

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5133 OF 1998

B.P. D. Pai (since deceased)

1(a) Smt. Sushila Dayanand Pai
1(b) Jagdish Dayanand Pai
1(c) Sudhir Dayanand Pai
1(d) Raghvendra Dayanand Pai
All residing at D-85/869,
MIG Colony, Gandhi Nagar,
Bandra (East),
Mumbai 400 051 and also
At Bunglow No. 5, U Ba Khin
Vipassana Village,
Dammagiri, Igatpuri,
District – Nashik,
Pin 422 403.

.. Petitioners

Vs.

1. The Sydicate Bank
a Nationalised Bank
having its Cororate
Office in Manipal – 576119.
(Karnataka State).

2. The General Manager (O),
(Disciplinary Authority)
Syndicate Bank, Head Office,
Manipal 576 119.
(Karnataka State)

3. Chairman and Managing
Director, Syndicate Bank,
Corporate Office,
Manipal 576 119.
(Karnataka State)

.. Respondents

Mr.Ramesh Ramamurthy, for the Petitioners.

Mr.Prakash U. Shinde i/b MDP & Partners, for Respondents.

**CORAM : A.A.SAYED &
M.S.KARNIK, JJ.**

**RESERVED ON : 19th JUNE, 2017
PRONOUNCED ON : 13th JULY, 2017**

JUDGMENT (PER M.S.KARNIK, J) :

1. The original petitioner (since deceased) had filed the present Petition challenging the orders of dismissal dated 26/06/1995 and orders passed in Appeals on 26/12/1997. The petitioner has prayed for quashing and setting aside the orders of dismissal and for grant of continuity of service and full back wages. The petitioner an employee of the Syndicate Bank, was working as an Assistant General Manager, Nariman Point Branch, Mumbai at the relevant point of time. By letter dated 23/05/1991, the Deputy General Manager of Syndicate Bank advised the petitioner that permission has been granted to him to commence Portfolio Management to the clients of his branch strictly in conformity with the guidelines contained in RBI circular dated 18/01/1991. It was further mentioned in the said letter that since the petitioner was already doing Portfolio Management for NRI clients, his branch had the requisite expertise in

the proposed Portfolio Management for general clients and Public Sector Undertakings. Some time in the year 1992, news of scam in the bank investments and Portfolio Management broke out. According to the petitioner, RBI started pressuring the bank Managements to somehow crucify one or the other person so as to satisfy the public hue and cry and also to enable the Government to meet the criticism in Parliament. The RBI themselves appointed M/s.Batliboi and Purohit Auditors to audit the Portfolio Management transactions for the period from September 1991 to September 1992 conducted by the Bombay Nariman Point Branch of the Syndicate Bank. The respondents proposed to hold an enquiry against the petitioner in accordance with the procedure laid down in Regulation No. 6 of the Syndicate Bank Officer Employee's (Discipline & Appeal) Regulations, 1976 (hereinafter referred to as 'Regulations' for short). The petitioner was served with the Articles of Charges and the Statement of Imputations of Misconducts in respect of which the enquiry was proposed to be held. The petitioner was called upon to show cause why regular departmental proceedings should not be initiated against him. The Articles of Charges mentioned are thus :

“ Articles of Charges

That during the period between 07/09/1987 and

16/10/1992, you were functioning as Chief Manager/Asst. General Manager of our Nariman Point Branch, Bombay and that while functioning in your position as such, in the matter of conducting Portfolio Management Services at the branch, you showed undue official favours to M/s.K.N.Amerchand, Broker, by –

(a) authorising/causing to be authorised purchase of shares of 23 companies in between 30/01/1992 and 28/05/1992 at prices higher than the market prices prevailing on the relevant dates;

(b) authorising/causing to be authorised sale of shares of 9 companies in between 22/01/1992 and 18/05/1992 at prices below the market rates as prevailing on the relevant dates;

