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

Reserved on: 05.04.2016
Pronounced on: 25.05.2016

\+	**LPA 873/2013, C.M. APPL.18441/2013**

PUNJAB NATIONAL BANK …………Appellant

Through: Sh. Vaibhav Kalra, Advocate.

Versus

SHRI GOPAL VASUDEVA ……..Respondents

Through: Sh. K.T. Anantharaman, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

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1. The Punjab National Bank (successor to the original respondent, New Bank of India, hereafter called "PNB") appeals the judgment of a learned Single Judge, allowing the writ petition of the respondent workman and directing his reinstatement. The workman was aggrieved by the award of the Central Government Industrial Tribunal (CGIT) dated 20.07.1992 which upheld PNB's order dismissing him from its service on proven misconduct.

2. The workman had joined the services of the bank in 1971 as a clerk at the Agra Branch. He was transferred to the Kanpur Branch and worked there from 01.05.1971 till 17.06.1972 after which he was transferred to the Ghaziabad branch. He alleged that the PNB management did not like him

because he was active in trade union activities. He was placed under suspension with effect from 29.05.1973 and issued the first charge sheet on 16.06.1973. This charge sheet referred to his previous lapses, recorded in a Memo dated 22.02.1973, which was initially refused but in respect of which on 02.03.1973, he accepted his fault and gave his unconditional apology. Those charges were reiterated in this charge sheet, which also alleged as follows:

> *"v) That it has been found now that your work and conduct were not above board, while you were posted at Kanpur, branch, as well, is evident from the following disturbing factors, which have come to light only recently:-*
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> *a) That a debit entry pertaining to the Cheque No. 020237 dated the 29' June, 1971 for Rs.603.87 of Messrs Poonam Electricals was posted in the account of Messrs Hira Nand Choith Ram instead of the party concerned on 1.7.1971. Reference in this connection is invited to the Bank's show cause notice No. EST/11035 dated the 4th May, 1973, inter alia, pointing out that as a consequence of the above said overt act, the Bank is likely to suffer a loss of Rs.173.56. This Memo has been duly acknowledged by you vide your evasive reply dated the 14th May, 1973.*
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> *vi) That yet another disturbing and distressing factor is that during your posting at the Kanpur Branch, when you were entrusted with the Bills work relating to M/s. Somani Steel Ltd., the said firm deposited a cheque No. 085200 for Rs.500/- drawn on the State Bank of India, Ferozepur, for credit to their account on realization, which was accepted by you as a representative of the Bank and entered in the O.B.C. Register under No. 201 dated 18.3.1972. This cheque was realised according to the Books of the Bank under your hand on 29.3.1972, but you instead of giving the credit to the right party viz. Messrs Somani Steel Ltd., credited the proceeds thereof in the sum of Rs. 495/- (after deducting the Banks collection charges) to the saving Bank Account no. 589 pertaining to one Shri Baboo Sharif, a close*

friend of yours. In furtherance of your above said dishonest intentions, you manipulated and/or fabricated the pay-in-slip dishonest under dated 4.3.1972 purporting to have been received in the account of the above said Shri Baboo Sharif, which the Bank has reasons to believe, that this document has been fabricated by you, by your abuse of your office and status in the employment of the Bank at the above said branch and having been entrusted with the duties of Bills work. In furtherance of your ill-designed objects and to set wrongful gain by the above said dishonest and fraudulent intention, you also in the Bills Register, in token of realization of the bill, made this entry cleverly and rather in a clandestine manner, so as to escape the attention of the checking official, thereby making yourself successful in this attempt to perpetuate the fraud in the aforesaid manner.

