

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.1087 of 1995

Date of decision: 22.9.2016

New Bank of India – 1 and anr.

...Appellants

Versus

Shri Bhag Singh

...Respondent

CORAM: HON'BLE MR.JUSTICE GURMIT RAM

Argued by: Mr. G.S. Bajwa, Advocate
for the appellants.

Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Abhishek Arora, Advocate
for the respondent.

GURMIT RAM, J.

This regular second appeal has been instituted by above-said appellants - herein (defendants) against the judgment and decree dated 8.2.1995 passed by the learned Additional District Judge, Jalandhar vide which the appeal filed by them (defendants) against the judgment and decree dated 7.1.1991 passed by the Court of learned Sub Judge Ist Class, Jalandhar, decreeing the suit of the plaintiff with costs, was dismissed with costs.

2. The case of the respondent – herein (plaintiff) before the learned trial Court in nutshell was that he was posted and working as a Manager, New Bank of India, Branch Begowal when he was issued a charge-sheet which was received by him on 14.2.1986 containing following charges:

- (i) for having acted in a manner unbecoming of an officer of the bank;*
- (ii) for having acted in a manner prejudicial to the interest of the bank;*
- (iii) for having acted otherwise than in his best judgement while discharging his duties;*
- (iv) for having failed to discharge his duties with utmost integrity, honesty and diligence; and*
- (v) for having failed to ensure and protect the interests of the bank.*

Along with the charge-sheet, there was also a statement of allegations in support of articles of charges. Thereafter, he also received another charge-sheet dated 2.6.1986 containing the following charges:

- (i) for acting in a manner prejudicial to the interest of the bank;*
- (ii) for failing to discharge his duties with utmost integrity, honesty and diligence;*
- (iii) for failing to ensure and protect the interest of the bank;*
- (iv) for acting in a manner unbecoming of an officer of the bank;*
- (v) for acting otherwise than in his best judgement while discharging his duties; and*
- (vi) for committing criminal breach of trust by misappropriation of cash amounting to Rs.3,50,000/-.*

The respondent – herein (plaintiff) replied to both the above-said charge-sheets whereby denying all the charges.

It was the further case of the respondent – herein (plaintiff) that

Sh.Karan Singh, his paternal uncle died on 1.4.1982 and as such, he proceeded on leave. Unfortunately, his father Sh.Jagat Singh also died on 10.4.1982 while he was on leave. During the period when he was on leave, Sh.R.S. Chhanna was working as Officiating Manager of the bank and Sh.Ram Rattan as Cashier. This Officiating Manager along with the other staff members came to the residence of respondent – herein (plaintiff) on 7.4.1982 and asked him to attend the office on next day since he had to attend an interview. Accordingly, he attended the office on 8.4.1982 for a single day. The said Sh.R.S. Chhanna again continued as Officiating Manager since 10.4.1982 by taking charge from the plaintiff. During this period, this Officiating Manager had asked Sh.Ram Rattan, Cashier for physical verification of the cash, which was ultimately checked on 19.4.1982 and a cash of Rs.3,50,000/- was found short. The matter was reported to the Regional Office and FIR No.122 dated 21.4.1982 was got lodged. Ram Rattan, Cashier as well as the plaintiff were arrested in this criminal case. This case was tried by the Court of Additional Chief Judicial Magistrate, Kapurthala which was decided on 25.2.1986 whereby acquitting the respondent – herein (plaintiff) and convicting Ram Rattan, Cashier. Ram Rattan, Cashier preferred an appeal in this regard which was decided by the Court of learned Additional Sessions Judge, Kapurthala on 21.5.1986 upholding his conviction. No appeal or revision was preferred by the State against the acquittal of the respondent – herein (plaintiff).

3. The above-said second charge-sheet was received by the respondent – herein (plaintiff) after his acquittal in the abovenoted criminal case. This charge-sheet was stated to be defective being not drawn in accordance with the rules, against principles of natural justice, not issued by

the competent authority, his reply to the charge-sheet was also not considered

by the competent authority i.e. General Manager etc. etc. The alleged inquiry against him was not conducted in accordance with the bank rules and regulations.