(c) authorising/causing to be authorised sale of shares of 5 PMS clients to the tune of Rs.2,50,16,800/- on 24/03/1992 and allowing the sale proceeds in the possession of the Broker till 05/05/1992;

and

authorising/causing to be authorised sale of shares to the tune of Rs.6258301/- in respect of certain PMS clients in between January 1992 and May 1991 and allowing the sale proceeds to be left at the disposal of the Broker indiscriminately;

and

(d) authorising/causing to be authorised payment of Rs.4339917.82 to the Broker on 03/04/1992 and allowing the funds at the disposal of the Broker till 09/05/1992, in the form of a clean accommodation by manipulating records, knowing or having reasons to believe that the transactions were not genuine;

and

(e) authorising/causing to be authorised purchase of shares to the tune of Rs.16448250/- on account of 3 PMS CLIENTS in between March 1991 and April 1991 and selling those shares in between 29/04/1992 and 19/05/1992 in a hurried manner, causing financial loss to the Bank/PMS clients;

and

(f) allowing he said Broker to utilise funds to the extent of Rs.37.66 crores in respect of sale of shares on account of certain PMS clients done in between 17/02/1992 and 12/03/1992 and thus facilitating the broker to enjoy the funds in the form of clean accommodation and also authorising/causing to be authorised certain sale and purchase transactions in the books of the branch, knowing or having reasons to believe that such transactions are not genuine;

and

(g) making available clean accommodation to the extent of Rs.103.40 crores to the Broker in between 23/03/1992 and 09/05/1992 in the guise of purchase and sale transactions, which you were knowing or had reasons to believe were not genuine;

and

(h) authorising/causing to be authorised payment of Rs.5750000/- to the Broker on 19/05/1992 for the apparent purpose of purchase of shares of M/s.Essar Shipping Co., without however receiving the securities and thereafter, agreeing for substitution of securities in a casual manner.

The details are more fully described in the Statement of Imputations of Misconducts mentioned herebelow.

In authorising and conducting these transactions, you acted in a manner detrimental to the interest of the PMS clients/Bank.

By your above acts, you failed to discharge your duties with utmost integrity and honesty and exhibited conduct unbecoming of the status of a Bank Officer and thus contravened Regulation No. 3 (1) read with Regulation No. 24 of Syndicate Bank Officer Employees (Conduct) Regulations, 1976.

Articles of Charge No. II :

That you also showed undue official favours to

M/s.Fairgrowth Investments Ltd., by making available to them clean accommodation to the extent of Rs.22.78 crores in between 27/03/1992 and 06/04/1992 in the guise of purchase and sale of Bonds, which you were knowing or having reasons to believe were not genuine, as per details more fully to believe were not genuine, as per details more fully described in the Statement of Imputations of Misconducts mentioned herebelow.

You thus acted in detriment to the interest of the Bank/PMS clients.

By your above acts, you failed to discharge your duties with utmost integrity and honesty and exhibited conduct unbecoming of the status of a Bank Officer and thus contravened Regulation No.3 (1) read with Regulation No.24 of Syndicate Bank Officer Employees (Conduct) Regulations 1976.

Articles of Charge No. III :

That on 01/01/1992, you authorised purchase of shares of two companies on account of PMS account no. 21 through Sri Jamnadas T Shah, Broker, at a price higher than the market rates prevailing and thus caused an approximate loss of Rs.117500/- to the Bank/the PMS client, at average market price, as per details more fully described in the Statement of Imputations of Misconducts mentioned herebelow.

You thus showed undue official favours to the said SriJamnadas T Shah, Broke, in detriment to the interest of the Bank/PMS clients.

By our above acts, you failed to discharge your duties with utmost integrity and honesty and exhibited conduct unbecoming of the status of a Bank Officer and thus contravened Regulation No. 3(1) read with Regulation No. 24 of Syndicate Bank Officer Employee's (Conduct) Regulations, 1976.

