

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 6142 of 1995 (O&M)

Reserved on : October 11, 2017

Date of Decision: November 01, 2017

Hans Raj

... Petitioner

Versus

State Bank of Patiala and others

... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Gaurav Sharma, Advocate,
for the petitioner.

Mr. A.K. Ahuja and Mr. C.B. Goel, Advocates,
for the respondents.

P.B. Bajanthri, J.

1. During pendency of this writ petition, respondents-State Bank of Patiala which is sister concern of State Bank of India was merged into State Bank of India w.e.f. 27.02.2017. In this regard, learned counsel for the respondents have no objection that they are representing State Bank of India in the present case.

2. In the instant writ petition, petitioner has challenged the validity of orders dated 02.09.1992, 25.02.1993 and 17.11.1994 (Annexures P/6, P/7 and P/9 respectively). Orders are relating to removal from service under regulation 67(g) of State Bank of Patiala (Officers') Service Regulations, 1979 (hereinafter referred to as "Regulations, 1979"), rejection of appeal and rejection of review petition.

3. Petitioner was in the cadre of Junior Management Grade Scale-I (hereinafter referred to as "JMGS-I"). He was appointed by the Managing Director of the respondent-Bank. The petitioner while working as Rural Development Officer – JMGS-I was placed under suspension on the allegations of illegal gratification and in violation of various circulars in sanctioning loans. He was charge-sheeted on 21.03.1991. Five charges were framed against him. Charges are like demand and acceptance of illegal gratification from loan borrowers. The petitioner submitted his reply to the charge-sheet. The disciplinary authority dissatisfied with the petitioner's reply proceeded to hold inquiry by appointing Inquiring Officer. Inquiring Officer submitted his report on 07.05.1992. The Inquiring Officer held that charge nos. 2(a), 2(b), 3 and 4 were proved. Insofar as charge Nos. 1 and 5 were not proved. Petitioner submitted representation / submission on the findings of the Inquiring Officer on 08.06.1992. With reference to the petitioner's submissions on the findings of the Inquiring Authority, the disciplinary authority – Chief General Manager after receipt of the Inquiring Officer's report disagreed with the findings of the Inquiring Officer in respect of charge nos. 1 and 5, proceeded to examine those charges and held that those two charges were also proved against the petitioner and proceeded to impose penalty of removal from service under regulation 67(g) of the Regulations, 1979. Feeling aggrieved by the order of the disciplinary authority, petitioner preferred an appeal before the appellate authority on 24.10.1992. Appeal was rejected by the Managing Director – appellate authority on 25.02.1993. Still aggrieved by the order of the appellate authority, petitioner preferred a review petition which was not disposed of

timely. Consequently, petitioner was compelled to approach this Court by filing CWP No.14300 of 1994. On 05.10.1994 this Court disposed of the petitioner's writ petition while directing the respondent-Bank to dispose of the review petition expeditiously by passing a speaking order within a period of two months (Annexure P/8). Thereafter, petitioner's review petition was rejected on 17.11.1994 (Annexure P/9). Hence, present writ petition.

4. Learned counsel for the petitioner submitted that initiation of inquiry till passing of penalty order of removal from service are without authority of law since the petitioner was appointed by the Managing Director, whereas the initiation of inquiry and its conclusion is by the General Manager and Chief General Manager who are subordinates to the Managing Director.

5. It was further submitted that Chief General Manager after receipt of the Inquiring Officer's report disagreed with the Inquiring Officer's report insofar as Charge Nos. 1 and 5 while holding that charges no.1 and 5 were also proved. Such finding/decision of the disciplinary authority is without notice to the petitioner. When disciplinary authority disagrees with the Inquiring Officer's report and proceed to pass any adverse order, in that event, petitioner is entitled for notice. Even though Regulations, 1979 do not provide for issuance of show cause notice, however, in order to meet the natural justice in all fairness, Chief General Manager should have issued a show cause notice from the defective stage of the Inquiring Authority's finding so as to give an opportunity to the petitioner to explain whether the findings of the Inquiring Officer on charge

nos. 1 and 5 were in order.