It is significant to state that in furtherance of the above said dishonest and fraudulent intentions on your part, the amount of Rs. 495/- the net proceeds of the above said Bill in question (after deduction of the Bank's charges) were withdrawn on the very next date i.e. on 30th March, 1972, by means of a cheque No. 003543 under the name and style of Baboo Sharif, the wrongful gainee pursuant to your dishonest and fraudulent acts.

vii) That it was only recently that the actual true depositor Messrs Somani Steel Ltd. Lodged a complaint and claimed the proceeds of the said cheque vide their letter dated the 1st May, 1973 that the Bank, after a good deal of search of the records, detected the above said fraudulent act on your part, on 17th May, 1973; when Shri Baboo Sharif was immediately contacted and apprised of the serious consequences. The said Sharif volunteered to pay back the wrongful gain and pursuant thereto deposited Rs. 500/- with the Bank so as to enable the Bank to at least recover the sum of Rs. 495/- as a consequence of the wrongful loss caused by your action.

viii) That your above said acts being of very serious and/or grave nature, you were suspended by the Bank vide its Registered A.D.

Communication No. EST/16274 dated the 29th May, 1973 and further directed not to leave the station without permission, but, the Bank has reasons to believe that you have also defied this very reasonable and lawful order of the Bank as well, in having left Ghaziabad and remaining at Delhi, which action of yours is equally subversive of discipline and among others, creates hindrance in proceedings with the matter.

ix) That it is significant to state that on being confronted the above said serious acts of misconduct involving moral turpitude and/or business of character which are, amongst others, nothing short of cheating by fraudulent means. You offered to tender your resignation for which you asked for time. But, your subsequent action belief this assurance, as a consequence of which the Bank had to suspend you vide Registered A.D. communication dated 29th May, 1973 at your Delhi address, as you had left Ghaziabad without any authorised permission.

x) The Bank, which is credit institution, because of your overt acts has suffered, among others, in respect of its reputation and/or service to its constituents, which as a credit institution it can ill afford.

(B) CHARGES
1. For cheating the Bank and/or causing wrongful loss to the Bank, by fabricating and/or tampering with the Bank's record by virtue of your being employed in the Bank at its Kanpur office among others by destroying and/or falsifying the documents and accounts relating to OBC No. 201 dated 18.3.1972 for Rs.500/- on the State Bank of India, Ferozepur, deposited by Messrs Somani Steel Ltd. and causing wrongful gain to Mr. Baboo Sharif by fraudulent means as detailed above.
2. For committing gross negligence and/or negligence by wrongful debit of Rs.603.67 in the account of Messrs Hira Nand Choith Ram instead of M/s. Poonam Electricals on 1.7.1971 by means of a cheque no. 020237 dated 29.6.1971 (reference as detailed above and stated in the Banks communication No. EST/11035 dated the 4th May, 1973).

3. For wilful damage and/or attempt to cause damage to the property of the Bank and/or its constituents.

4. For acting prejudicially to the interests of the Bank involving the Bank into serious loss.

5. For commission of acts involving moral turpitude.

6. For loss of confidence.

7. For gross negligence and/or negligence involving and/or likely to involve the Bank into serious loss.

8. For disobeying lawful and/or reasonable orders of the Management and/or of the superiors.

9. For absence without leave and/or over staying the sanction leave without sufficient grounds.

10. For unseemly and/or insolent attitude towards the officers of the Bank.

11. For committing acts prejudicial to the interests of the Bank adversely affecting the reputation of the Bank."

3. The workman was given a memo which reads as under:-

"Smt. Champa Wati, a saving bank depositors (SB A/C No. 487) has yesterday lodged the following complaints to the undersigned:-
I the depositor of S/B A/C No. 487 in your Bank came to your Bank on 16.5.1973 for withdrawal of Rs.200/- from my account. The clerk on the counter told me that the form was not correct another may be filed. I asked him to file the form himself and I would sign it. So he has filed the said form and I signed it & I got Rs.200/- on that date. But the previous form was not returned to me by the Clerk on counter and so it remained with him. Next

time on 22.5.73 also I withdraw Rs.100/-. But when I attend the Bank on 23.8.73 I was surprised to find that Rs.200/- are shown as withdrawn in my account on 24.5.73, which I never withdrew. So the counter clerk appear to have committed mischief & I am made to loss Rs.200/-, from my account which is not but fraud with me.