Articles of Charge No. IV :

That during the period between February 1991 and

March, 1992, you authorised sale of/caused to be sold shares of certain companies on account of PMS clients to the tune of Rs.1007725/- through M/s.Kishore Kumar Hariram, Broker, and allowed the sale proceeds at the disposal of the Broker for a considerably long period, and thus caused a loss of Rs.17580/- to the Bank/PMS clients, as per details more fully described in the Statement of Imputations of Misconducts mentioned herebelow.

You thus showed undue official favours to the said M/s.Kishore Kumar Hariram, Broker in detriment to the interest of the Bank/PMS clients.

By your above acts, you failed to discharge your duties with utmost integrity and honesty and exhibited conduct unbecoming of the status of Bank Officer and thus contravened Regulation No. 3 (1) read with Regulation No. 24 of Syndicate Bank Officer Employee's (Conduct) Regulations, 1976.

Articles of Charge No. V :

That on 31/03/1992, you authorised payment of Rs.22.50 lakhs in favour of IDBI by raising debit on IM Account No.22 of M/s. Oil India Ltd., with false./fictitious details by resorting to manipulation of accounts and records knowing or having reasons to believe the fictitious nature of the transaction, as per details more fully described in the Statement of Imputations of Misconduct mentioned herebelow.

By your above acts, you failed to discharge your duties with utmost integrity and honesty and exhibited conduct unbecoming of the status of a Bank Officer and thus contravened Regulation No.3 (1) read with Regulation No.24 of Syndicate Bank Officer Employee's (Conduct) Regulations, 1976.

Articles of Charge No. VI :

that in between 23/12/1991 and 05/03/1992, you

authorised conducting of/caused to be conducted certain purchase and sale transactions of buy-back nature, in violation of RBI guidelines.

In the matter of conducting these transactions, you issued/caused to be issued BR s against BRs, violating RBI guidelines.

In the process, you acted indetriment to the interest of the Bank/PMS clients.

By you above acts, you failed to discharge your duties with utmost integrity and honesty, and exhibited conduct unbecoming of the status of a Bank Officer and thus contravened Regulation no.3 (1) read with Regulation No.24 of Syndicate Bank Officer Employee's (Conduct) Regulations, 1976.

Articles of Charge No. VII :

That in the matter of conducting the PMS operations at the branch –

(a) you failed to obtain/caused obtention of the prescribed Written Agreement from 12 PMS clients for reasons best known to you;

and

(b) you offered/caused to be offered indicative yiled on the funds invested by 20 PMS clients contrary to the guidelines issued by RIB and SEBI and you approved unauthorisedly, the acts of the Chief Manager of our K.G. Marg branch, Delhi, in his having indicated yield on funds accepted for PMS;

and

(c) you failed to ensure that investment of Rs.15.00 crores made by M/s. Oil India Ltd., were deployed immediately'

and

(d) you failed to ensure that the Bank's position with regard to its PMS operations is correctly reflected in the Balance Sheet as at 31/03/1992.

and

(e) you failed to ensure that the deals were put through in a proper and systematic manner, with

adequate supervision and control;

and

(f) you failed to ensure that a system of periodical surprise verification of the securities was introduced and meticulously followed;

and

(g) you failed to ensure that proper books of accounts are maintained evidencing receipt/delivery/movement of securities;

and

(h) you failed to get the panel of Brokers introduced by you, approved by the Head Office, fixing individual exposure limits, Broker-wise;

and

i) you failed to ensure that the BRs were issued in the form prescribed by IBA;

and

(j) you failed to report individual transactions carried out under PMS to the Head Office, furnishing full details;

and

(k) you failed to ensure that periodical reports are sent to the PMS clients as prescribed in the guidelines issued by SEBI.

That when certain discrepancies in the holding of securities were observed, you allowed/caused to be allowed to effect adjustment entries in an unusual manner, as per details more fully described under sl. no. 6 in the Statement of Imputations of Misconduct mentioned herebelow.