6. It was also submitted that all the three authorities, namely, Chief General Manager – disciplinary authority, Managing Director – appellate authority and Chairman-Board – reviewing authority have failed to appreciate contentions of the petitioner which were pleaded before them like representation/submission on the Inquiring Officer's report, memorandum of appeal and review petition. Therefore, on the ground of non-consideration of petitioner's plea by the authorities, orders passed by each of the officers are liable to be set aside.

7. Learned counsel for the petitioner further submitted that along with the charge-sheet, petitioner was not provided list of documents and list of witnesses which were required to be furnished. Therefore, Regulations have not been followed by the disciplinary authority. Learned counsel further submitted that disciplinary authority before disagreeing with the findings of the Inquiring Authority, if it is not itself the Inquiring Authority may for reasons to be recorded by it in writing, remit the case to the Inquiring Authority – whether the Inquiring Authority is the same or different – for fresh or further inquiry and report, and the Inquiring Authority shall thereupon proceed to hold further inquiry according to the provisions of sub-regulation (2) as far as may be, has not been resorted to or invoked after receipt of Inquiring Officer's report as per regulation 68(3)(i), whereas the disciplinary authority proceeded to exercise power under regulation 68(3)(ii) while disagreeing with the findings of the Inquiring Authority. It was also pointed out by the petitioner that sub regulation (5) of Regulation 68 of Regulations 1979 mandates the disciplinary or appellate

authority as the case may be, under sub regulations (3) and (4) shall be communicated to the officer concerned who shall also be supplied with a copy of the report of the inquiry, if any. Disciplinary authority failed to comply the aforesaid provisions while imposing penalty of removal from service.

8. Learned counsel for the petitioner further submitted that appellate authority has not considered the petitioner's appeal in accordance with sub regulations (2) of Regulation 70 where the appellate authority shall consider whether findings are justified and/or whether the penalty is excessive or inadequate.

In support of the petitioner's contentions, learned counsel for the petitioner relied on the following decisions:-

I. Union of India & Ors. vs. B.V. Gopinath, reported in ***(2014) 1 SCC 351***, Para No. 40 reads as under:-

“40. Disciplinary proceedings against the respondent herein were initiated in terms of Rule 14 of the aforesaid Rules. Rule 14(3) clearly lays down that where it is proposed to hold an inquiry against a government servant under Rule 14 or Rule 15, the disciplinary authority shall draw up or cause to be drawn up the charge sheet. Rule 14(4) again mandates that the disciplinary authority shall deliver or cause to be delivered to the government servant, a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and the supporting documents including a list of witnesses by which each article of charge is proposed to be proved. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the disciplinary authority

approves the initiation of the disciplinary proceedings, the charge sheet can be drawn up by an authority other than the disciplinary authority. This would destroy the underlying protection guaranteed under Article 311(1) of the Constitution of India. Such procedure would also do violence to the protective provisions contained under Article 311(2) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the charge sheet. Such a charge sheet can only be issued upon approval by the appointing authority i.e. Finance Minister.”

II. *Union of India and others vs. Mohd. Ramzan Khan*, reported in (1991) 1 SCC 588, Para 15 reads as under:-

“15. Deletion of the second opportunity from the scheme of Article 311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the inquiry officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be

taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the 42nd amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought about any change in this position.”

9. Per contra, learned counsel for the respondents submitted that no doubt petitioner was appointed by the Managing Director in the year 1985. In the year 1990, respondents-Bank have created post of Chief General Manager and others. In the guise of creation of Chief General Manager and others posts, powers were reshuffled among the Managing Director, Chief General Manager, General Manager and others. Insofar as appointing authority to the post of JMGS-I is concerned, Chief General Manager was identified as appointing authority. Since the petitioner is in the cadre of JMGS-I, consequently, disciplinary authority would be Chief General Manager this is evident from Annexure R-1/2. It was further submitted that General Manager is immediate lower rank than the Chief General Manager. Initiation of inquiry by the General Manager is permissible since Regulations provides for it. Therefore, petitioner's contention that initiation of inquiry till imposition of penalty is by General Manager and Chief General Manager are not competent persons to initiate since petitioner was appointed by the Managing Director is not tenable.