It was further his case that the Punishing Authority i.e. General Manager (Personnel) had differed with the Inquiry Officer and gave his own reasoning and ultimately imposed the impugned punishment. No show-cause notice was issued to the plaintiff as to why he be not punished with fresh reasoning. Further, this authority also imported personal knowledge and extraneous consideration while arriving at the conclusion to hold the plaintiff guilty of the charges levelled against him. Herein the reference was made to Rule 6 (10), (11) and (12) of the New Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1982 (hereinafter to be referred as the Regulations, 1982).

4. It was further his case that although the Inquiry Officer exonerated him but General Manager (Personnel) terminated his services vide the impugned order dated 10.10.1986 which was stated to be cryptic one and not supported by the evidence on the record. The alleged shortage in the cash was occurred during the period when he was on leave. Then it was further his plea that as per the prescribed procedure, the cash and keys of the chest remain in the joint custody of the Manager and Cashier, which is to be daily checked and tallied. An appeal was preferred by him against the order dated 10.10.1986 which was rejected by the Appellate Authority vide order dated 24.3.1987. Both the above-said orders impugned in the instant suit were stated to be illegal, null and void being against the rules as well as principles of natural justice, which necessitated to file this suit.

5. Notice of the suit was given to the defendants, who appeared and

filed joint written statement wherein they took preliminary objections that the suit is barred under the provisions of Specific Relief Act; that plaintiff was trying to enforce a contract of personal services through a declaration which was not permissible under the law; that there was no violation of Regulations, 1982 while conducting the departmental action against the plaintiff; that the suit was bad for not properly valuating it for the purpose of Court fee and jurisdiction; that it was also bad for non-joinder of necessary parties and that the Civil Court is not to sit over the judgment of the departmental officers nor the evidence on record can be re-appreciated.

On merits, it was anyhow admitted that plaintiff was posted and working as Manager as alleged in the plaint. It was also admitted that two charge-sheets dated 14.2.1986 and 2.6.1986 containing allegations as mentioned in para No.2 of the judgment were also issued to him. Then it was also admitted that plaintiff submitted his replies to the above-said charge-sheets. But in this connection, it was pleaded that in the reply it was a simple denial without specifically denying the allegations in detail. It was further pleaded that Inquiry Officer came to the definite conclusion that plaintiff was guilty of various charges levelled against him on the basis of the record placed before him. In the instant suit, the plaintiff was trying to build up a story which was neither put up by him before the Inquiry Officer nor the same was otherwise tenable. The Disciplinary Authority as well as Appellate Authority considered his defence whichever was taken by him before the Inquiry Officer. Then the Court of Additional Chief Judicial Magistrate, Kapurthala vide judgment dated 25.2.1986 had held that plaintiff definitely was a party to the fraud and the main accused Ram Rattan was in connivance with him, though the Court did not convict him (plaintiff) on account of strict proof required for conviction in a

criminal case. He was acquitted on the basis of benefit of doubt. Copy of the judgment was produced by plaintiff himself before the Inquiry Officer during the inquiry as Ex.O.E.10.

Then it was admitted that second charge-sheet was served upon the plaintiff after his acquittal in the above-said criminal case, which was stated to be perfectly in consonance with the rules and regulations applicable to the plaintiff. It was further the plea of the defendants that at the relevant time, there was no Joint General Manager working and as such, the General Manager an authority higher in rank initiated the proceedings, charge-sheeted, appointed the Inquiry Officer and passed the dismissal orders dated 10.10.1986. The plaintiff was given full opportunity to cross-examine the official witnesses. All the evidence and documents were taken on record in his presence. After the inquiry which was conducted as per rules and law, the Inquiry Officer submitted a detailed report to which the General Manager (P) concurred and passed the speaking order in his way of writing. It was denied that plaintiff was exonerated of the charges. In this connection, it was pleaded that the charges levelled against the plaintiff had been proved during the inquiry. Rest of the allegations were also denied by the defendants.

6. Replication was filed. From the pleadings of the parties, following issues were framed:

- 1. Whether the impugned orders dated 10.10.1986, 24.3.1987, are wrong, illegal, null and void etc.? OPP.*
- 2. Whether the suit is not properly valued? OPD.*
- 3. Whether the suit is bad for non-joinder of parties? OPD.*
- 4. Whether the matter in dispute is not justiciable in the Civil Court? OPD.*
- 5. Whether the suit is barred under the provisions of Specific Relief Act?*

OPD.

