

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

Judgment reserved on August 11, 2015

Judgment delivered on September 04, 2015

+ **W.P.(C) 8216/2002**

S.K. DHAWAN

..... Petitioner

Through: Mr.N.K. Vohra, Advocate with
Mr. Jitender Vohra, Advocate

versus

UNION BANK OF INDIA & ORS.

..... Respondent

Through: Mr. O.P. Gaggar, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition is to the order of suspension dated February 21, 1998, charge-sheets dated November 22, 1997 and October 13, 1999, findings of the Enquiring Authorities dated March 17, 1999 and February 25, 2000, orders of penalty dated November 30, 1999 and January 18, 2001 and Appellate orders dated August 12, 2000 and August 18, 2002 and Review order dated June 18, 2002.

2. As noted from the above, two charge-sheets were issued to the petitioner, dated November 22, 1997 and October 13, 1999.

3. During the course of his submissions, Mr.N.K. Vohra, learned counsel for the petitioner had given up the challenge to the charge sheet

dated November 22, 1997, and the consequential orders passed thereof. Hence the challenge to the charge-sheet dated November 22, 1997, Enquiry Officer's report dated March 17, 1999, penalty order dated November 30, 1999, Appellate Authority order dated August 12, 2000 is rejected.

4. Insofar as the charge-sheet dated October 13, 1999 is concerned, the facts are, the petitioner was appointed as Clerk on March 01, 1966 in the respondent bank. Between the period May 16, 1996 and February 20, 1998, the petitioner was posted as Chief Manager in Grade IV at Branch Office Sadar Bazar, Delhi. On February 21, 1998 while the petitioner was working in the Khari Baoli branch of the bank as Branch Manager, he was put under suspension pending departmental investigation. On September 28, 1998, a show cause notice was issued to the petitioner seeking his reply within 7 days of the receipt of the same. The show cause notice is of approximately 14 pages detailing certain omissions and commissions on the part of the petitioner. The petitioner submitted his reply vide letter dated May 24, 1999 which was a very brief one, wherein he has stated that he has not committed any act of commission inter-alia warranting any disciplinary action. Be that as it may, on October 13, 1999 Articles of Charge was issued to the petitioner, which reads as under:-

“This has reference to the explanation dated 14.5.99 submitted by Shri S.K. Dhawan, Manager, Zonal Audit Office, Delhi in reply to memorandum no.CO:IRD:7429/98 dated 28.9.98.

Shri Dhawan is informed that the explanation submitted by him has not been found either convincing or satisfactory as the fact remains that Shri Dhawan while working as Officiating Chief Manager at Sadar Bazar branch accommodated M/s. Asian International and M/s. Manish International by various means inspite of the fact that he was aware both these accounts are sister concerns of M/s. Redson Tea Ltd., account at Karol Bagh branch for which limit has been sanctioned by General Manager. He also accommodated M/s. Excel Cardmon Co. by purchasing cheques and allowing overdrafts in current account.

The aforesaid acts constitute the following misconducts and he is hereby charged of the same:

- 1. Doing acts unbecoming of a Bank Officer;*
- 2. Failure to take all possible steps to ensure and protect the interest of the Bank;*
- 3. Failure to discharge his duties with utmost honesty, integrity, devotion and diligence;*
- 4. Acting otherwise than in his best judgment in the performance of his official duties.*

Shri Dhawan is informed that memorandum no.CO:IRD:7429/98 dated 28.9.98 will form the statement of allegations for this Articles of Charge.

Shri Dhawan is further informed that Shri P.S. Khuntia, CDI, Central Vigilance Commission, Satarkata Bhawan, GPO Complex, Block-A, INA, New Delhi has been appointed as Inquiring Authority to inquire into the aforesaid charges levelled against him. The date, time and place of enquiry will be intimated to Shri Dhawan directly by the Inquiring Authority. Shri Dhawan, if he so desires, may submit his written statement of defence directly to the Inquiring Authority within 10 days from receipt hereof by him.”