You thus exposed the Bank to unnecessary/avoidable financial risks and litigation, damaging the overall image of the Bank and its reputation.

By your above acts, you failed to discharge your duties with utmost integrity and honesty and exhibited conduct unbecoming of the status of a Bank Officer and thus contravened Regulation No. 3(1) read with Regulation NO. 24 of Syndicate Bank Officer Employee's (Conduct) Regulations, 1976."

2. The petitioner by reply dated 12/04/1993 denied the charges as the presumptive and baseless. A detailed explanation was offered by the petitioner in response to the said Articles of Charges.

3. The petitioner was served with the second charge-sheet on 13/05/1993. The said charge-sheet was similar to the first charge-sheet but for different transactions. The petitioner filed a detailed reply to the second charge-sheet on 10/07/1993.

4. The preliminary hearing in respect of the first charge-sheet was held on 20/09/1993. The Presenting Officer filed list of witnesses and documents on behalf of the Disciplinary Authority in support of the charges levelled against the petitioner. The Enquiry Officer allowed the inspection of the original documents to the petitioner. The preliminary hearing in respect of the second charge-sheet was held on 28/01/1994. The petitioner on 21/02/1994 informed the Enquiry Officer that though inspection was given, the inspection of the documents which are listed in the said communication dated 21/02/1994 was not given. The petitioner requested for the said inspection. The petitioner also submitted a list

of witnesses and documents in support of his defence. The petitioner called upon the Enquiry Officer to direct the Management to provide him documents on which the petitioner wants to rely for his defence.

5. The Enquiry Officer called upon the Management to obtain the permitted documents from the custodians and offer them for inspection to the petitioner by 30/04/1994. In respect of second charge-sheet also the petitioner by letter dated 21/02/1994 requested that inspection of the relevant documents may be given. By order dated 16/04/1994, Enquiry Officer was changed and one Shri P.M. Rangaswami Commissioner for Departmental Enquiry was appointed as Enquiry Authority. On 19/05/1994, it was observed by the Enquiry Officer that the inspection of certain documents has not been offered to the petitioner. The Presenting Officer was directed to immediately make these documents available to the petitioner on or before 26/05/1994. By order dated 08/10/1994 again there was change of the Enquiry Officer and original Enquiry Officer Shri S.C.Gupta was reappointed. On 30/10/1994 during the course of the hearing of the enquiry request was made by the Presenting Officer for time to make available the balance documents for inspection and handing over the copies of the documents to the petitioner. The

request made by the petitioner for the defence witnesses was permitted. The regular hearing enquiry was fixed from 30/11/1994.

6. By order dated 04/11/1994, the Enquiry Officer fixed schedule of the enquiry. The petitioner along with his defence assistant and the Presenting Officer were directed to participate in the regular hearing without fail otherwise the hearing was to proceed exparte. The summons to the prosecution witnesses were sent to the Presenting Officer and the summons for the permitted defence witnesses were to be sent to the petitioner. The prosecution and defence documents were to be taken on record on 24/11/1994. The prosecution witnesses were to be examined on 30/11/1994, 01/12/1994 and 02/12/1994 and defence witnesses were to be examined on 03/12/1994 and 04/12/1994. In the said order, it was stated that the regular hearing of the case shall not be adjourned on any plea.