As per Bank's record one Shri Anup, another saving Bank Depositor (SB A/C No. 430) has taken the payment of the said withdrawal on 24.5.73. On further scrutiny of the Bank's records we observe that the said gentleman was introduced to the bank by you. As per statement of Mr. Anup you delivered the said withdrawal from of Rs.200/- of Smt. Champa Wati to him at Delhi and obtained cash against it telling him that you were not going to attend office on 24.5.73.

It is also clear from the Bank's record that the withdrawals for Rs.200/- dated 16.5.73 was filled in and posted in the Ledger by you. It also appears that the date of the said withdrawal form has been tempered with & changed to 24.5.73.

You are hereby required to please show cause:-

1) *Why the withdrawal from Rs.200/- which was held by you as incorrectly filled in was not returned to the depositor on 16.5.73?*

2) *How & why was the date altered into 24.5.73?*

3) *How & why was it later made fraudulent use of?*

4) Why did you obtain Rs.200/- in cash against the said withdrawals form from another depositor entreating him that you were not to attend office on 24.5.73 and that he should get it cashed? Your reply should reach this office within two days from the receipt of this letter, otherwise it will be presumed that you have no explanation to offer.
sd/
Manager"

4. The workman submitted his reply which was not found satisfactory; he was served with a second (supplementary) charge sheet dated 04.10.1973 and in that charge-sheet it was alleged that:-

> *"Further to the bank's charge sheet No. EST/13695 dated 16.6.1973 sent through Registered A.D. Post, yet more startling facts about your conduct, character and/or integrity have come to light resulting into issuance of a Memo No. 6105 dated 25.8.1973 to you by the Manager, Branch Office, Ghaziabad which has been duly acknowledged by you vide your letter dated 3.9.1973.*
>
> *It is significant to state that although you are in full know of the facts in respect of defalcation committed by you against Smt. Champa Vati, a Savings Bank depositor of the Bank at Branch Office, Ghaziabad (S.B. A/C No. 487) in the sum of Rs.200/- by using one Shri Anoop Vohra, another Savings Bank depositor of the Branch as an instrument for completing the said defalcation as detailed in our said Memo, yet you were allowed to have inspection of the record despite the fact that your request in the behalf was an afterthought. But you did not come forward to inspect the documents-so much so, you managed to get the Registered A.D. Communication dated 4.9.1973, returned though you cannot escape the responsibility as the Branch Office, Ghaziabad, by way of abundant caution, had sent a copy thereof to you by ordinary post simultaneously, which having not been received back, is presumed to have been received by you.*
>
> *The facts stated in the above said Memo. dated 25.8.73 be read as part of the charge sheet dated 16.6.1973.*
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> *Still another disturbing aspect of your having abused your office of employment in the bank that has come to light is that on 29.3.1973 your purchased cloth worth Rs.260.75 from M/s. Krishna Handloom Factory, Ghaziabad, on credit with the assurance that you would discharge your liability shortly, but until now you have not done so, which has resulted into a complaint from the said party. Your above act has undoubtedly*

lowered the prestige of the Bank.

In the circumstances you are hereby further charged in continuation of our previous charge sheet no. EST/13695 dated 16.6.1973 as follows:-

i) For committing defalcation in the sum of Rs.200/- in the S.B. account no. 487 of Smt. Champa Wati by sheer misrepresentation and for that purpose using one Shri Anoop Vohra as an instrument in furtherance of your above said illegal acts;

ii) For misusing your office and status by virtue of your employment at Ghaziabad Branch of the Bank in furtherance of committing the abovesaid fraud of Rs.200/-.

iii) For loss of confidence;

iv) For a baseness of character; and

v) For doing acts prejudicial to the interest of the bank. You are hereby called upon to submit your explanation, if any, to the above within seven days from the receipt hereof, failing which it shall be presumed that you have nothing to say in the matter, admit the same and in that eventuality the Bank may take such action against you as it may deem fit and proper in the circumstances of the case."

