

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

+ **LPA No. 958/2011**

% **Reserved on : 1st September, 2016**
Pronounced on : 9th November, 2016

K.S. KARDAM ...Appellant
Through : Mr.Ashish Pratap Singh, Advocate

Versus

UNION OF INDIA & ORS. ...Respondents
Through : Mr.Roshan Lal Goel, Advocate for
UOI.
Mr.A.B. Dayal, Sr. Advocate with
Mr.Kunal Anand, Advocate for R-2 to 4

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J.

This Letters Patent Appeal impugns the judgment dated 23rd September, 2011, dismissing W.P.(C) No.948 of 1991 filed by the appellant- K.S. Kardam.

2. The primary challenge is to the order dated 22nd February, 1989 passed by the Assistant General Manager of Syndicate Bank (Bank, for short) removing the appellant from service, and the order dated 4th July, 1989 passed by the General Manager of the Bank dismissing the review petition filed by the appellant against the punishment of removal. For the sake of convenience, we would like to discuss and decide the aerguments

raised by the appellant under separate headings as has been done in the impugned judgment.

Factual Challenge

3. The appellant was appointed as a clerk and had joined the service of the Bank on 3rd January, 1973. He was promoted as an Officer, Grade-I on 18th December, 1980 and posted at Meerut. The appellant had requested for transfer on account of the serious illness of his wife and was accordingly transferred and posted as the Assistant Manager at the Vasant Vihar Branch, New Delhi between 7th July, 1982 and 11th September, 1984. The appellant has stated that his younger sister aged 22 years was murdered by her in-laws on 19th February, 1984.

4. Certain discrepancies and wrong entries in the appellant's personal account and the customer accounts under his charge as the Assistant Manager at the Vasant Vihar Branch, New Delhi were revealed and uncovered. On 28th March, 1985, the appellant was placed under suspension on account of the alleged manipulations and discrepancies. By communication dated 13th May, 1985, the Assistant Manager (Vigilance) of the Bank wrote and asked the appellant to explain specific transactions between 7th July, 1982 and 11th September, 1984. The appellant, in his reply dated 29th May, 1985, inter alia, professed:-

"In the month of May 1984, when I was preparing the statement of my ODD A/c 12/82, I observed that certain debits are not entered in my OCC account. This raised a doubt in my mind that due to my mental imbalance I might have made inaccurate entries in the past also. I mentioned this to the Divisional Manager and also told him that I will go through my all accounts if and there was any mistake, I will tell him the

same. The Divisional Manager asked me to check all accounts and inform him, if there was any mistake. Accordingly, I did so in good faith and true to my good intention and where ever I detected the mistake I reported the same to the Divisional Manager.

As required my explanation in regard to various transaction mention in memo, it is difficult to explain each and every thing (transaction) at various stages without the documents. I would however, submit the following:

- (i) That all the discrepancies in the transaction when noticed were rectified by me either by preparation of slips, reimbursement or realization of money from the customers where there were wrong entries in their accounts (LD a/cs)
- (ii) That there is no monetary loss to the Bank.
- (iii) That there is no amount due to the Bank from me connected with the transactions mentioned in the memo.
- (iv) That all the transactions mentioned in the memo which relate to my personal accounts, there was sufficient margin/balance to my credit on the dates of transaction"

5. On 19th June, 1985, the suspension order was revoked with immediate effect, and the appellant was posted as the Officer (Inspection) in the Regional Inspectorate, New Delhi. On 7th March, 1986 a charge-sheet was issued under Regulation 6 of the Syndicate Bank Officer Employees (Discipline & Appeal) Regulations, 1976 (Regulations, for short). The contents of the charge-sheet pertained to transactions under taken by the appellant when he was posted as Assistant Manager at the Vasant Vihar Branch, New Delhi and may be summed up as under:-

- a. Overdraft Account: While working as an Assistant Manager at the Vasant Vihar Branch, New Delhi, between 7.7.1982 and 11.9.1984,

the appellant had made fictitious entries and unauthorized payments approximately amounting to Rs. 3120/- to his own overdraft and had attempted to adjust the said payments and entries by way of misappropriating the interest charged in respect of various Overdraft accounts.

b. Demand Loan Account: During the same period, the appellant was charged with making fictitious and unauthorized credit entries by misappropriating proceeds of credit received towards the income account and adjusting the same by raising unauthorized debit in the interest account. Further, the appellant had reduced the debit balance in his Demand Loan Account and misleadingly adjusted the same by misappropriating the proceeds of Credit advice by the branch in respect of the LD A/c of one Shri V. K. Narula.