6. Relief.

7. Learned trial Court (Sub Judge Ist Class, Jalandhar) after hearing the counsel for both the parties and perusing the record, recorded findings on issue No.1 in favour of the plaintiff, on issues No.2 to 5 against the defendants and decreed the suit of the plaintiff for declaration vide the impugned judgment and decree dated 7.1.1991.

8. Feeling aggrieved from the judgment and decree of the learned trial Court, the defendants preferred an appeal which was dismissed by the Court of learned Additional District Judge, Jalandhar vide judgment and decree dated 8.2.1995.

9. The appellants – herein (defendants) being aggrieved from the above-said judgment and decree dated 8.2.1995 passed by the learned Additional District Judge, Jalandhar have come up before this Court vide the instant appeal, notice of which was given to the respondent – herein (plaintiff). Record of both the Courts below was also requisitioned.

10. Counsel for both the parties were heard and record was also perused with their able assistance.

11. Learned counsel for the appellants has contended that both the Courts below while recording findings in favour of respondent – herein (plaintiff) have relied upon the case law to a considerable extent as laid down by the Hon'ble Apex Court in ***Union of India and Others Versus Mohd. Ramzan Khan, 1991(1) SLR 159 (SC)***. Herein, he has contended that this approach of learned both the Courts below is totally erroneous for the reason that the law laid down in Mohd. Ramzan's case (supra) was to be followed in

authority after the decision of this case i.e. 20.11.1990 and not to those cases in which order of punishment in question was passed before the decision of this case. In other words, he has contended that the law laid down in said Mohd. Ramzan's case (supra) was to be applied prospectively and not retrospectively. In order to further elaborate his contention, he submitted that the impugned order dismissing the respondent – herein (plaintiff) from his service was passed by the punishing authority on 10.10.1986 and in the appeal filed against this order, the Appellate Authority passed the order on dated 24.3.1987 whereby dismissing the appeal. Then it is further his contention that both the orders impugned in this suit were prior to the decision of Mohd. Ramzan's case (supra) and as such this case law has no applicability to the case in hand. In support of his contention, he has sought the strength from the case law as delivered by the Hon'ble Apex Court in Managing Director, ECIL, Hyderabad Versus B. Karunakar, 1993(4) Supreme Court Cases 727 which is an elaborate authority. He has referred to the relevant portion of paras No.7, 8 and 37 of this judgment which are reproduced as under:

Para No.7:

What emerges from the above survey of the law on the subject is as follows:

Since the Government of India Act, 1935 till the 42nd Amendment of the Constitution, the Government servant has always the right to receive report of the Inquiry Officer/authority and to represent against the findings recorded in it, when the Inquiry Officer/authority was not the disciplinary authority. This right was however, exercisable by him at the second stage of the disciplinary proceedings viz., when he was served with a notice to show cause against the proposed penalty. The issuance of the notice to show cause against the penalty necessarily required the

furnishing of a copy of the inquiry Officer's report since, as held by the Courts, the right to show cause against the penalty also implied the right to represent against the findings on the charges. This was considered to be an essential part of the 'reasonable opportunity', incorporated earlier in [Section 240](#) (3) of the GOI Act and later in [Article 311\(2\)](#) of the Constitution as originally enacted. The right to receive the Inquiry Officer's report and to show cause against the findings in the report was independent of the right to show cause against the penalty proposed. The two rights came to be confused with each other because as the law stood prior to the 42nd Amendment of the Constitution, the two rights arose simultaneously only at the stage when a notice to show cause against the proposed penalty was issued. If the disciplinary authority after considering the Inquiry Officer's report had dropped the proceedings or had decided to impose a penalty other than that of dismissal, removal or reduction in rank, there was no occasion for issuance of the notice to show cause against the proposed penalty. In that case, the employee had neither the right to receive the report and represent against the finding of guilt nor the right to show cause against the proposed penalty. The right to receive the report and to represent against the findings recorded in it was thus inextricably connected with the acceptance of the report by the disciplinary authority and the nature of the penalty proposed. Since the 42nd Amendment of the Constitution dispensed with the issuance of the notice to show cause against the penalty proposed even if it was dismissal, removal or reduction in rank, some courts took the view that the Government servant was deprived of this right to represent against the findings of guilt as well. The error occurred on account of the failure to distinguish the two rights which were independent of each other.

