

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

Judgment Reserved on: July 02, 2015

% *Judgment Delivered on: July 14, 2015*

+ **LPA 534/2009**

K.V. KULKARNI

..... Appellant

Represented by: Ms.Vasudha Indurkar, Adv.

versus

BANK OF INDIA AND ORS.

..... Respondent

Represented by: Mr.Jagat Arora, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. K.V.Kulkarni while working as Chief Manger of Bank of India was dismissed from service pursuant to an inquiry on November 21, 1989 which order was upheld by the appellate authority vide order dated April 19, 1990. K.V.Kulkarni filed a writ petition being W.P.(C) No.1609/1990 before this Court challenging the two orders of dismissal which writ petition was dismissed by the learned Single Judge of this Court on August 13, 2009 and hence the present appeal.

2. The allegations of misconduct against K.V.Kulkarni were of abusing his official position to accommodate M/s.Harrison Tyres Company, a borrower of the branch, to the detriment of bank's interest interalia by realising facilities exceeding his delegated authority and not reporting the same immediately to any superior authority knowing fully well that M/s Harrison Tyre Company was an offshoot of M/s Kanishka Tyres and Tubes Pvt.Ltd. and was operated from the same premises with common Director

and same stock. The accommodation to M/s Harrison Tyre Company to the detriment of the bank's interest was to the extent that even the specific written advice incorporated in the letters dated July 16, 1982 and September 12, 1985 of Punjab National Bank, Sonapat was ignored, cash credit facilities were allowed in contravention of banks procedure and LCs were allowed to be opened despite the cash credit and DP accounts of the party being grossly out of order.

3. Before proceeding further it would be relevant to note the scope of interference by the Court in disciplinary proceedings. In the decision reported as AIR 1999 SC 625 Apparel Export Promotion Council vs. A.K.Chopra the Supreme Court held:

“17. The High Court appears to have over-looked the settled position that in departmental proceedings, the Disciplinary Authority is the sole judge of facts and in case an appeal is presented to the Appellate Authority, the Appellate Authority has also the power/and jurisdiction to re-appreciate the evidence and come to its own conclusion, on facts, being the sole fact finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in Writ Jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since, the High Court does not sit as an Appellate Authority, over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot normally speaking substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or the Departmental Appellate Authority, is either

impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though Judicial Review of administrative action must remain flexible and its dimension not closed, yet the Court in exercise of the power of judicial review is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial Review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hal-tom in Chief Constable of the North Wales Police v. Evans [1982] 3 All ER 141, observed :

The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court."

4. Three issues have been raised by learned counsel for K.V.Kulkarni challenging the validity contending that principles of natural justice have been violated. The three issues are; the inquiry officer violated the principles of natural justice by denying K.V.Kulkarni an opportunity to cross-examine the witness George Thomas whose examination-in-chief was conducted on November 24, 1988 and the petitioner's request for deferring the cross-examination was declined, though the defence representative was away to Tis-Hazari for his work; secondly, K.V.Kulkarni was not permitted to examine the dropped witnesses of the prosecution i.e. the prosecution dropped number of witnesses and thus K.V.Kulkarni wanted to examine two

of them which permission was declined and thus K.V.Kulkarni was prejudiced in disproving the case against him and thirdly, K.V.Kulkarni was not permitted to lead defence evidence, as his witnesses were not permitted to be examined ostensibly on the ground that written statement of the witnesses had not been filed therefore, the relevancy to examine those witnesses was not known to the inquiry officer.

5. With regard to the first issue denying K.V.Kulkarni an opportunity to cross-examine the witness George Thomas it would be relevant to note the proceedings of November 24, 1988 before the inquiry officer. The inquiry officer in the order sheet dated November 24, 1988 noted that when the Presenting Officer was asked to proceed to examine George Thomas PW-2, K.V.Kulkarni submitted that his defence representative Shri Bihari was stuck up at Tis-Hazari Court in connection with some case of Karol Bagh branch and thus prayed for adjournment till the next date. On the Presenting Officer pointing out that George Thomas, the witness had come from outside and requested that his examination-in-chief and subsequent cross-examination be completed on that date, K.V.Kulkarni agreed to it. Having agreed to the examination-in-chief and cross-examination of George Thomas to be conducted in the absence of his defence representative, though in his presence, K.V.Kulkarni cannot now turn around and say that principles of natural justice have been violated. A perusal of the evidence of George Thomas PW-2 would reveal that when opportunity to cross-examine was granted, K.V.Kulkarni stated that he did not want to cross-examine the witness. Thereafter the Presiding Officer put questions to George Thomas who replied the same.