7. The petitioner by letter dated 16/11/1994 informed the Enquiry Officer that he was denied opportunity to inspect original documents. Only photocopies of the documents which were made available for the inspection were produced for verification and not

the originals. The petitioner expressed apprehension that enquiry would proceed without making available permitted documents and originals thereof for verification. The Defence Assistant of the petitioner requested that the hearing of the enquiry scheduled on 24/11/1994 and from 30/11/1994 to 04/12/1994 as per the notice dated 04/11/1994 may be adjourned for a fortnight on account of personal reasons and office exigencies. The Defence Assistant was not available on the said dates. It was also mentioned that in case the adjournment is not possible, the department will treat the Defence Assistant's offer as withdrawn. (Learned Counsel for the petitioner in the course of his submissions pointed out that the Defence Assistant is from Bangalore whereas the enquiry was to be held at Bombay). The Enquiry Officer proceeded with the enquiry on 24/11/1994. It was indicated that only the documents are proposed to be taken on record on 24/11/1994. The examination of the witnesses would start from 30/11/1994. It is recorded in the proceedings that the petitioner stated that if he is able to get another Defence Assistant or if he is able to persuade Shri H.S. Kamath the present Defence Assistant to act as his Defence Assistant, he will participate in the enquiry from 30/11/1994 onwards. Alternatively, he will inform his inability to participate from 30/11/1994. On

30/11/1994, the hearing of the enquiry proceeded and deposition of Shri B.N. Pai - Assistant General Manager, Syndicate Bank was recorded.

8. The petitioner by his letter dated 01/12/1994 referred to the order dated 30/11/1994 and conclusion drawn by the Enquiry Officer that the petitioner is not making serious efforts in getting a Defence Assistant. The petitioner protested against the conclusion drawn by the Enquiry Officer that the petitioner wanted to delay the enquiry as much as possible. In the said letter, the petitioner made his position clear the contents of which are reproduced as under :

“1. I had till now never sought any adjournment of any session of the enquiry which, was more than half a dozen times.

2. In my earnestness, I have, even gone beyond the time stipulated by you, to facilitate PO's giving me the documents by continuing to go to him each day till 16th of Nov., though you had ordered completion of this stage by 12th November, 1994.

3. I had gone back to Disciplinary Authority for assistance in choosing a defence assistant in conformity with Bank's own Disciplinary Regulations and not as a device for delay.

4. Even before a response from Disciplinary Authority was received by me on my communication dated 23rd November, 1994 and 25th November, 1994. You have, relying on the PO' s demands gone ahead with the enquiry as exparte.

5. PO's offer of one month time was not holding out any assurance of complying with my request made to Disciplinary Authority and therefore unacceptable to me.

6. I may draw your attention to the fact that my defence assistant was not granted 15 days adjournment of the hearing by PO whereas he stated that he was prepared for 1 months time on 30th with full knowledge as to my difficulty or physical impossibility of accomplishing the task of acquiring a fresh suitable defence assistant at such short notices. Such contrary

positions on the part of P.O. have not drawn from you any inferences of deliberate attempt on his part to deprive me of a proper permitted assistance in the enquiry.

7. Please note that unlike many executive in the Bank who over these kind of eventualities by continuing as members of any Trade Unions, I am not a member of any Officers Unions and engaging such professional defence assistants is also not possible for me.

8. Being in SEGS -V I would not like to engage a lower ranked official also besides the uniqueness of the transactions will require vast and quick grasp of the subject making my choise of Defence Assistant difficult.

In view of above, your passing orders dated 30.11.1994 has been quite unfair to me and I am therefore, once again renewing my request for adjournment of the hearing to an appropriate future date.”

9. On 03/12/1994, the Enquiry Officer forwarded to the petitioner copies of depositions of the Management witnesses and order sheets in connection with the departmental enquiry held against him from 30/11/1994 to 02/12/1994.

10. The Enquiry Officer proceeded with the enquiry and on 04/12/1994 it was recorded by him that the petitioner did not produce any more listed witnesses and prosecution case was closed. In all three witnesses were examined. It was recorded that the petitioner did not attend the enquiry.

11. The Presenting Officer submitted his written brief in the first charge-sheet on 17/01/1995 as also written brief in the second

charge-sheet. The petitioner by his communication dated 25/03/1995 pointed out to the Disciplinary Officer the circumstances which compelled the petitioner to stay away from the enquiry proceedings. He therefore requested that the denovo enquiry be held so as to enable the petitioner to prove his defence.