Para No.8:

Both administrative reality and public interests do

not, therefore, require that the orders of punishment passed prior to the decision in Mohd. Ramzan Khan's case (supra) without furnishing the report of the Inquiry Officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account. Hence we hold as above.

Para No.37:

Accordingly I hold that the ratio in Mohd. Ramzan Khan's case would apply prospectively from the date of the judgment only to the cases in which decisions are taken and orders made from that date and does not apply to all the matters either became final or pending decision at the appellate forum or in the High Court or the Tribunal or in this Court.

In support of his above contention, further he has also referred to another authority of Hon'ble Apex Court titled as **Debotosh Pal Choudhary Versus Punjab National Bank, 2002(4) S.C.T. 451** wherein it was held as under:

It is true that the petitioner was not provided with a copy of the enquiry report by the disciplinary authority before imposition of the punishment of dismissal, but that circumstance has no bearing on the dismissal of the petitioner in view of the decisions of this Court in Ramzan Khan's case (supra) and [Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors., 1994\(1\) S.C.T. 319 \(SC\) : 1993 \(4\) SCC 727](#). The said two decisions are to the effect that no order of punishment before the date of the decision in Ramzan Khan's case would be challengeable on the ground that there is failure to furnish inquiry report before imposing the punishment by the disciplinary authority. In the present case, the punishment had been imposed upon the petitioner by the disciplinary authority on October 8, 1988 long before the decision of this Court in Ramzan Khan's case on 20.11.1990.

12. But on the other hand, learned counsel for the respondent – herein (plaintiff) has contended that this case does not relate to supply or non-supply of the copy of the report of the Inquiry Officer. He has submitted that no doubt it is a case in which punishing authority concurred with the findings of the Inquiry Officer vide which he (Inquiry Officer) held the delinquent official guilty of the three charges out of 11 charges levelled against him and further at the same time the punishing authority differed from the findings of the Inquiry Officer qua two other charges of which the Inquiry Officer did not held him guilty. Herein he has also contended that on the said two charges, the punishing authority recorded his findings on the basis of its own reasoning and held the delinquent official guilty of the said two charges also in addition to the three charges of which the Inquiry Officer had held him guilty. Learned counsel for the respondent – herein (plaintiff) has contended that in case the punishing authority differs from the findings of the Inquiry Officer on any of charges of which the Inquiry Officer did not hold the delinquent official guilty and the punishing authority records its own reasoning for holding him guilty of the said charges also, then in that eventuality, the delinquent official is to be given an opportunity of hearing by issuing him some sort of notice in order to enable him to submit his explanation that the findings recorded by the Inquiry Officer qua the charges of which he was not held guilty are the correct one and the same need not be disturbed. It is further his contention that in the case in hand, no opportunity was given to the delinquent official by the punishing authority to submit his explanation of the two charges qua which the punishing authority differed from the findings of the Inquiry Officer and held the delinquent official guilty of said two charges also in addition to the three charges of which the delinquent official was held guilty

by the Inquiry Officer. The case in hand does not strictly fall within the purview of ratio as laid down in Mohd. Ramzan's case (supra).

In support of his contention, he has cited certain case laws which are discussed as under:

(1) **Punjab National Bank Versus Kunj Behari Misra, 1998(3) SCT 833**, wherein it was held as under:

The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

(2) **Yoginath D. Bagde Versus State of Maharashtra, 1999(4) S.C.T. 403**, wherein it was held as under:

In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded

by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of [Article 311\(2\)](#) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under [Article 309](#) of the Constitution.

(3) **State Bank of India and others Versus N.P. Narayanan Kutty, 2003(3) S.C.T. 743.** The principles laid down in Punjab National Bank Versus Kunj Behari Misra's case (supra) were also followed in this case law. In addition to this, it was held as under:

That we find it difficult to accept the contention advanced on behalf of the appellants that unless it is shown that some prejudice was caused to the respondent due to non-issuance of show cause

notice, the order of dismissal could not be set aside by the High Court.