5. The workman refuted the allegations made against him. PNB found his replies unsatisfactory and so it ordered a formal enquiry and appointed an Enquiry Officer to inquire into the allegations of misconduct allegedly committed by the petitioner-workman. Whilst the enquiry into the two charge sheets was ongoing, PNB issued yet another charge sheet dated 24.04.1974 charging the workman of another act of abuse of office as a bank employee- for having taken a hand loan of ₹300/- from his colleague and giving him two post dated withdrawal forms of ₹50/- and ₹100/- which on

presentation by his colleague were dishonoured. This too was referred for enquiry to the same Enquiry Officer who was already holding enquiry against the petitioner in respect of other two charge sheets.

5. The Enquiry Officer started the enquiry on 14.02.1974 and concluded it on 04.09.1976. He furnished his report on 07.04.1979 to the Bank, holding that all the charges leveled against the workman, except Charge Nos. 8 and 9 in the first charge sheet-for which no findings were returned, were proved by the management. The workman was aggrieved and availed of his departmental remedies, including appeals to the highest authorities. These were of no avail; he was dismissed from service on 16.11.1979. He then demanded reinstatement and the dispute was referred for adjudication by the appropriate Government to the CGIT by notification dated 01.08.1991. The sole term of reference was as under:

> *"Whether the action of the management of New Bank of India in relation to the Branch office at Ghaziabad in dismissing from service Shri Gopal Vasudeva, clerk with effect from 16.11.79 is justified? If not, to what relief is the workman concerned entitled?"*

6. The workman filed a claim challenging the validity of the enquiry as also the Enquiry Officer's report. The respondent-management filed its written statement refuting the claim of the petitioner workman. The CGIT framed the following issues:

> *"1. What is the effect of the take-over of the New Bank of India Limited by the Central Government under the Banking Companies (Acquisition of Transfer and undertaking) Act?*
>
> *2. Whether the enquiry conducted against the workman was fair*

and proper?

3. As in order of reference."

7. The first issue was framed because in 1980 New Bank of India, which was earlier a private bank and the original employer, was taken over by the Central Government. The CGIT after recording evidence also did not give any relief to the petitioner and upheld the enquiry proceedings and the enquiry report. The decision of the management to dismiss the workman from service too was upheld by the Tribunal. The workman preferred a writ petition challenging the Award of the CGIT.

8. The CGIT, by the Award noticed that the workman did not appear in the witness box in his defence and rested his claim only on the contention that he was not provided reasonable opportunity as he was denied his alleged right to be represented by a lawyer. It was held that *"The only exception taken by the workman is that he was not permitted to be represented by Advocate."* The CGIT observed that:

> *"9. The parties in support of submissions also filled written arguments and the reply thereto. The only exception taken by the workman is that he was not provided to be represented by Advocate. The bank has refuted this contention equally with vehemence firstly on the ground that as per the Bipartite settlement dated 19.10.66 (as modified by Bank awards) which has acquired the statutory status, representation through an Advocate is not mandatory and that the nature of the charges leveled against the workman pertain to the area of Banking Practice & procedure, of which the workman must effectively chosen to cross examine the bank witness and led his evidence as well, as is evident from the record of proceedings/detailed findings of inquiry officer. The Bank has also submitted that even otherwise, the representation through Advocate does not from part of the natural justice as held by the Hon'ble Supreme Court*

in the case entitled Maharashtra State Board of Secondary and Higher Secondary Education Vs. K.S. Gandhi & Another reported in 1991 (2) JT(SC) 296, wherein it has been held that non-representation through Advocate of a delinquent person in the inquiry does not amount to denial of principles of natural justice.