c. Miscellaneous Transactions: The appellant overdrafted discounted cheques, made fictitious entries pertaining to unpaid discounted cheques and also made fictitious entries in the FCDD and CDD Register and appropriated the proceeds thereof. With regard to one particular L D A/c of Shri Dahiya, the appellant was charged with making fictitious credit entries to the said account and adjusting the same by misappropriating the proceeds from interest collected or credit advice received from the D.T.C. Extension Counter, from the funds received from the Foreign Exchange Processing Centre and credit received towards and interest collected from other L D Accounts. Lastly, the appellant was also charged with setting up a L D Account in the name of Manju Kaur without her knowledge and consent or obtaining the requisite documents and then making entries and cash remittances in the account by misappropriating proceeds of credit advice and credit received towards other L D accounts and adjusting and concealing the said misappropriation.

d. Foreign Currency: The appellant discounted Foreign Currency Notes worth 300 USD and did not account for the same in the books of the Branch but adjusted the entry relating to the discounted cheques by misappropriating overdue interest collected from another account to which cheques were discounted and funds from the Branch adjustment account.

6. The appellant in his reply to the charge-sheet on 30th April, 1986 had proclaimed:-

"No doubt there were entries some of which I could see at the Vigilance Cell in New Delhi, but I did not utilize them in my favour. When I found the inaccuracies in the entries I rectified the same by reimbursing the amount. Not only this at my own initiation I mentioned the facts about the inaccuracies which had crept in to the Divisional Manager of the branch and told him that I was reviewing my accounts and if there was my further mistake, I would let him know. Accordingly, I checked all accounts and informed him wherever there was any mistake."

The appellant had represented that the inaccuracies were not on account of failure to discharge duties with integrity, honesty and diligence, but were owing to the fact that he was mentally upset due to the severely deteriorating health of his wife who was suffering from Tuberculosis (3rd Stage), and also because of the death of his younger sister in which regard a Sessions case was pending. The appellant pleaded that on account of depression and due to a disturbed state of mind, the appellant did not notice and detect discrepancies in his accounts and some other accounts for which he was responsible in the Vasant Vihar Branch, where he was working as the Assistant Manager. Further, the appellant had immediately reported the details of the matter to the Divisional Manager and rectified the errors before any financial benefit, even a nominal one, could accrue to him.

7. By the letter dated 1st July, 1986, the appellant was informed that the explanations having been examined were found to be unsatisfactory. An Enquiry Officer had been appointed to conduct the departmental inquiry.

8. The enquiry took time and the proceedings concluded on 10th March, 1987. The appellant had contested the proceedings before the Enquiry Officer. The enquiry report dated 15th April, 1988 recorded specific findings in respect of each of the seven charges and held that the Management had established and proved several irregularities committed by the appellant. Reliance was placed on the ocular testimony of M.V. Maiya, Deputy Divisional Manager (Vigilance Unit), Regional Inspectorate, who had appeared as MW-1, as well as the documentary evidence, vide documents MEX-1 to MEX-140. It was also observed that the appellant, in his defense, had been unable to rebut or dislodge the evidence placed on record.

9. By the order dated 2nd May, 1988, the Personnel Manager, in his capacity as the Disciplinary Authority, dismissed the appellant from the service of the Bank for the acts of misconduct with immediate effect. This order of dismissal was communicated to the appellant vide letter dated 16th July, 1988, along with a copy of the enquiry report dated 15th April, 1988.

10. The appellant has challenged and questioned the factual findings recorded in the enquiry report with regard to all seven charges. Referring to the ledger accounts, the appellant has tried to explain each and every entry. Noticeably, no such attempt was made before the Single Judge when the writ petition was argued. In order to satisfy ourselves and ensure that no injustice has been done, we have examined the assertions made by the appellant but find the same to be devoid of merit. An attempt has been to obviate and trivialize the wrong and offer explanations and make assertions without any basis or foundation so as to confuse. Intermittently, the revelation was found to be an afterthought on the part of the appellant. Some of the charges and findings clearly expound the objective and purpose

behind the wrong and false entries. The assertion that the discrepancies and wrong entries were innocent and innocuous is inaccurate and a mask to cover the wrong doing.