12. The enquiry report dated 13/03/1995 in the first charge-sheet was received by the petitioner on 25/04/1995 and thereafter the enquiry report dated 25/04/195 / 04/05/1995 in the second charge-sheet. The petitioner on 23/05/1995 replied to the first charge-sheet and contended that the enquiry is against fair play and natural justice and the same is therefore vitiated. The petitioner pointed out that the enquiry was conducted in his absence. The petitioner pointed out the circumstances necessitating his staying away from the enquiry which were mentioned in his earlier letters dated 23/11/1994, 25/11/1994, 01/12/1994 and 25/03/1995. The petitioner requested for holding of denovo enquiry. Similar reply was given by the petitioner to the enquiry report in the second charge-sheet. As regards the first charge-sheet, by an order dated 26/06/1995 passed by the Disciplinary Authority, the petitioner was dismissed from service. In respect of second charge-sheet, by an

order dated 26/06/1995 passed by the Disciplinary Authority, the petitioner was dismissed from service. The appeals filed by the petitioner against the orders of dismissal also came to be rejected by the Appellate Authority vide order dated 26/12/1997.

13. Learned Counsel for the petitioner invited our attention to the charge-sheet and pointed out that serious charges were levelled against him. In the submission of the learned Counsel for the petitioner the gravity of the charges necessitated him to be represented by the Defence Assistant during the course of the enquiry. The representation by the Defence Assistant under rule is valuable right of the petitioner. According to the learned Counsel for the petitioner the enquiry was conducted with undue haste and in complete breach of the principles of natural justice. Refusal to adjourn the hearing under the circumstances was harsh and amounts to denial of grant of fair opportunity to the petitioner to defend his case.

14. Learned Counsel for the petitioner contended that the petitioner has been discharged in the criminal proceedings initiated against him and therefore, on this count itself the departmental

enquiry can not stand as charges in the criminal proceedings are virtually the same as in the departmental enquiry. Various other contentions were raised by the learned Counsel for the petitioner, but having regard to the facts of the present case we are confining ourselves to examine as to whether refusing the request of the petitioner to adjourn the proceedings and thereby not granting him sufficient time to seek assistance of the Defence Assistant amounts to violation of the principles of natural justice thereby denying him a reasonable opportunity to participate in the enquiry and defend himself.

15. Learned Counsel for the respondents on the other hand supported the orders of dismissal. In his submission charges are grave and serious. Though adequate opportunity was given to the petitioner, he refused to participate in the enquiry proceedings. The Enquiry Officer by communication dated 04/11/1994 fixed the schedule of hearing which the petitioner was well aware, therefore, it cannot be said that the petitioner was denied reasonable opportunity of defending himself. According to the learned Counsel for the respondents, the petitioner was interested in delaying the proceedings and therefore, the Enquiry Officer was justified in

proceeding with enquiry. Learned Counsel for the respondents submitted that the scope of interference by the High Court in the enquiry proceedings is very limited. Based on the material on record, the Enquiry Officer has recorded findings of fact and held the charges as proved.

16. Learned Counsel for the respondents invited our attention to the observations of the Appellate Authority where it is observed that it is evident from the proceedings of the enquiry that the petitioner himself has deliberately stayed away from the enquiry with a view to delay the proceedings and to avoid disciplinary exercise. In his submission, the petitioner has committed serious irregularities in conducting security transactions and money marketing operations while functioning as Chief Manager/Assistant General Manager of the respondent Bank. In his submission when the petitioner has abandoned proceedings and himself has chosen not to participate in the enquiry, it cannot be said that the enquiry is conducted in breach of the principles of natural justice.

17. Learned Counsel for the respondents has relied upon various decisions of the Apex Court in support of his proposition that

the High Court while exercising the judicial review does not act as an Appellate Authority. Its jurisdiction is circumscribed and confined to correct errors of law.