10. Learned counsel for the respondents further submitted that Chief General Manager while disagreeing with the Inquiring Officer's report in respect of charge nos.1 and 5 are concerned, it is to be noted that charge no.1 is relating to acceptance of illegal gratification to that extent of complaint was received. Merely non-examination of complainant that does not wipeout charges leveled against the petitioner which was investigated by the officers of the respondents-Bank, namely, Sh. K.J. Wadhan, Sh. A.K. Kalia and Sh. Ram Lal, who have examined in the inquiry. Thus, the Inquiring Officer has not erred in appreciating the evidence of the witnesses. It is not mandatory that complainant is required to be examined if the complaint is part and parcel of the inquiry.

11. It was further submitted that disciplinary authority – Chief General manager even though not considered each of the petitioner's contentions on the Inquiring Officer's report, at the same time, the appellate authority has considered those points which have not been considered by the disciplinary authority. Therefore, whatever the defects in the disciplinary authority's order has been taken note of by the appellate authority and decided. Hence, the petitioner's contention that Chief General Manager – disciplinary authority failed to appreciate each of the contentions is not tenable. In support of respondents' contentions, learned counsel for the respondents relied on the following decisions:-

I. State Bank of India Vs. S. Vijay Kumar, reported in (1990) 4 SCC 481, Para Nos. 24 and 25 read as under:-

“24. Now so far as the right which has been conferred on the employees of the State Bank contained in Regulation 55(2)(a) is that such officers or employees

shall not be dismissed from service of the State Bank by an authority lower than the appointing authority. Thus a comparison of the provisions contained in Article 311(1) of the Constitution and the right guaranteed to the employees of the State Bank under Regulation 55(2)(a) shows that there is a material difference between the language used in the two provisions. Under Article 311 (1) the words used are "by which he was appointed." In Regulation 55(2)(a) there are no such words "by which he was appointed" and in its place the only right guaranteed is that the employee shall not be dismissed by an authority lower than the appointing authority. Thus the right guaranteed in case of the officers or employees of the State Bank is that the order of dismissal cannot be passed by an authority lower than the appointing authority. A perusal of the relevant Regulations and Rules mentioned above clearly go to show that the Chief General Manager had become the appointing authority of the employees in question under Regulation 55(2)(a) with effect from July 1, 1974. Admittedly the orders of dismissal have been passed long after these amendments when the Chief General Manager had already become their appointing authority under the Regulations and the Rules. The right that an officer or employee of the State Bank of India cannot be dismissed from service by an authority lower than the appointing authority is a creation of statutory rules and regulations. So far as the right or protection guaranteed under Article 311 of the Constitution is concerned, it applies to members of the Civil Service of the Union or an All India service or a Civil Service of a State or who holds a Civil Post under the Union or a State. Admittedly the employees of the State Bank do not fall under any one of these categories

and they cannot seek any protection under Article 311(1) of the Constitution. The employees of the State Bank can only claim such rights which have been conferred under Regulation 55(2)(a) of the General Regulations. The only right conferred under the said provision is that the officers or employees of the State Bank cannot be dismissed by an authority lower than the appointing authority. With the risk of repetition it may be stated that on the date when the order of dismissal has been passed, Chief General Manager had already become the appointing authority and as such the order of dismissal has not been passed by an authority lower than the appointing authority.