11. The appellant had an overdraft account with a limit of Rs. 5000/-. Payments or credit entries to this account were reflected when the same did not relate to the overdraft account of the appellant, but to another person's account. The discrepancies, which are not a few but numerous and mostly relate to the overdraft account of the appellant, i.e. his personal account. Pertinently, these discrepancies had come to the notice of the Head of the Branch in June, 1984. The appellant had written letters dated 14th June, 1984 and 22nd June, 1984 stating and accepting that he had credited Rs. 700/- in his over draft account because of the errors. He had also accepted having made a credit entry of Rs. 565/- in his account, instead of crediting it to the interest account. These deposits necessarily establish that advantage or benefit had accrued. Charge No. IV related to foreign currency notes which were discounted to a customer on 25th November, 1983. The appellant had failed to make the relevant entries in the counting register maintained by the Branch. The foreign currency was not accounted for. An amount of Rs. 900/- which was discounted was adjusted by making an entry relating to the commission account. Another entry of Rs. 700/- was discounted by rounding of the credit pertaining to the commission account. It is apparent that the appellant did not challenge and question in extenso, the factual findings in the revision petition, except for making a general statement that he had not tried to take advantage or derive any benefit. The latter, we would observe, is an assumption, or at best a self-serving conclusion. The appellant having failed to show and establish that any finding in the enquiry

report and accepted by the authorities was factually perverse or that there was no evidence to support the same, the plea raised by him has to be rejected. In these circumstances, the first contention of the appellant with regard to the charges being factually incorrect would fail and has to be rejected.

Non-supply of the documents during the course of enquiry proceedings

12. Our attention was drawn to the order dated 29th October, 1986 recorded by the Enquiry Officer. The order states that the Charge-sheet dated 7th March, 1986 had been read out by the Enquiry Officer to the appellant, who was then asked to admit or deny the charges. The appellant had denied the charges and stated that he would be defended by his representative at the time of hearing. The Enquiry Officer had thereupon called upon the Presenting Officer to submit the list of documents and witnesses. The Presenting Officer had agreed to furnish the lists within 15 days. The appellant had consented. Referring to Regulation 6 (10) (b) of the Regulations, the following order was passed:-

" For the purpose of preparing his defence, the charged officer may

i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents listed; and the PO or any other officer authorised by him shall ensure the same;

ii) submit a list of documents and witnesses he wants for the inquiry;

iii) be supplied with copies of statements of witnesses, if any, recorded earlier and the inquiring authority shall furnish such copies not later than three days before the commencement of the examination of witnesses by me;

iv) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery or production of documents referred to in item (ii)"

13. The aforesaid order clearly records the direction issued for inspection of records and the supply of statements of witnesses, if any. Pursuant to the said order, the appellant had requested as many as 11 different sets of documents vide his letter dated 9th March, 1987. Receipt of the said documents was admitted by the appellant by way of an endorsement in the letter itself. Subsequently, the appellant wrote another letter dated 14th March, 1987 accepting that he had received a photocopy of the documents at Sr. No 1 and 4 to 8 mentioned in his previous letter, but a copy of the documents at Sr. No.2, 3 and 9 to 11 were not provided. This letter, however, has a note by the Enquiry Officer recording that the time for filing of the written statement stands extended up to 25th March, 1987. It is highlighted and emphasised that the appellant thereafter, never protested or claimed not being supplied with the documents. In the letter dated 12th February, 1987, the appellant confirmed having verified the documents at Sr. No. 1 to 140 which were relied upon by the Management. Even during the course of the hearing, the appellant has not specifically stated the documents or papers which were not supplied or made available for verification. In this context, the respondents' plea and argument that the appellant had never stated or complained of non-supply of documents in the revision petition, becomes significant and of relevance. It would establish that the appellant's assertion is a guise and pretence. The truth is to the contrary.

14. Apart from the aforesaid factual matrix, the impugned judgment correctly records that the enquiry related to the entries made during the course of banking transactions. The appellant was fully aware and conscious of the bank books containing these entries which he was asked to explain. This is apparent from the detailed response to the charge-sheet filed by the appellant. Earlier too, the appellant had responded to the notices and given his explanation. The respondents had submitted detailed written arguments dated 5th April, 1987 to which the appellant had replied vide written synopsis dated 27th May, 1987. The appellant did not assert or contend that he was not furnished with a copy of the documents relied upon by the respondents, thus hindering or preventing him from explaining and meeting the charges.