13. It is an admitted case of both the parties that respondent – herein (plaintiff) was charge-sheeted vide two charge-sheets dated 14.2.1986 and 2.6.1986 containing 5 and 6 charges, respectively. Then it is also undisputed that out of these 11 charges, the Inquiry Officer held the respondent – herein (plaintiff) guilty after the due inquiry on three charges vide his report. Then it is also an admitted fact that the punishing authority concurred with the findings of the Inquiry Officer qua three charges of which the Inquiry Officer had found him to be guilty. Now the main fact which is to be seen is that as to whether the punishing authority differed from the findings of the Inquiry Officer qua two charges of which Inquiry Officer held the respondent – herein (plaintiff) to be not guilty. A perusal of the impugned order dated 10.10.1986 manifests that the punishing authority differed from the findings of Inquiry Officer qua two charges i.e. (i) giving of fictitious crop loan (ii) criminal breach of trust and misappropriation of cash amounting to Rs.3.50 lacs. With regard to advancing of fictitious crop loan, the punishing authority as per the impugned order observed that Bhag Singh (plaintiff) produced a copy of the voter list in order to show that some of the borrowers did exist, but that does not absolve him of granting loan to such person without completing requisite formalities envisaged under the rules of the bank. This charge, to the mind of punishing authority stands established.

With regard to the charge of criminal breach of trust and misappropriation of the said cash amount, the punishing authority relied upon certain observations/passing references made by the criminal Court in the judgment delivered in criminal case instituted against Ram Rattan, the Cashier

and respondent – herein (plaintiff) Bhag Singh. But it is a fact that the respondent – herein (plaintiff) was not given any opportunity to explain his position for the reasonings on the basis of which the punishing authority held him guilty on the above-said two charges, which charges as per Inquiry Officer were not proved against the respondent – herein (plaintiff). Then it is also to note that any observations/passing references made in any judgment cannot be made the basis for holding any official guilty in any departmental inquiry/proceedings. It is only the final outcome of the case which is to be seen and matters for getting its benefit in any said proceedings or anywhere-else as per law. It is undisputed that respondent – herein (plaintiff) was acquitted in above-said criminal case and no appeal or revision was filed against his acquittal either by the State or by the appellants – herein (bank).

14. In the light of the principles laid down in **Punjab National Bank Versus Kunj Behari Misra's, Yoginath D. Bagde Versus State of Maharashtra** and **State Bank of India and others Versus N.P. Narayanan Kutty's** cases cited supra, the above contention of learned counsel for the respondent – herein (plaintiff) is held to be tenable and consequently, the above contention of learned counsel for the appellants stands declined. The matter would have been different if the punishing authority had passed the impugned order on the basis of the findings of Inquiry Officer on three charges of which the Inquiry Officer had held the delinquent official guilty, without differing his opinion from the findings of the Inquiry Officer qua the abovesaid two charges and in that eventuality, the above contention of learned counsel for the appellants was to be maintainable.

15. Learned counsel for the appellants has also contended that if there is a legal defect in the impugned orders, then the matter may be remitted to the

quarter concerned for holding fresh inquiry into the matter from the stage at which the inquiry in question is held to be defective. But in the case in hand, there is no default on the part of the Inquiry Officer while conducting the proceedings of the inquiry in question and as such the question of remitting the matter to the quarter concerned for holding the fresh inquiry does not arise at all. The only defect in the impugned order as above discussed is that the punishing authority did not issue any notice to the respondent – herein (plaintiff) to submit his explanation qua the reasonings on the basis of which he (Punishing Authority) differed from the findings of Inquiry Officer qua the above-said two charges before passing the impugned order.

Moreover, the allegations on the basis of which this inquiry was initiated against the respondent – herein (plaintiff) were pertaining to the transaction held in April, 1982. Since then a period of more than 34 years has already elapsed. It does not appeal to any valid reasons to re-open any matter after a gap of more than 34 years.

16. In the light of the above discussion, this appeal stands dismissed being meritless and disposed of accordingly.

22.9.2016
Brij

(GURMIT RAM)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No