6. In the decision reported in 1996 (3) SCC 364 State Bank of Patiala

and others vs.S.K.Sharma the Supreme Court while laying down the scope of interference by a Court in disciplinary proceedings held that even where there are no rules/ regulations/ statutory provisions incorporated, the principles of natural justice are implicit in the very nature of the action/order however, the principle of natural justice cannot be reduced to any hard and fast formulae, the object being to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. A distinction ought to be made between violation of the principle of natural justice and violation of a facet of the said principle. In other words distinction is between "no notice"/"no hearing" and "no adequate hearing." It was illustrated that a case where the person is dismissed from service without hearing him altogether would be a case falling under the first category and the order of dismissal would be invalid or void, however, where a person is dismissed from services without supplying him a copy of the inquiry report or without affording him a due opportunity of cross-examining a witness it would be a case falling in the latter category, that is, violation of a facet of the set rule of natural justice in which case, the validity of the order has to be tested on the touch stone of prejudice.

7. Regarding the second and third ground that K.V.Kulkarni was not permitted to examine two of the witnesses dropped by the Presenting Officer as defence witnesses and his defence witnesses as the inquiry officer before summoning the witnesses wanted to know the relevancy of the evidence of these witnesses, K.V.Kulkarni stated that he cannot be compelled to disclose his defence and all that was required for him to disclose was that the witnesses were relevant from all angles i.e.relevancy of time, place and first-hand knowledge of the subject matter of the inquiry. The inquiry officer

vide order dated December 10, 1988 observed that despite repeated opportunities given to K.V.Kulkarni to explain the relevancy of the examination of these witnesses whom he intended to examine in defence, he has not been able to explain the same, rather he has taken the stand that he cannot be compelled to disclose his defence. The said stand is not tenable and in the absence of any relevancy forthcoming of the examination of the witnesses requisitioned by K.V.Kulkarni, the inquiry officer found it difficult to summon the witnesses, however, still to provide an opportunity of an effective defence the inquiry officer permitted K.V.Kulkarni to submit the evidence of these witnesses in examination-in-chief in the form of written statements duly signed within two weeks from the date of the order. Thus the evidence of the witnesses was duly permitted and K.V.Kulkarni having failed to submit the examination-in-chief of his witnesses cannot now turn back and say that the conduct of the inquiry officer in refusing to examine his witnesses on the ground of relevancy was clearly prejudicial to him.

8. In the decision reported as AIR 1966 SC 269 The State of Bombay (now Maharashtra) vs. Nurul Latif Khan the Supreme Court emphasised the requirement that the inquiry officer is bound to regulate the proceedings and if a charge sheeted officer starts examining the departmental witnesses in irrelevant manner such cross-examination can be checked and controlled and if the officer desires to examine witnesses whose evidence may appear to the inquiry officer to be thoroughly irrelevant, the inquiry officer may refuse to examine such witnesses but in doing so he will have to record his special and sufficient reasons.

9. Thus, none of the issues raised by the appellant merit any

consideration for the reason neither there is a violation of principle of natural justice nor a facet thereof and while regulating the proceedings the inquiry officer clearly recorded the reasons and provided adequate opportunity to K.V.Kulkarni to examine his witnesses by filing written statements so that their relevancy was evident. It is well settled that in a case of loss of confidence in the officer by the Bank it would be a futile exercise of judicial review to embark upon the decision of the disciplinary authority removing the officer from service preceded by an inquiry unless the decisions are tainted with malafide or in violation of natural justice. No such case has been made out. [See 2007 (I) LLJ 728 Suresh Pathrella and Oriental Bank of Commerce]

10. Consequently, the present appeal is dismissed.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

JULY 14, 2015
‘ga’