25. Apart from the view taken by us as mentioned above the Regulation 55 has been amended by a resolution of the Central Board dated August 25, 1988 with retrospective effect. It has now been made clear in the explanation that for the purpose of clause (b) the term appointing authority shall mean and include the authority who has been designated as such in respect of such class or grade of officers or employees to which the officer or employee concerned, as the case may be belongs at the time when such order is passed or any proceedings leading to such order or termination is initiated. This provision now concludes the controversy if any and clearly provides that the appointing authority shall mean and include the authority who has been designated as such at the time when such order is passed. It was contended on behalf of the Learned counsel for the employees that the Bank had no power to amend the Regulations with retrospective effect. We see no force in this contention. Section 50(2)(a) of the Act clearly provides that all regulations made under this

section shall have effect from such earlier or later date as may be specified in the regulation. Thus the regulations can be made to give effect from earlier dates also as may be specified in the regulations. We find no force in the contention of learned counsel for the employees that they had vested right in this regard and the same could not have been taken away by making regulations with retrospective effect. There cannot be any vested right in such a matter. As already mentioned above it was a right conferred under Regulation 55(2)(a) and the same can be amended with retrospective effect also in case the authority competent to make regulations has been given a right to make regulations with retrospective effect. It has been held in State of Jammu & Kashmir v. Triloki Nath Khosa & Ors., (1974) 1 SCC 19 that it is well settled that a Government servant acquires a 'status' on appointment to his office and as a result his rights and obligations are liable to be determined under statutory or constitutional authority which for its exercise requires no reciprocal consent. In Bishun Narain Misra v. The State of Uttar Pradesh and others, AIR 1965 SC 1567 it was held that new rule reducing the age of retirement from 53 years to 55 years could not be said to be retrospective. The proviso to the new rule and the second notification were only methods to tide over the difficult situation which would arise in the public service if the new rule was applied at once and also to meet any financial objection arising out of the enforcement of the new rule. The new rule therefore, could not be struck down on the ground that it was retrospective in operation. In Roshan Lal Tandon v. Union of India & Anr., AIR 1967 SC 1889 it was held that the legal position of Government servant is more

one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement by the parties. Emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It was further held in the above case that the petitioner had no vested contractual right in regard to the terms of his service and that the same can be altered unilaterally. We may further add that the prohibition if any to alter the terms and conditions can be found only under the Constitution of India and in case power of the rule or law making authority is not circumscribed or limited by any constitutional mandate then it has power to amend such terms and conditions of service unilaterally without the consent of the employee. In the cases in hand before us the right whatsoever conferred on the employees of the State Bank was on the basis of Regulation 55(2)(a) and the Central Board of the Bank was authorised to amend such regulations from any date under Section 50 (2)(a) of the Act.”

II. Satinder Singh Arora vs. State Bank of Patiala, reported in **1991 LawSuit (SC) 497**, para no.6 reads as under:-

“6. The second contention raised by the petitioner seems to be covered by the decision of this Court in State Bank of India vs. S. Vijaya Kumar. In that case this Court after considering the language of the relevant Regulation 55 (2) (o) came to the conclusion that under that regulation the appointing authority at the relevant date when the impugned order of punishment is passed is competent to make the order. Regulation 55(2)(a)

conferred powers of appointment and promotion on different functionaries of the Bank. It recognized the right of the Bank employees not to be dismissed or removed from service by an authority lower in rank than the appointing authority. In that case also the Bank employees were appointed by the Executive Committee but their services were terminated by the Chief General Manager who was their appointing authority on the date of the impugned order. This court held that the dismissal orders were valid even though the Chief General Manager was lower in rank than the Executive Committee as at the relevant date he was the appointing authority under the amended Regulations. The position is the same in our case also and, therefore, the petitioner's contention in this behalf must be rejected as devoid of merit.”

III. Managing Director, ECIL, Hyderabad, etc. etc. vs. Karunakar, etc. etc., reported in (1993) 4 SCC 727, Para no.7 (v) reads as under:-

“7(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the

principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to a "unnatural expansion of natural justice" which in itself is antithetical to justice.

Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court! Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court., Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/ Tribunals which will apply their judicial mind to the question and give their reasons for

setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Courts/ Tribunals find that the furnishing of the report would have made a difference to the result in the case that should set aside the order of punishment. Where after following the above procedure the Courts/Tribunals sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority, management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law.”

In view of these facts and circumstances, petitioner has not made out a case.