15. The impugned judgment correctly refers to the question of prejudice and has highlighted that the appellant had failed to show that he was unduly handicapped in preparing and putting forward his defence on account of the alleged failure of the respondents to supply him with a copy of the relevant documents. In *Syndicate Bank and Ors. Vs. Venkatesh Gururao Kurati*, (2006) 3 SCC 150, it has been observed:-

"15. Apart from this, the delinquent officer did not deny that the prosecution relied upon 218 documents and also 24 witnesses and the delinquent officer had an opportunity to cross-examine them and also examine the documents on basis of which the witnesses were cross-examined in the course of enquiry. The enquiry officer as stated earlier submitted a detailed report in which the delinquent officer did not deny at all, either by oral or written arguments, that he did not receive the cash from the cashier which was meant for the loanee. Learned counsel for the respondent vehemently urged that although the documents may not form part of the charges or be relied upon by the prosecution in the course of enquiry, denial of the same would

prejudice the delinquent's case because denial of contemporary documents deprive the right of the delinquent to set up an effective defence. We are unable to countenance such submissions at all, that the documents which do not form part of the charges or are relied upon by the prosecution during the course of enquiry, non-supply of which would cause any prejudice to the delinquent officer.

16. In the case of *Krishna Chandra Tandon v. Union of India* [(1974) 4 SCC 374 : 1974 SCC (L&S) 329] it is held in para 16 as under: (SCC pp. 380-81)

“16. Mr Hardy next contended that the appellant had really no reasonable opportunity to defend himself and in this connection he invited our attention to some of the points connected with the enquiry with which we have now to deal. It was first contended that inspection of relevant records and copies of documents were not granted to him. The High Court has dealt with the matter and found that there was no substance in the complaint. All that Mr Hardy was able to point out to us was that the reports received by the Commissioner of Income Tax from his departmental subordinates before the charge-sheet was served on the appellant had not been made available to the appellant. It appears that on complaints being received about his work the Commissioner of Income Tax had asked the Inspecting Assistant Commissioner Shri R.N. Srivastava to make a report. He made a report. It is obvious that the appellant was not entitled to a copy of the report made by Mr Srivastava or any other officer unless the enquiry officer relied on these reports. It is very necessary for an authority which orders an enquiry to be satisfied that there are prima facie grounds for holding a disciplinary enquiry and, therefore, before he makes up his mind he will either himself investigate or direct his subordinates to investigate in the matter and it is only after he receives the result of these investigations that he can decide as to whether disciplinary action is called for or not. Therefore, these documents of the nature of inter-departmental communications between officers preliminary to the holding of enquiry have really no importance unless the enquiry officer wants to rely on them for his conclusions. In that case it would only be right that copies of the same should be given to the delinquent. It is not the case here that either the enquiry officer or the Commissioner of Income Tax relied on the report of Shri R.N. Srivastava or any other

officer for his finding against the appellant. Therefore, there is no substance in this submission.”

17. In the case of *Chandrama Tewari v. Union of India* [1987 Supp SCC 518 : 1988 SCC (L&S) 226 : (1987) 5 ATC 369] , at SCC p. 521, para 4 it was held by this Court:

“However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges, instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied upon by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recording finding of guilt against him. On a careful consideration of the authorities cited on behalf of the appellant we find that the obligation to supply copies of a document is confined only to material and relevant documents and the enquiry would be vitiated only if the non-supply of material and relevant documents when demanded may have caused prejudice to the delinquent officer.”

18. In our view, non-supply of documents on which the enquiry officer does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents, which are relied upon by the enquiry officer to arrive at his conclusion, the non-supply of which would cause prejudice, being violative of principles of natural justice. Even then, the non-supply of those documents prejudice the case of the delinquent officer must be established by the delinquent officer. It is well-settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice."

Similarly, in *State of Punjab and Another Vs. Hari Singh*, (2008) 11 SCC 85, it has been observed:-

"13.....There is nothing to indicate that the respondent suffered any prejudice on that account. It is therefore impossible to hold that the departmental enquiry was vitiated due to non-production of documents asked for by the respondent and on that basis no punishment could be imposed against him. (See *Syndicate Bank v. Venkatesh Gururao Kurati* [(2006) 3 SCC 150 : 2006 SCC (L&S) 487] and *U.P. State Textile Corpn. Ltd. v. P.C. Chaturvedi* [(2005) 8 SCC 211 : 2005 SCC (L&S) 1108] .)"