18. Learned Counsel also placed reliance on the decision of the Apex Court in the case of **Regional Manager, U.P.S.R.T.C. Etawah & ors. Vs. Hoti Lal & anr. (2003) 3 Supreme Court Cases 605** where the Apex Court has observed that misconduct in cases where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity has to be dealt with iron hands.

19. Having considered the rival submissions advanced by the learned Counsel, we are of the opinion that the petitioner has been deprived of a fair and reasonable opportunity to participate in the enquiry which has resulted in manifest miscarriage of justice. It is material to note and as is the submission of the learned Counsel for the respondents, the charges levelled against the petitioner are grave and serious in as much as the charges related to petitioner committing serious irregularities in conducting security transactions and money marketing operations while functioning as Chief

Manager/Assistant General Manager of the respondent Bank. In the departmental enquiry, the petitioner was to be proceeded against with almost 7 charges in respect of first charge-sheet and 9 charges in respect of the second one. Learned Counsel for the respondents is absolutely justified in contending that misconduct in cases where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity are to be dealt with iron hands. The departmental enquiry which have been proceeded against the petitioner ought to have been conducted in observance of the principles of natural justice and after giving full opportunity to the petitioner to participate in the enquiry.

20. First and second charge-sheets were issued on 13/05/1993. The petitioner has duly replied to the said charge-sheets denying the charges levelled against him. The petitioner requested for verification of the documents relied by the respondents. Even as regards the second charge-sheet, the petitioner has filed a detailed reply on 10/07/1993. On the first date of hearing on 20/09/1993 in respect of the first charge-sheet the Presenting Officer was to supply photostat copies of the listed documents. Inspection of the original document was also allowed. The petitioner by his letter

dated 21/02/1994 informed the Enquiry Officer that the original documents were not given for inspection. On 02/03/1994, the Enquiry Officer recorded that the Presenting Officer should obtain permitted documents from the custodians and offer them for inspection to the petitioner by 30/04/1994. On 16/04/1994, the Enquiry Officer was changed and new Enquiry Officer was appointed. The petitioner submitted the list of defence documents and witnesses in the second charge-sheet on 21/07/1994. On 08/10/1994, the second Enquiry Officer was changed and the original Enquiry Officer was brought back. It is only on 30/10/1994 that hearing of the regular enquiry was then conducted and record indicates that the Presenting Officer requested for time to make available balance documents for the inspection and for making available copies of the documents to the petitioner. It was stated that the defence documents can be made available to the petitioner only on 12/11/1994 and that the hearing was fixed on 30/11/1994. The petitioner by his letter dated 16/11/1994 protested against the action of the Management in not giving him opportunity of inspection of original documents. He therefore requested that the Presenting Officer should produce the documents requested and inspection of the original documents should be given. On 18/11/1994 the Defence

Assistant of the petitioner made a request for adjourning the hearing for a fortnight as he could not attend the hearing fixed on 24/11/1994 and from 30/11/1994 to 04/12/1994 as per notice of enquiry dated 04/11/1994. On 24/11/1994, the petitioner informed the Enquiry Officer that if he is able to get another Defence Assistant or if he is able to persuade Shri H.S.Kamath to act as his Defence Assistant, he will participate in the enquiry from 30/11/1994 onwards. Alternatively, he would inform about his inability to participate on 30/11/1994. In the order sheet dated 30/11/1994 it is recorded that the petitioner is not making any serious effort in getting the Defence Assistant and the method adopted by him in securing Defence Assistant for this enquiry is not appropriate. It is recorded that the petitioner merely wants to delay the enquiry as much as possible. In these circumstances, enquiry was to proceed exparte if the petitioner did not participate in the enquiry on 30/11/1994. On 01/12/1994 the petitioner protested against the proceeding of the enquiry and pointed out that he had never sought any adjournment of any session of the enquiry which was previously held on more than half a dozen times. He pointed out that his Defence Assistant was not given 15 days adjournment of the hearing. The Disciplinary Authority examined 3 witnesses on behalf of the

Bank. The petitioner by his letter dated 25/03/1995 again made a request for holding denovo enquiry from the stage the enquiry Officer had conducted exparte enquiry to enable the petitioner to prove his defence.

