans,
- (ii) Borrowing and investments,
- (iii) Loan policies and individual loan decisions,
- (iv) Personnel policy, staffing, recruitment, positing, and compensation for the audit.
- (v) Internal control systems, appointment of auditors and compensation for the audit.

(3) (a) The State Government's equity in a Co-operative Credit Society shall not exceed 25% of the paid up share capital. The Society Co-

operative Credit Society may reduce the State equity further at its choice.

(b) There shall be only one Government nominee on the managing committee of the Andhra Pradesh State Co-operative Bank/District Co-operative Central Bank as long as the equity of Government continues and there shall be no Government nominee on the managing committee of a Primary Agricultural Co-operative Credit Society;

Provided that the existing nominee(s) on the managing committee shall continue till the expiry of their current term. However, they shall not have any voting right in any election or in the motion of no confidence.

In view of what has been laid down by the Hon'ble Supreme Court in ***U.P.State Coop.Land Development Bank Ltd. V. Chandra Bhan Dubey*** (6 supra) and also the Full Bench decision of this Court in ***Sri Konaseema Coop.Central Bank Ltd. V. N.Seetharama Raju*** {AIR 1990 AP 171}, I have no hesitation in holding that the respondent-District Cooperative Central Bank Limited is an Authority, controlled by the State Government and the service conditions of the Employees of the Bank, particularly with regard to the disciplinary proceedings against them are statutory in nature and therefore, the writ petition is maintainable.

In view of the foregoing discussions, it is held that the impugned order dated 27.09.2004 passed by the 1st respondent is liable to be set aside.

The Writ Petition is accordingly allowed. The impugned order dated 27.09.2004 is set aside. Since the writ petitioner has already attained the age of superannuation on 30.09.2004, he cannot be directed to be reinstated, but, however, he is entitled to all retirement benefits that are payable to a retired employee. The period of

suspension of the petitioner i.e. from 25.06.2004 to 27.09.2004 shall be treated as in service. The respondents are directed to pay all retirement benefits to the petitioner within a period of 3 (three) months from the date of receipt of a copy of this order. In the circumstances, there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date:30.12.2015

Dsr

[\[1\]](#) (1998) 6 SCC 651

[\[2\]](#) (1995) 6 SCC 749

[\[3\]](#) (2009) 2 SCC 570

[\[4\]](#) (2003) 8 SCC 639

[\[5\]](#) 2006 AIR SCW 3723

[\[6\]](#) (1999) 1 SCC 741