16. In *State Bank of India and Ors. Vs. Bidyut Kumar Mitra* and Ors., (2011) 2 SCC 316, it was highlighted that the employee had belatedly made a grievance regarding the non-supply of documents but even at that stage, he had failed to point out what prejudice was caused to him. In such circumstances, the High Court was wholly unjustified in setting aside the entire disciplinary proceedings. The impugned judgment also refers to *Syed Rahimuddin Vs. Director General, CSIR*, (2001) 9 SCC 575, where the charged official had not made any grievance during the course of enquiry about the non-supply of documents and, therefore, it was held that he could not be permitted to do so at a subsequent stage. It is significant to note that the appellant, before us, had not complained of any grievance regarding the non-supply of documents in the reply to the show cause notice based upon the enquiry report. In such circumstances, the contention of the appellant predicated on the alleged non-supply of documents has to be rejected.

Non-supply of the enquiry report

17. Learned counsel for the appellant has submitted that the enquiry report was furnished to the appellant vide letter dated 16th July, 1988

whereas the order of punishment was passed earlier on 2nd May, 1988. Thus, a copy of the enquiry report was made available after the Disciplinary Authority had imposed punishment. Our attention was drawn to the letter dated 5th July, 1988 written by the appellant to the Personnel Manager stating that the Enquiry Officer's report had not been furnished till then and that he had to file an appeal within 45 days. The letter dated 16th July, 1988 records that a copy of the enquiry report was sent to the appellant along with the letter dated 2nd May, 1988 sent under the cover of the letter dated 10th May, 1988 written by the Divisional Officer, Regional Inspectorate, New Delhi. As a specific request was made, a copy of the findings of the Enquiry Officer had been enclosed. Thus, the appellant did not have the benefit of a copy of the enquiry report and, therefore, could not respond to and challenge the same, when the Disciplinary Authority had examined the issue of the findings and charges, and had imposed the punishment.

18. In the present case, we are dealing with a situation prior to the pronouncement of the Supreme Court in the case of ***Managing Director, ECIL Hyderabad Vs. P Karunakar***, (1993) 4 SCC 727. This decision refers to an earlier decision in the case of ***Union of India & Ors. Vs. Mohd. Ramzan Khan***, (1991) 1 SCC 588 and has held that the later decision has laid down the ratio and made the law prospective in operation i.e. applicable to orders of punishment passed after 20th November, 1990. Accordingly, the decision in the case of ***P. Karunakar*** (supra) would be applicable from the said date. ***P Karunakar*** (supra) holds:-

"43. However, it has to be noticed that although it is in ***Mohd. Ramzan Khan case*** [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] that this Court for the first time accepted and laid down the law that the delinquent employee is entitled to the copy of the report

before the disciplinary authority takes its decision on the charges levelled against him, Gujarat High Court in a decision rendered on July 18, 1985 in *Union of India v. N.N. Prajapati* [(1985) 2 GLR 1406] and a Full Bench of the Central Administrative Tribunal in its decision rendered on November 6, 1987 in *Premnath K. Sharma v. Union of India* [(1988) 6 ATC 904 : (1988) 3 SLJ (CAT) 449] had taken a similar view on the subject. It also appears that some High Courts and some Benches of the Central Administrative Tribunal have given retrospective effect to the law laid down in *Mohd. Ramzan Khan case* [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] notwithstanding the fact that the said decision itself had expressly made the law prospective in operation. The fact, however, remains that although the judgments in *N.N. Prajapati case* [(1985) 2 GLR 1406] and *Premnath K. Sharma case* [(1988) 6 ATC 904 : (1988) 3 SLJ (CAT) 449] as well as some of the decisions of the High Courts and of the Benches of the Central Administrative Tribunal were either taking a similar view prior to the decision in *Mohd. Ramzan Khan case* [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] or giving retrospective effect to the said view and those decisions were not specifically challenged, the other decisions taking the same view were under challenge before this Court both before *Mohd. Ramzan Khan case* [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] was decided and thereafter. In fact, as stated in the beginning, the reference to this Bench was made in one such case as late as on the August 5, 1991 [(1992) 1 SCC 709 : 1992 SCC (L&S) 361 : (1992) 19 ATC 652 : JT (1992) 3 SC 605] and the matters before us have raised the same question of law. It has, therefore, to be accepted that at least till this Court took the view in question in *Mohd. Ramzan Khan case* [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] the law on the subject was in a flux. Indeed, it is contended on behalf of the appellants/petitioners before us that the law on the subject is not settled even till this day in view of the apparent conflict in decisions of this Court. The learned Judges who referred the matter to this Bench had also taken the same view. We have pointed out that there was no contradiction between the view taken in *Mohd. Ramzan Khan case* [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] and the view taken by this Court in the earlier cases and the reliance placed on *K.C. Asthana case* [(1988) 3 SCC 600 : 1988 SCC