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(iv) That the fraud as committed by the workman is duly proved in the departmental enquiry as well coupled with admission on his part. Thus, the action on the part of the bank is fully justified as per the verdict of the Hon'ble Supreme Court in AIR 1989 SC 1185. Further I am of the view that the charge do not involve the assistance of a legal practitioner as they are based upon documentary evidence and these documents have been filed by the Bank which are on record of the Tribunal, besides other records, the copies were duly furnished to workman in the enquiry."

10. I have carefully perused the detailed pleadings of the parties, duly supported by record of enquiry and submissions as discussed above, and am of the view that the bank has conducted the enquiry fairly by providing all reasonable opportunity to the workman. The request of the workman for being represented by Advocate also looses its weight when undisputedly, the workman has himself cross examined the bank witness at his will and even the bank had recalled the witness that had been examined ex-parte, because of the non-appearance of workman, in order to provide reasonable opportunity in this behalf as well. The enquiry has been conducted by a very senior officer of the Bank. The Disciplinary Authority of the high rank of General Manager had agreed with the findings of the Enquiry Officer applying his independent mind in the facts and circumstances of the case and has inflicted the punishment of dismissal from employment with reference to the record inclusive of past record, as distinctly dealt with in the findings of the enquiry officer and, thereafter considered by the disciplinary authority. The appellate authority *of the highest rank in the hierarchy of the Bank management i.e. Chairman has considered the submissions of the workman and rejected after applying his mind. Thus, the workman has been provided all reasonable and fair opportunity in conformity with service conditions. The workman has not been able to satisfy as to how he has been prejudiced by non-representation through Advocate, in face of the admitted position that he had himself been representing his case as well. The workman has also not chosen to appear as witness in the proceedings before the Tribunal but for the mere contention in pleadings, which further strengthen the case of bank duly supported by documentary evidence as discussed herein above."*

9. The learned Single Judge was of the opinion that denial of opportunity to be represented resulted in failure of justice to the workman. It was held that:

"18. In the present case the respondent's own case and as was observed by the Enquiry Officer also in his report that the charges leveled against the petitioner were quite grave. And for that reason only the respondent appears to have not only appointed a person as the its presenting officer in the enquiry who admittedly had been a practicing advocate before getting employment with the respondent bank but he was examined as the management's witness also. In these circumstances the denial of the petitioner's request to engage an advocate for the enquiry was certainly not justified and for this reason alone the decision of the CGIT is liable to be set aside and it has to be held that the enquiry conducted by the respondent was not a valid enquiry and is vitiated. The judgments cited by the learned counsel for the respondent are distinguishable on facts inasmuch as in none of those the question whether an employee facing enquiry is entitled to be represented by an advocate when the management appoints a presenting officer to represent it has been an advocate before joining service. In the case of Harinarayan Srivastav (supra), which was decided by a short order, the charges were found by the Supreme Court to be simple and in the bipartite settlement with the workers also there was no stipulation that the delinquent

employee could be permitted to represented by an advocate in domestic enquiry. Similarly in the other judgment relied upon by the learned counsel for the respondent the relevant Rules did not permit representation of the delinquents by an advocate in domestic enquiry and so it was observed that denial of representation by advocate to the delinquents did not amount to violation of the principles of justice. In the present case the petitioner had pleaded in the writ petition that the relevant bipartite settlement provided that the bank in its discretion could permit a workman to be represented in enquiry by an advocate. That claim of the petitioner was not denied by the respondent in its counter affidavit. In fact the respondent itself has placed on record alongwith its counter affidavit copy of the relevant term of bipartite settlement which shows that the management could permit representation of a delinquent employee by an advocate during the enquiry. So that was all the more a good reason for the respondent to have accepted the request of the petitioner. The contention raised on behalf of the management that since the petitioner had fully participated in the enquiry despite his having been denied the permission to bring an advocate he cannot have any grievance is not justified. It cannot be said that the petitioner should have simply walked out of the enquiry when his request was not accepted. If an employer decides to give appointment to advocates and then their services are availed of for representing it in domestic enquiries then it should permit the delinquent employee also to avail of the services of an advocate in the enquiry so that he is not put in a disadvantageous position. It is also significant to note that the petitioner had also made an alternative request to the enquiry officer that he should be permitted to be represented by an employee of the bank but that request was also turned down. In view of the aforesaid conclusion the decision of the CGIT that a proper enquiry was held against the petitioner-workman cannot be sustained and is liable to be set aside and accordingly is set aside. Since the respondent management had not asked for any permission to substantiate its charges before the CGIT itself in the event of enquiry being vitiated for any reason the dismissal of the petitioner-workman from service ordered by the respondent is