12. Heard learned counsel for the parties.

13. Petitioner's counsel contended that initiation of inquiry till

imposition of penalty is by in-competent authority as he was appointed by the Managing Director, whereas the inquiry proceedings were initiated and concluded by Chief General Manager/General Manager. No doubt, petitioner was initially appointed by the Managing Director. At the same time in view of later developments in the year 1990, respondents-Bank have created Chief General Manager and others posts, while doing so power to appoint and take disciplinary action against the post-holder of JMGS-I is concerned, it has been assigned to Chief General Manager. Therefore, petitioner's contention that initiation of inquiry and its conclusion by the in-competent authority is hereby rejected. That apart petitioner has preferred an appeal before the Managing Director and he has surrendered his right before the Managing Director - appellate authority.

14. Petitioner contended that list of documents and witnesses have not been provided along with charge memo or before examination of witnesses as mandated under Regulation 68 (x)(2) II and III of Regulations 1979 for the purpose of effective defence in the inquiry and it is not disputed by the respondents. However, it was contended by the learned counsel for the respondents that no prejudice has caused to the petitioner in not providing list of documents and witnesses. When regulation mandate for providing list of documents and witnesses, it was bounden duty of the authority to provide list of documents and witnesses to the aggrieved employee. In other words, in not providing list of documents and witnesses would result in not submitting effective reply to the charge memo. Thus, there is a violation of principle of natural justice. On this ground, proceedings from the stage of commencement of inquiry by the Inquiring

Officer would be liable to be set aside.

15. Disciplinary authority while considering the petitioner's explanation read with Inquiring Officer's report failed to appreciate each of the contentions raised by the petitioner. That apart disciplinary authority had disagreed with charge Nos. 1 and 5 and it has arrived its own finding to prove the charge, at that juncture petitioner has not been provided opportunity. On the other hand, learned counsel for the respondents contended that if disciplinary authority disagreeing with the Inquiring Officer's report, it need not give notice. Further each of the contentions raised by the petitioner even though not considered by the disciplinary authority at the same time appellate and reviewing authorities have considered at length, therefore, petitioner's contention is liable to be rejected are concerned, it is to be noticed that rightly or wrongly disciplinary authority has disagreed with the Inquiring Officer's finding on certain charges like Charge Nos. 1 and 5, the Inquiring Officer has held that charge nos. 1 and 5 were not proved when the disciplinary authority finds that those two charges were also proved, in that event, it has a civil consequences. Therefore, without hearing the petitioner, disciplinary authority cannot proceed to pass adverse order behind the back of the petitioner. Therefore, the disciplinary authority's findings on charge nos. 1 and 5 is without hearing the petitioner. On this score, disciplinary authority's decision is liable to be set aside. Regulation 68(3) of Regulations 1979 reads as under:-

“(3) (i) The Disciplinary Authority, if it is not itself the Inquiring Authority, may, for reasons to be recorded

by it in writing, remit the case to the Inquiring Authority – whether the Inquiring Authority is the same or different – for fresh or further inquiry and report, and the Inquiring Authority shall thereupon proceed to hold further inquiry according to the provisions of sub-regulation (2) as far as may be.

(ii) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(iii) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in regulation 67 should be imposed on the officer, if shall notwithstanding anything contained in sub-regulation (4), make an order imposing such penalty.

Provided that where the Disciplinary Authority is of the opinion that the penalty to be imposed is any of the major penalties specified in clauses (e), (f), (g) and (h) of regulation 67 and if it is lower in rank to the Appointing Authority in respect of the category of officers to which the officer belongs, it shall submit to the Appointing Authority the records of the enquiry specified in clause (xxi) (b) of sub regulation (2), together with its recommendations regarding the penalty that may be imposed and the Appointing Authority shall make an order imposing such penalty as it considers in its opinion appropriate.

(iv) If the Disciplinary Authority or the Appointing Authority, as the case may be, having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer concerned.”