5. A perusal of the charge-sheet would reveal that the Disciplinary

Authority had decided that the show cause notice dated September 28, 1998 will form the statement of allegations of the articles of charge. It also reveal that the disciplinary authority had directed the petitioner to submit the written statement of defence to the Enquiry Officer namely Mr.P.S. Khuntia, CDI, CVC. Pursuant to enquiry, the Enquiry Officer submitted his report on February 25, 2000. The petitioner submitted representation to the enquiry report. Pursuant thereto the Disciplinary Authority vide order dated January 18, 2001 imposed on the petitioner a penalty of removal from the services of the bank with immediate effect. The petitioner preferred an appeal dated February 21, 2001 to the Appellate Authority, who dismissed the appeal on February 18, 2002.

6. Mr.N.K. Vohra, learned counsel for the petitioner has urged several grounds against the impugned orders, including the ground that the Disciplinary Authority in violation of the sub-Regulation 3 of Regulation 6 of Union Bank of India Officer Employee's (Discipline & Appeal) Regulations, 1976 ("Regulations of 1976" in short) did not afford the petitioner a statutory codified opportunity to file written statement of defence in rebuttal to the charge-sheet dated October 13, 1999, moreso when in the said charge-sheet serious allegations of misconduct inasmuch as (i) doing acts unbecoming of a Bank Officer; (ii) Failure to take all possible steps to ensure and protect the interest of

the bank; (iii) Failure to discharge his duties with utmost honesty, integrity, devotion and diligence; (iv) Acting otherwise than in his best judgment in the performance of his official duties, have been made against the petitioner which did not form part of the show cause notice dated September 28, 1998. It is his submission that the disciplinary proceedings having been initiated with the issuance of the charge-sheet and the issuance of a charge-sheet had culminated into penalty of removal from service, the Disciplinary Authority ought have sought, reply to the charge-sheet and considered the same in accordance with the Regulations of 1976 before even appointing an Enquiry Officer. According to him, the directive of the Disciplinary Authority to submit his written statement of defence directly to the Enquiry Officer is an unknown procedure under the Regulations of 1976 and the enquiry and the subsequent proceedings/orders stand vitiated, and need to be set aside. He would rely upon the following judgments in support of his submissions:-

(i) M.P. Rajput vs. Union Bank of India & Ors. (2009) V AD (Delhi) 330

(ii) Punjab National Bank vs. H.N. Wadhwa, LPA 191/2007 decided on March 04, 2013

7. On the other hand, Mr.O.P. Gaggar, learned counsel appearing for

respondent No.1 would submit that the scope of judicial review in cases related to departmental proceedings is very limited and this Court would not like to re-appreciate the findings of the Enquiry Officer, nor interfere with the order of the Disciplinary Authority and Appellate Authority. He would rely upon the judgment of the Supreme Court in the case reported as **(1995) 6 SCC 749 B.C. Chaturvedi vs. Union of India**, wherein the Supreme Court held that the decision making process is amenable to judicial scrutiny and not the decision itself. Further, he would rely upon the judgment of the Supreme Court in the case reported as **(2003) 4 SCC 364 CMD, United Commercial Bank vs. P.C. Kakkar** that the irregularities in financing can be a ground for dispensing with the service of an officer/employee of the bank. He would also by relying upon the judgment of the Supreme Court in the case reported as **(2011) 4 SCC 584 State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya** state, a bank employee stand on a different footing, loss of confidence would be a sufficient ground to justify the dismissal of an employee.

8. That apart it is his submission that the charges against the petitioner are of making unauthorized advances which were not sanctioned by the Competent Authority; failure to take adequate securities and other financial irregularities, had exposed the bank to heavy bad loans of Rs.1.7 Crores. According to him, the case of the

petitioner was that advances to the parties were result of instructions of higher up is totally baseless. He should have had written instructions or as a precautionary measure should have sent a note for approval of such authority. No such noting is available in the records, absence of which shows that the petitioner has acted on his own and not on instructions.