21. In our opinion, the right to be defended by the Defence Assistant during the course of enquiry is a valuable right of the employee. Right from the date of issuance of first charge-sheet dated 12/04/1993 upto 30/10/1994, the petitioner attended the enquiry. Nothing is there on record to indicate that the enquiry was adjourned at his behest. On the contrary, it is at the instance of the Presenting Officer himself that the during of course hearing longer time was granted by the Enquiry Officer and the hearing was fixed on 30/11/1994. From the record, it appears that it is for the first time the Defence Assistant requested that hearing to be held on 30/11/1994 should be adjourned by a fortnight. The petitioner could not be reasonably expected to engage a Defence Assistant within such a short span of time to represent him in the enquiry proceedings when such serious charges are levelled against him. The approach of the Enquiry Officer in coming to the conclusion that the petitioner has abandoned the enquiry merely because the petitioner

requested for adjournment is completely unjustifiable. According to us, refusal on the part of the Enquiry Officer to accede to the request of the Defence Assistant for adjourning the enquiry by a fortnight itself is unreasonable. The respondents have acted completely in breach of principles of natural justice by not granting sufficient time to the petitioner to engage a Defence Assistant. Even on 25/03/1995 the petitioner requested for a denovo enquiry from the stage when the enquiry was conducted exparte. The contention of the respondents that two other officers were proceeded against in this enquiry which was a common proceeding & therefore as the petitioner was well aware of the proceedings, it is the petitioner who deliberately chose to stay away, is a contention which can only be stated to be rejected. The charges levelled against the petitioner are in respect of the transactions which according to the respondents the misconduct is attributable to the petitioner. It is therefore incumbent upon the respondents to observe the principles of natural justice insofar as the petitioner is concerned even though the enquiry proceedings may be common.

22. In our opinion, therefore, the petitioner was not given sufficient opportunity and fair chance to defend his case. The

conclusion of the Enquiry Officer that the petitioner has deliberately stayed away from the departmental enquiry and that he has abandoned the proceedings is incorrect and unfair and cannot be countenanced. We, therefore, have no hesitation in holding that the impugned orders of dismissals are liable to be set aside.

23. In ordinary course, we would have remanded the matter back to the Enquiry Officer for conducting the enquiry from the stage *ex parte* enquiry was ordered. However, during the pendency of the Petition, the petitioner expired and his legal heirs have been brought on record. Mr. Ramamurthy on instructions has fairly conceded that he would not press the claim for back wages and the petitioners would be satisfied with the terminal dues. In the light of above discussion, we are inclined to pass the following order which would meet the ends of justice.

ORDER

(i) The Writ Petition is allowed in terms of prayer clause (a) which reads thus :

“(a) that the Hon'ble Court be pleased to a Writ of Certiorari or a writ in the nature of Certiorari or other appropriate writ, order of direction and call for the record and proceedings of the two impugned orders of Dismissal both dated 26/06/1995 and two

Appellate Orders, both dated 26/12/1997 and after examining the legality and/or the validity of the said orders, quash and set aside the same.”

(ii) The petitioner may be treated as in continuous service till the date of his death or superannuation whichever is earlier and terminal benefits including provident fund, gratuity, pension may be paid to the petitioners.

(iii) The arrears of the retirement dues be paid to the petitioners within a period of 3 months from today.

(iv) In view of the concession given by learned Counsel for the petitioner, there will be no order for back wages.

23. Rule is accordingly made absolute in the above terms with no order as to costs.

(M.S.KARNIK, J.)

(A.A.SAYED, J.)