(L&S) 869] to contend that a contrary view was taken there was not well-merited. It will, therefore, have to be held that notwithstanding the decision of the Gujarat High Court in *N.N. Prajapati case* [(1985) 2 GLR 1406] and of the Central Administrative Tribunal in *Premnath K. Sharma case* [(1988) 6 ATC 904 : (1988) 3 SLJ (CAT) 449] and of the other courts and tribunals, the law was in an unsettled condition till at least November 20, 1990 on which day the *Mohd. Ramzan Khan case* [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] was decided. Since the said decision made the law expressly prospective in operation the law laid down there will apply only to those orders of punishment which are passed by the disciplinary authority after November 20, 1990. This is so, notwithstanding the ultimate relief which was granted there which, as pointed out earlier, was per incuriam. No order of punishment passed before that date would be challengeable on the ground that there was a failure to furnish the enquiry report to the delinquent employee. The proceedings pending in courts/tribunals in respect of orders of punishment passed prior to November 20, 1990 will have to be decided according to the law that prevailed prior to the said date and not according to the law laid down in *Mohd. Ramzan Khan case* [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505] . This is so notwithstanding the view taken by the different benches of the Central Administrative Tribunal or by the High Courts or by this Court in *R.K. Vashisht case* [1993 Supp (1) SCC 431 : 1993 SCC (L&S) 153 : (1993) 23 ATC 444 (II)] ."

19. Reference in this regard can be made to the decision in ***Commandant, Central Industrial Security Force & Ors. Vs. Bhopal Singh***, (1993) 4 SCC 785, ***Om Prakash Mann Vs. Director of Education (Basic) and Ors.*** (2006) 7 SCC 558, ***Union of India and Ors. Vs. Bishamber Das Dogra***, (2009) 13 SCC 102, and ***Burdwan Central Cooperative Bank Limited and Anr. Vs. Asim Chatterjee and Ors.***, (2012) 2 SCC 641, which are to the similar effect.

20. Learned counsel for the appellant has relied upon the decision in ***Bilaspur Raipur Kshetriya Gramin Bank and Anr. Vs. Madanlal Tandon***, (2015) 8 SCC 461. In the said case, the appeal filed by the bank was dismissed and the order of the High Court quashing the order of removal and awarding lump sum payment of Rs. 5,00,000/- was upheld observing, inter alia, that the relevant documents on the basis of which findings were recorded in the disciplinary proceedings were not furnished and that the list of documents and witnesses were not supplied to the Bank's employee. It was also observed that the counsel for the bank was unable to demonstrate when and how the documents were supplied even during the course of the enquiry. We have dealt with this aspect under the section "**Non-supply of Documents**" and on account of the reasons and grounds recorded thereunder, the decision in ***Bilaspur Raipur Kshetriya Gramin Bank*** (supra) would not have any application in the present case.

21. Reference was also made to the decision of the Supreme Court in ***Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise, Gauhati and Ors.*** (2015) 8 SCC 519. This decision refers to the principles of administrative law and natural justice. These principles cannot be put in a straitjacket formula, for natural justice is not a preordained concept but a family of views which represents the essence of morality and justice. It is an aspect of procedural fairness which ensures that the right to just treatment and procedural honesty and impartiality is not violated. There may be situations where a breach of procedure would not give rise to a remedy in the Court unless there is something of substance which has been lost by the failure to adhere to the principles of natural justice. These are cases where the breach has been caused to the person against whom the action is taken

and, therefore, every violation of facets of natural justice may not always lead to a conclusion or finding declaring the order as null and void. The validity of an order has to be decided on the touchstone of prejudice and the test of fairness. This contention also fails.

Violation of Regulation 6 (17) of the Regulations

22. Regulation 6 (17) of the Regulations reads as under:-

"The inquiring authority may, after the officer employee closes his evidence, and shall if the officer employee has not got himself examined, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the officer employee to explain any circumstances in the evidence appearing against him."