> *also set aside. Same was the conclusion of the Bombay High Court which was affirmed by the Supreme Court also in Bombay Port Trust case (supra) but it would be open to the respondent bank to adopt the course of action which was permitted by the Supreme Court in the said case after setting aside the dismissal of the employee concerned or to take any other decision which it may consider appropriate and in accordance with law."*

10. PNB argues that the learned Single Judge acted in error, because the judgment in *Board of Trustees of Port of Bombay v. Dilipkumar Raghavendranath Nadkarni* 1983 (1) SCC 124 was distinguished in number of judgments by the Supreme Court notably in *Dinesh Chandra Pandey v. High Court of MP & Anr.* (2010) 11 SCC 500 and *SBI and Ors v. Surender Kishore Endow & Anr.* JT 1994 (1) SC 217. Counsel argues that the circumstances in the banking industry are different and the *ratio* in the *Dilipkumar Nadkarni* is inapplicable in the facts of the present case.

11. Counsel argued that moreover, the workman was well conversant with bank practice and procedure and was able to defend himself in the inquiry proceedings effectively. That is the reason the respondent chose not to be represented by a member of trade union/federation during the inquiry proceedings despite the option available to him. No prejudice was caused to the delinquent employee by refusing his request to be represented by a lawyer. It is also argued that in *Syed Rahimuddin v. Director General, Council for Scientific and Industrial Research* (2001) 9 SCC 575 the Supreme Court held that after making request if a delinquent employee participates in the inquiry proceedings without any demur or protest, he is estopped from taking the plea at a later stage that the principles of natural justice were violated during the enquiry proceedings.

12. PNB's counsel next argues that the learned Single Judge failed to appreciate the fact that the appellant bank had lost confidence in the respondent employee as his continuous delinquent acts resulted in losses to the bank and also lowered the prestige and goodwill of the bank and that the bank, in dismissing such delinquent employee acted within the purview of settled law. PNB seeks support of this view in the light of *Divisional Controller, N. K.R.T.C. v. H. Amaresh,* (2006) 6 SCC 187.

13. Sh.. Anantharaman, learned counsel for the workman, contended that in the enquiry, though the Management was represented by a Presenting Officer (hereinafter referred to as "PO"), i.e. one Sh. Sarwan Singh, who is a legally qualified and experienced officer of the Bank and has been a practicing lawyer, the request of the Petitioner to be represented in the enquiry by a legal practitioner was summarily rejected, both by the EO and the Disciplinary Authority. The True copy of the letter of the Respondent dated 25.06.1974 in this regard is annexed as Annexure P-9 to the petition. A similar request made by the petitioner for being permitted to be represented by a legal practitioner or at least by a bank employee, for the limited purpose of assisting the petitioner in examining himself as a witness in the enquiry was also rejected by the EO. In this regard, the relevant extract from the enquiry proceedings dated 21.02.1976 is relied on.