9. On the submissions made by the learned counsel for the petitioner, Mr.Gaggar would state that an exhaustive show cause notice dated September 28, 1998 was issued to the petitioner stating all acts of misfeasance. The petitioner was required to reply to the same within 7 days and was granted liberty to inspect records of the bank for the said purpose. The petitioner replied to the same denying all the allegations which are part of the petitioner's documents. The same show cause notice was made as statement of allegations in the charge-sheet dated October 13, 1999. According to him, the charges are just formal accusations. It is only the statement of allegations which were specific. The proving of those allegations could lead to proving of the charges. He would state that the statement of allegations have been culled out by the Enquiry Officer as specific accusations on which the evidence has been discussed and findings arrived at. These specific allegations have been given to the petitioner on September 29, 1998 itself and the formal Articles of Charge were made on October 13, 1999. The petitioner was

required to reply to the allegations. He availed the opportunity to answer the allegations, and denied the same.

10. On the judgment relied upon by the learned counsel for the petitioner in the case of ***M.P. Rajput's*** case (supra), learned counsel for the respondent No.1 would submit that the same is on the peculiar facts of that case, which was based on the judgment of the Supreme Court in the case reported as ***(2001) 2 SCC 330 State of Punjab vs. V.K. Khanna***, wherein in para No.34 the Supreme Court held that the authority concerned has to apply its mind on the reply to the charge-sheet or show cause, as the case may be, as to whether a further enquiry is called for or not. This implies, if the authority had applied mind on the reply to either charge-sheet or show cause, then there is a substantial compliance. He would also rely on the judgment of Karnataka High Court in the case reported as ***ILR 1992 Karnataka 219 K.E.B. vs. T.S. Venkatrangaiah***, which according to him is contrary to the judgment in ***M.P. Rajput's*** case (supra). He states that in that case the Karnataka High Court in spite of a specific rule i.e. Rule 11(4) of Karnataka Civil Services Rules, 1957 requiring calling for the written statement of the chargesheeted officer before appointing an Enquiry Officer, the Court held that unless prejudice can be proved and a contemporaneous objection taken by the chargesheeted officer, the breach of the same shall not vitiate the enquiry

proceedings. He would rely upon the judgment of the Supreme Court in the case reported as *AIR 1996 SC 320 State Bank of Bikaner and Jaipur & Ors. vs. Prabhu Dayal Grover* to contend, if there is a substantial compliance with a Rule, then principles of natural justice have not been vitiated. He would also rely upon the judgment of the Supreme Court reported as *AIR 2005 SC 3742 National Fertilizers Ltd. & Anr. vs. P.K. Khanna* in support of his submissions.

11. In the last, it is his submission based on the judgment of the Supreme Court in the case reported as *AIR 1996 SC 1669 State Bank of Patiala & Ors. vs. S.K. Sharma*, that the rules of procedure have to be treated differently than the substantive provisions. The procedural rules are directory, whose breach should not be considered fatal to the enquiry proceedings. It is his submission that the denial of opportunity to file reply to the charge-sheet was a procedural requirement and the enquiry would not be vitiated on that ground.

12. Having heard the learned counsel for the parties and perused the written submissions/synopsis filed by them, noting that several grounds have been urged by the learned counsel for the petitioner, which were equally rebutted by the learned counsel for the respondents, one ground urged by the learned counsel for the petitioner is appealing and need to be accepted, is in relation to the denial of opportunity to submit written

statement of defence. The Regulation 6 of Regulations of 1976 inter-alia stipulates as under:-

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6(3) Where it is proposed to hold an inquiry, the Disciplinary Authority shall frame definite and distinct charges on the basis of the allegations against the Officer Employee and the Articles of Charge, together with a Statement of the allegations, on which they are based, shall be communicated in writing to the Officer Employee, who shall be required to submit within such time as may be specified by the Disciplinary Authority, (not exceeding 15 days) or within such extended time as may be granted by the said Authority, a written statement of his defence.

6(4) On receipt of the written statement of the Officer Employee, or if not such statement is received within the time specified, an inquiry may be held by the Disciplinary Authority itself, or if it considers it necessary to do so appoint under Sub-Regulation (2) an Inquiring Authority for the purpose.