Perusal of the aforesaid statutory provisions, it mandates the disciplinary authority to reasons to be recorded by the disciplinary authority by it in writing, remit the case to the Inquiring Authority for fresh or further inquiry and report, so also disciplinary authority has been empowered to record its reasons for disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose. Even though, Regulations do not stipulate providing an opportunity to the aggrieved person, even then if any civil consequence is involved, in that event, it was bounden duty of the authority to provide an opportunity to an aggrieved person. In other words, behind the back of an employee or officer, adverse order cannot be passed like one passed by the disciplinary authority insofar as Charge Nos. 1 and 5 are concerned.

16. Supreme Court in the case of *Palanisamy and others vs. K. Dhanpalan* reported in (2017) 4 SCC 713 (Para Nos. 6 and 7) held that “since allegations made against appellants were serious and finding of guilt recorded against them inevitably and had civil consequences, it is cardinal that they should have been allowed to cross-examine witnesses concerned - Not granting such opportunity, entails infraction of principles of natural justice, thus, vitiating enquiry procedure”. Whereas in the present case, disciplinary authority behind the back of the petitioner held charge nos. 1 and 5 were proved, Therefore, in not following principles of natural justice by providing opportunity to the petitioner would be contrary to the aforesaid decision.

17. The contention of the respondents' counsel that even though disciplinary authority has not considered each of the plea raised by the

petitioner but the same is covered by next higher authority like appellate and reviewing authority. On this issue, Supreme Court in the case of **Ravi Yashwant Bhoir vs District Collector, Raigad** reported in **(2012) 4 SCC 407** held that recording of reasons for a decision is held to be a part of principle of natural justice. Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. The authority ought to have the advantage of examining the reasons that prevailed with the court or the authority making the order. Supreme Court in the case of **Babulal vs. State of Haryana** reported in **(1991) 2 SCC 335** held that the party who is denied natural justice “need not establish particular prejudice for want of such opportunity” because “the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice has been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary.

18. The decision cited by petitioner's counsel on the issue relating to competency is concerned, is distinguishable having regard to the fact that Article 311 of the Constitution is not attracted in the present case. Further in the year 1990, the respondents – Bank have reshuffled the powers and functions of the various authorities like Managing Director, Chief General Manager, General Manager and others. The relevant rules and regulations have been modified and powers have been entrusted to Chief General Manager.

19. The decisions cited by the respondents' counsel in particularly **State Bank of India vs. S. Vijay Kumar** and **Satinder Singh Arora (supra)**

is applicable on the issue relating to competency.

20. Learned counsel for the respondents relied on ***Managing Director, ECIL, Hyderabad vs. Karunakar*** cited supra in respect of how prejudice has caused to the employee. The said decision is distinguishable with reference to the present case wherein the respondents-Bank have not provided list of documents and witnesses. If the charges are supported by list of documents and witnesses, in that event, in order to submit effective reply to the charge memo it was necessary. Supreme Court in the case of ***Kumaon Mandal Vikas Nigam Ltd. vs. Girja Shankar Pant*** reported in ***(2001) 1 SCC 182*** held that in not furnishing list of documents resulted in violation of principles of natural justice. That apart the disciplinary authority while disagreeing with the charge nos. 1 and 5 proceeded to hold that charges leveled against the petitioner were proved behind the back of the petitioner. Therefore, there is violation of principles of natural justice.

21. Sub regulation (2) of regulation 70 of Regulations 1979 relates to preferring appeal and its consideration. The appellate authority has not complied aforesaid regulation in particularly when the penalty is excessive or inadequate and so also appellate authority was required to consider whether the findings are justified or not.

22. In the light of the above discussion, orders dated 02.09.1992, 25.02.1993 and 17.11.1994 of disciplinary, appellate and reviewing authorities (Annexures P/6, P/7 and P/9 respectively) are set aside. Since petitioner is out of service from 02.09.1992, he is entitled to continuity of service till date of superannuation with all service benefits, he shall be entitled to only 50% of arrears of salary for the intervening period from the

date of removal from the service till attaining the age of superannuation.

Retiral benefits shall also be released to the petitioner.

22. Writ petition stands allowed. No order as to costs.

November 01, 2017

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[P.B. Bajanthri]
Judge

Whether reasoned / speaking : Yes

Whether reportable : Yes