14. It was argued that the PNB not only conducted the inquiry in a most unreasonable manner and prejudicial to the workman, but also failed to prove the charges. Counsel highlighted that the recording of evidence in the enquiry was completed on 04.09.1976 and even the written submission of the Petitioner had been submitted to the EO on 11.12.1976. Despite repeated letters, no action to reinstate him was taken; furthermore, it was only after a

legal notice that the report of inquiry was prepared on 07.04.1979 wherein he had come to perverse conclusions based on surmises and conjectures and held the Petitioner guilty and all the charges and had even impermissibly recommended the award of penalty of dismissal from service.

15. Learned counsel submitted that the evidence on record clearly revealed that the New Bank of India had gone to great lengths to frame the workman. He argued that in the course of the inquiry, the evidence and report of a handwriting expert had been relied on. The said witness, Ms. R.K. Vij, in the course of examination had stated that the signatures on a cheque said to have been manipulated by the workman, in fact were the signatures of Sh. D.N. Misra (MW-12), his superior officer. The expert witness clearly said that the cheque contained Sh. Misra's signature and that he made attempts to disguise it. This was in respect of a charge that the workman had wrongly credited a sum of ₹500/- in the account of one concern instead of the correct firm and caused loss to the PNB. It was submitted that in the larger interests of justice, the Court should not disturb the findings and judgment of the learned Single Judge, more so, because the workman died on 06.01.2016; he had already reached the age of superannuation in 2001.

Analysis and Findings

16. The principal issue is whether the learned Single Judge erred in holding that the workman was prejudiced because he was denied the opportunity to be represented. There is no denial of the fact that the management of the Bank had used the services of a Presenting Officer, who had prior legal experience and expertise; not only was he a law graduate; he had practiced law earlier. This placed the management in a distinct

advantage over the workman. The PNB, during the course of proceedings in the CGIT and even before the learned Single Judge, could not explain why the respondent workman was denied not only the facility of a legally trained defence counsel, but any representation at all. If for some reason, it were to be assumed that the PNB's policies impeded the participation of a legal counsel, yet the right of the charged employee to be represented by *someone in whom he could repose confidence* could not have been snuffed out altogether. There is absolutely no explanation why this omission should have been overlooked.

17. This Court does not agree with PNB, which argues that *Dilipkumar Nadkarni (supra)* is no longer the last word on the subject. There are, undoubtedly observations in *Harinarayan Srivastava v. United Commercial Bank and another* (1997) LLR 497 (SC) and *Gandhi (supra),* which suggest that a workman has no absolute right to legally trained counsel. Yet, the Courts have to be careful in weighing the materials while considering if the nature of the charges and all the circumstances are such that denial of legally trained representative (or any representative) to defend the charges vitiates the inquiry itself. *Endow (supra)* and subsequent judgments (*State Bank of Patiala v S.K. Sharma* AIR 1996 SC 1669) are indicative of the fact that natural justice cannot be placed in a straitjacket formula. All depends on the facts and circumstances of each case. Issues such as veracity of documents, analysis of facts and considering disputed facts may require experience and would require competent handling. To expect workmen to learn these technical aspects would be overambitious. The EO examined no less than 18 witnesses. The rejection of the argument of the workman on this aspect, on the ground that he cross-examined the witnesses, in our opinion, is of no

consequence. The workman was denied representation altogether; he had no choice but to proceed with the inquiry and defend himself as best as he could. This, in our opinion, was an utter travesty of justice.

18. Equally fundamentally, the handwriting opinion of the cheque-execution of which was denied by MW-12, (who alleged that the signature on it belonged to him, or contained his signatures)- showed that the witness had disguised his signatures. That MW-12 introduced tainted evidence, which was a false document, in our opinion, undermines the integrity of the enquiry. Such an action could have been explained only on the ground of bias.

19. The workman died during the pendency of the present appeal; he had attained the age of superannuation in 2001. His legal representatives have been impleaded. Considering the totality of circumstances, interests of justice *clearly* require that in the present case, the only appropriate relief is calculation of backwages for the entire period he was out of employment. The impugned judgment is, therefore, affirmed. There shall be no order on costs.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

MAY 25, 2016