23. The contention of the appellant is that the Enquiry Officer had failed to examine the appellant in spite of the fact that the appellant had not appeared as a defence witness. Reliance was placed on the decisions in *Ministry of Finance and Anr. Vs. S.B. Ramesh*, (1998) 3 SCC 227 and *Punjab National Bank and Ors. Vs. K.K. Verma*, (2010) 11 SCR 311. In *S.B Ramesh* (supra), the Supreme Court referred to the decision of the Tribunal wherein it was held that sub-rule (18) of Rule 14 of the Central Civil Services (Classification, Control, and Appeal) Rules, 1965 was mandatory and this should not be lost sight of by the Enquiry Officer, though the charge-sheeted employee had not appeared as a witness and was proceeded against *ex-parte*. In the said case, the Supreme Court had elaborately quoted from the reasoning given by the Tribunal which referred to several facts and facets, to ultimately enfold that there was a total dearth of evidence to bring home the charge that the charge-sheeted employee was

living in a manner unbecoming of a government servant. In paragraph 15, the Supreme Court observed that it was not a case for interference, particularly in the absence of full materials being made available and failure on part of the Government to place the same before the Court despite being given an opportunity to do so. The final conclusion of the Supreme Court was that the departmental enquiry conducted in the said case was totally unsatisfactory and did not confirm to the minimum required procedure for proving the charge. The said decision would, therefore, not as such help the case of the appellant.

24. In *K.K. Verma* (supra), the Supreme Court examined the applicable regulation which spoke of the several different kinds of orders that could be passed by the Disciplinary Authority upon receiving the enquiry report. In the said case, the Disciplinary Authority had disagreed with the findings of the Enquiry Officer and, therefore, in terms of the applicable regulations, was required to record reasons for such disagreement and communicate the same to the officer concerned. In this context, it was held that non-furnishing of the enquiry report before the Disciplinary Authority had imposed a penalty had caused prejudice to the employee. We have separately examined and decided the issue pertaining to the non-supply of the enquiry report before the order of the Disciplinary Authority was passed.

25. In *Sunil Kumar Banerjee Vs. State of West Bengal and Ors.*, (1980) 3 SCC 304, a similar grievance was made with reference to an identically worded Rule. The Supreme Court observed that the provision was akin to Section 313 of the Code of Criminal Procedure (Code, for short). Taking clue from the ratio applicable to Section 313 of the Code, it was held that failure to comply with the requirement of examination of the charge-sheeted

officer would not vitiate the enquiry unless the said officer is able to establish prejudice. In the factual matrix of the said case, it was held that no prejudice had been caused by the failure to observe the requirements of the rule in question and the plea was rejected. Further, the charge-sheeted officer was fully aware of the allegations against him and had dealt with all the aspects in his defence statement. A Division Bench of the High Court of Delhi in W.P. (C) No.8640/2009 titled ***Union of India Vs. Abid Ali***, decided on 30th August, 2010 referring to the decision in ***S.B Ramesh*** (supra) and ***Sunil Kumar Banerjee*** (supra) had elucidated that ***Sunil Kumar Banerjee*** (supra) being earlier in point of time, was the binding precedent. The challenge based on Rule 14(18) of the Central Civil Service (Classification, Control, and Appeal) Rules, 1965 was rejected on the ground that no prejudice had been shown. It was highlighted that ***Sunil Kumar Banerjee*** (supra) is a decision by a three Judges Bench.

26. This contention of the appellant, therefore, fails and is rejected.

Personnel Manager was not the appointing or competent authority

27. The appellant did not raise this contention in the writ petition, but it was raised in C.M. No.4458/1993 before the Single Judge. In our opinion, the contention has been rightly rejected. The appellant relies on the amendments made to the Regulations with effect from 27th May, 1991, as per which the Deputy General Manager (Personnel) was the competent authority to take disciplinary action and pass an order of dismissal/removal from service. During the course of hearing, counsel for the respondents had produced and relied on the Regulations, as they existed at the relevant time. Chapter-III of the said Regulations clearly states that pursuant to a meeting

of the Board of Directors held on 17th December, 1981, the Personnel Manager was notified as the competent authority to take action in the case of officers in Scale I of the Junior Management Grade, to which the appellant belonged. The impugned judgement, therefore, rightly rejects the contention and appropriately records that the appellant was initially appointed by the Joint Staff Controller, who since then had been re-designated as the Personnel Manager. The appellant was also promoted by the order issued by the Personnel Manager. Consequently, there was no irregularity in the Personnel Manager acting as the Departmental Authority and passing the punishment order. The order of removal dated 2nd May, 1988 was, therefore, in accordance with law and not invalid or lacking authority.