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

6(5) The Disciplinary Authority shall, where it is not the Inquiring Authority, forward to the Inquiring Authority:-

- (i) a copy of the Articles of Charge and Statement of Imputations of misconduct or misbehaviour;*
- (ii) a copy of the written statement of defence, if any, submitted by the Officer Employee;*
- (iii) a list of documents by which and list of witnesses by whom the Articles of Charge are proposed to be substantiated;*
- (iv) a copy of statements of the witnesses, if any;*
- (v) evidence proving the delivery of Articles of Charge under Sub-Regulation (3).*
- (vi) a copy of the order appointing the ‘Presenting Officer’ in terms of Sub-Regulation (6).”*

13. A perusal of the same would reveal, it deals with the procedure to be followed by the Disciplinary Authority while imposing major penalty. It is a matter of record that the charge-sheet issued to the petitioner was for major penalty. Sub Regulation 3 stipulates that the Disciplinary Authority shall frame definite and distinct charges on the basis of allegations against the officer/employee. The Articles of Charge together with the statement of allegations on which they are based shall be communicated in writing to the officer/employee who shall be required to submit within such time as may be specified by the Disciplinary Authority not extending 15 days or within the extended time as may be granted, a written statement of defence. On receipt of the written statement, the Disciplinary Authority itself or if it considers it necessary to do so appoint under sub-Regulation 2 an Enquiry Officer for that purpose, but it may not be necessary to hold an enquiry, if the Charged Officer admits the charge(s).

14. A similar provision with regard to Union Bank of India had come up for interpretation on identical facts before this Court in the case of *M.P. Rajput's* (supra), where a charged officer was denied the right of reply to the charge-sheet issued to him. This Court in para No.13 noting similar provisions of the Union Bank of India has in para No.15 framed a question whether appointment of an Enquiry Officer would stand

vitiated, if that is done without first giving delinquent employee a chance to submit his written statement of defence. This Court relying upon the judgment of the Supreme Court in the case of **V.K. Khanna's** (supra), wherein in para No.34 the Supreme Court has held that *“it is well settled in service jurisprudence that the authority concerned has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in affirmative the inquiry follows but not otherwise”*, was of the view that in terms of the judgment of the Supreme Court it is inescapable viz. the appointment of the Enquiry Officer before even the receipt of the written statement of the petitioner would be in violation of Sub-Rule (3), (4) & (5) of the Regulation 6. The effect would be that the entire proceedings conducted by the Enquiry Officer and the punishment imposed on that basis would also stand vitiated.

15. That apart this Court in the case of **H.N. Wadhwa's** (supra) has also on a similar issue wherein on an additional charge the Charged Officer was not asked to submit the written statement of his defence, this Court through the learned Single Judge held that the employer failed to give an opportunity to the employee to file written statement of defence before commencement of enquiry, which failure was serious enough to

vitiating the enquiry to the extent of additional charge which conclusion was upheld by the Division Bench in view of Regulation 6 of the New Bank of India Officers Employees' (Discipline and Appeal) Regulations, 1982. The Division Bench in para No.6 has stated as under:-

“6. The purpose of giving an opportunity to the employee concerned to submit a written statement of his defence is to enable him to satisfy the Disciplinary Authority, by way of his reply, that the charges served upon him were not tenable and called for no inquiry. If the Disciplinary Authority is satisfied with the written statement of defence submitted by employee, he is not required to hold an inquiry against him and may decide to drop the proceedings initiated by him. Therefore, by not giving an opportunity to the respondent to file his written statement of defence, the appellant deprived him of this valuable opportunity to satisfy the Disciplinary Authority that the charges against him did not warrant an inquiry.”

16. This issue of denial of filing the written statement was pleaded by the petitioner in his submissions/representation dated May 15, 2000 on the findings of the Enquiry Officer, wherein in para Nos.3 & 14 he has stated as under:-

“3. The articles of charge dated 13-10-1999 is itself defective, illegal, unreasonable, unwarranted, unjustified, unconstitutional, wrong and therefore, inoperative in law for the reasons mentioned hereinbefore and after these humble submissions. It flagrantly and manifestly violates Regulation 6(3) of Union Bank of India Officers Employee Regulations, 1976.

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14. The Impugned Articles of Charge is incomplete,

illegal, unreasonable, unjust, uncalled for, infirm, defective, improper, invalid, unconscionable and does not conform to the provisions of Regulation 6(3), no penalty can lawfully be imposed on this Undersigned for the impugned Disciplinary proceedings.”