Gravity of misconduct and proportionality of punishment

28. The last issue pertains to the proportionality of punishment and the gravity of misconduct in light of the charges. We have already referred to the contentions raised by the appellant, which, as noticed above, include the argument that the appellant was mentally disturbed on account of the illness of his wife and death of his sister, and also the fact that he had repaid the money. It was emphasised that the alleged misconduct was in fact, a mistake which could be justified as an accounting or clerical error. The Single Judge has examined the said contentions in depth and detail and observed that the appellant was holding a senior managerial position. The appellant had never pleaded that the errors were committed by his subordinates or stated that he had reimbursed the amount wherever there was any shortfall. The present case relates to an era when there were no computerized accounts and all bank accounts were maintained manually by making entries in the

books/ledgers. Several entries which are the subject matter of the present dispute related to the personal overdraft account of the appellant. **Venkatesh Gururao Kurati** (supra) was a case wherein the charge-sheeted employee had put in 33 years of service and was dismissed two days prior to the age of superannuation. However, these facts did not compel the Supreme Court to take a different view, particularly when taking into consideration the fact that the charge-sheeted employees, in collusion with certain other members of the staff, had got documents signed and arranged loans in the name of poor, illiterate villagers under the scheme. In **UCO Bank, Chandigarh and Ors. Vs. Hardev Singh** (2006) 11 SCALE 88, the Supreme Court observed as under:-

"4. On 6th February, 1998, the respondent deposited this amount of Rs. 864/-. An inquiry was conducted and on the basis of this inquiry report which held the charge to be established, penalty of removal from service and not dismissal was imposed on the respondent. The High Court, on a writ petition being filed, came to the conclusion that the punishment awarded was not commensurate with the proven charge. It, accordingly, while upholding the findings of the inquiry, set aside the punishment of dismissal and directed the respondent's reinstatement but without any back wages.

5. This is a case of misplaced sympathy. The respondent was acting as a Teller in the Bank. One expects the higher standards of honesty and integrity. When admittedly small amounts deposited by the bank's customers do not find their way into the coffers of the bank but land up in the pocket of an employee, to say that the charge is not serious or the embezzlement is not intentional would be a gross understatement, the least to say. The charge framed was serious and normally punishment of dismissal from service would have been logical course to take. Keeping in view the past service of the respondent and other relevant factors into consideration, the punishment of removal only was imposed. The Bank, in a sense, has been more than considerate towards the respondent because with the punishment of removal being imposed pensionary benefits etc. are not

denied. The decision of the High Court to direct the reinstatement was uncalled for"

29. The appellant was a bank officer, a job which requires commitment, integrity, and uprightness. Dealing with the question of integrity, the Supreme Court in *Union of India and Ors. Vs. P. Gunasekaran*, (2015) 2 SCC 610 has observed:-

"20. Equally, it was not open to the High Court, in exercise of its jurisdiction under Articles 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to *Oxford Dictionary* is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence, etc. In short, it depicts sterling character with firm adherence to a code of moral values.

21. The impugned conduct of the respondent working as Deputy Office Superintendent in a sensitive department of Central Excise, according to the disciplinary authority, reflected lack of integrity warranting discontinuance in service. That view has been endorsed by the Central Administrative Tribunal also. Thereafter, it is not open to the High Court to go into the proportionality of punishment or substitute the same with a lesser or different punishment. These aspects have been discussed at quite length by this Court in several decisions including *B.C. Chaturvedi v. Union of India* [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , *Union of India v. G. Ganayutham* [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , *Om Kumar v. Union of India* [(2001) 2 SCC 386 : 2001 SCC (L&S) 1039] , *Coimbatore District Central Coop. Bank v. Employees Assn.* [(2007) 4 SCC 669 : (2007) 2 SCC (L&S) 68] , *Coal India Ltd. v. Mukul*

Kumar Choudhuri [(2009) 15 SCC 620 : (2010) 2 SCC (L&S) 499] and the recent one in *Chennai Metropolitan Water Supply [Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu, (2014) 4 SCC 108 : (2014) 1 SCC (L&S) 38]* ."

30. The appellant has drawn our attention to the order of the Appellate Authority dated 22nd February, 1989 wherein, keeping in view the accentuating circumstances, the order of dismissal from service was modified to that of removal. It is submitted that the aforesaid modification was inconsequential and this Court should interfere on the quantum of punishment. Taking note of the facts of the present case and keeping in view the different charges that have been proved, we are of the opinion that on the basis of the Doctrine of Proportionality, it cannot be held that the punishment awarded is outrageous or shockingly disproportionate and in excess of the misconduct, so as to call for any interference. The argument is rejected.

31. In view of the aforesaid discussion, we do not find any merit in the present appeal and the same is accordingly dismissed. No costs.

(SANJIV KHANNA)
JUDGE

(SUNITA GUPTA)
JUDGE

NOVEMBER 9th, 2016
NA/ssn