17. The Disciplinary Authority has not considered in his order dated January 18, 2001 this ground/objection raised by the petitioner in his representation/submissions dated May 15, 2000. Even in appeal the petitioner had taken a ground, which is as under:-

“3. In the conduct of impugned departmental proceedings, all the sub-regulations of Regulation 6 of UBIOE (D&A) Regulations 1976, have flagrantly been violated to the prejudice of the poor appellant herein, no order of penalty prescribed in regulation 4 of UBIOE (D&A) Regulation 1976 can lawfully be passed in this case.”

18. The Appellate Authority by a brief order rejected the appeal. Similar is the position in the Review Petition filed by the petitioner, wherein in para No.49 the petitioner had stated as under:-

“49. All the sub-regulations of Reg 6 of UBOIOE (D&A) Reg. 1976, and principles of natural justice, in the conduct of impugned proceedings, have been flagrantly violated.”

19. The Reviewing Authority also by a brief order rejected the Review Petition. It is not a case that the ground as urged by the petitioner now was not urged before the authorities below.

20. The submission of Mr.Gaggar that the opportunity to give reply to

the charge-sheet is a procedural requirement and would not amount to violating the principles of natural justice or any prejudice can be said to have been caused to the petitioner need to be rejected. As has been seen, Sub-Regulation (3), (4) & (5) of Regulation 6 provides the procedure to be followed by the Disciplinary Authority. The reply to the charge-sheet is relevant as on consideration the Disciplinary Authority may drop the charges or proceed with the enquiry. The fact that the Disciplinary Authority on consideration of the reply may drop the charges, surely would suggest the Sub Regulation (3) & (4) is not procedural or directory but a mandatory one. Being a mandatory provision, the test of prejudice or the theory of substantial compliance would not be applicable in view of the judgment of the Supreme Court in ***S.K. Sharma's*** case (supra).

21. That apart, insofar as the submission of Mr.Gaggar, that the petitioner had already filed a reply to the show cause notice dated September 28, 1998 and the allegations in the show cause notice being part of the charge-sheet, no useful purpose could have been served by seeking reply to the charge-sheet also needs to be rejected for the reason, as noted above, the charge-sheet also details the following misconducts, which were not alleged against the petitioner in the show cause notice, rightly so, as that was not a charge-sheet initiating disciplinary

proceedings under Regulation 6 of the Regulations of 1995.

- “1. Doing acts unbecoming of a Bank Officer;*
- 2. Failure to take all possible steps to ensure and protect the interest of the Bank;*
- 3. Failure to discharge his duties with utmost honesty, integrity, devotion and diligence;*
- 4. Acting otherwise than in his best judgment in the performance of his official duties.”*

22. The misconduct(s) imputed against the petitioner are of very serious nature with regard to his honesty, integrity, devotion and diligence. The petitioner need to have been given an opportunity on the misconduct(s) imputed for the first time in the charge-sheet. Further, the Disciplinary Authority acknowledges the right of the petitioner to file a written statement but the directive to file the written statement of defence before the Enquiry Officer is not contemplated under Regulation 6. The statement of defence should and must be considered by the Disciplinary Authority before even appointing an Enquiry Officer to conduct the enquiry. This writ petition needs to be allowed in view of the position of law, noted above. The impugned orders dated February 25, 2000, January 18, 2001, August 18, 2002 and June 18, 2002 are set aside.

23. During the course of the submissions, it has been represented that the petitioner has since attained the age of superannuation. The charges

relate to the year 1997, the show cause notice was issued in 1998 and the charge-sheet was issued in the year 1999. In these circumstances, neither there can be an order of reinstatement nor an order for a fresh enquiry. Accordingly, from the date of dismissal till he would have attained the age of superannuation the petitioner would be entitled to 50% of the salary and allowances for the said period and consequential benefits on his retirement shall also be granted.

24. The writ petition is allowed in terms of the above. Rule is made absolute with no order as to costs.

(V.KAMESWAR RAO)
JUDGE

SEPTEMBER 04, 2015