

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No.5371 of 2007**

- Ramayan Singh Shori S/o Late Aghan Singh Sori, Aged about 48 years, R/o Village-Baloudgahan Tehsil-Baloud District Durg At Present Kailash Nagar, Ward No.-2 Kawardha District Kabirdham Cg

---- Petitioner**Versus**

1. Cheif Manager Durg-Rajnandgaon Gramin Bank Head Office, G-E Road Distt- Rajnandgaon 491 441
2. The Chairman & Disciplinary Authority Durg-Rajnandgaon Gramin Bank Head Office, G-E Road Distt- Rajnandgaon 491 441
3. Enquiry Officer Durg Rajnandgaon Gramin Bank Head Office G.E. Road Distt-Rajnandgaon 491 441

--- Respondents

For Petitioner : Shri H. S. Ahluwalia, Advocate
 For Respondents : Shri N. N. Roy, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**CAV Order****18/05/2018**

Heard.

1. This writ petition is directed against the order dated 29-07-2006 passed by the disciplinary authority, by which, penalty of reduction to lower scale in the time scale pay was imposed on the petitioner.
2. The petitioner was posted as Branch Manager, Gotatola Branch, during the period from 29-12-1998 to 03-10-2000. A detailed investigation was carried out by the Senior Manager (Audit & Inspection), which detected misappropriation/embezzlement amounting to Rs.3,37,650/-. FIR was lodged in the Police Station Mohalla on 03-10-2000, wherein the petitioner was also made

accused. The petitioner was eventually placed under suspension on 04-10-2000. He was reinstated on 12-02-2004. The charge sheet was then served on the petitioner instituting departmental enquiry on as many as five charges, which were as below:-

- (i) Various withdrawals were passed for payment without verifying the posting/debits in the respective accounts.
- (ii) During the period of his leave/tour, the then Clerk made payment of various withdrawals without posting the same in the respective accounts. But he did not verify/inspect the vouchers passed by the Clerk.
- (iii) He as Branch Manager did not clerk the ledger postings either on the dates of his presence nor on the dates after he returned from tours/leave, balance the books of accounts, accumulated the arrears of balancing of books creating/according opportunities to the clerk working under him for committing fraud in the Branch.
- (iv) He did not verify transactions made by the customers of the Branch and did not verify the ledger postings in the respective accounts from the pay-in-slip and scroll leading to misappropriation of funds by the Clerk.
- (v) He did not deposit the amount of field recovery collected by him deposited by the customers of the Branch recovery book on the date of recovery/following working day. He has misappropriated Bank's fund by pocketing the recovery receipts in violation of orders/instructions of the Bank.

The Enquiry Officer was appointed, who conducted enquiry, allowing prosecution and the delinquent employee-the petitioner, to lead oral as well as documentary evidence. Thereafter, the Enquiry Officer submitted a enquiry report on 18-11-2005, in which, all the charges were found proved. The disciplinary authority concurring with the findings of the Enquiry Officer, imposed penalty by the impugned order and appeal filed against the same was also dismissed on 31-05-2007, giving rise to the instant petition.

3. Assailing the legality and validity of the order of penalty, learned counsel for the petitioner argued that the allegations of fact made against the petitioner, even found proved, did not constitute misconduct. According to learned counsel for the petitioner, the allegations only relate to some kind of lethargy on the part of the petitioner in performance of duties, which could not be made a basis to institute departmental enquiry. Next submission is that before instituting departmental enquiry, the disciplinary authority got preliminary enquiry conducted against the petitioner. The said preliminary enquiry report was extremely relevant document because it was relied upon to hold the charges proved against the petitioner. Non supply of copy of preliminary enquiry report therefore, resulted in denial of reasonable opportunity of hearing to defend the charges. It is also submitted that during the course of preliminary enquiry, various statements were recorded, even the copies of statements were not supplied to the petitioner. A prayer for supply of preliminary enquiry report was earlier accepted, but later on, the same was rejected. Non supply of relevant documents like the preliminary enquiry report and the statements recorded during preliminary enquiry, violated the principles of natural justice. In support of his submission, learned counsel for the petitioner placed reliance in the case of ***The State of Punjab vs. Bhagat Ram*¹, *State of U.P. vs. Mohd. Sharif (dead) through L.Rs.*², *Kashinath Dikshita vs. Union of India and others*³, *Babulal vs. State of Rajasthan & Ors.*⁴. In support of submission that the alleged negligence even if found proved, did not amount to misconduct within its ordinary meaning and as understood in service jurisprudence, reliance was placed on ***LIC of India vs. R. Suresh*⁵, *Union of India and others vs. J.*****

1 (1975) 1 SCC 155

2 (1982) 2 SCC 376

3 (1986) 3 SCC 229

4 2001 1 RLW (Raj) 75

5 2008 2 SCC (L & S) 1083

Ahmed⁶ and Shyam Lal Tiwari vs. Managing Director, Chhattisgarh Khadi Gramodyog Board, Raipur⁷.

It is also contended that the penalty imposed on the petitioner is grossly disproportionate to the gravity of alleged misconduct. Penalty of reduction of lower stage of pay scale, amounts to major penalty, whereas except negligence, no other allegations were found proved against the petitioner. Lastly, referring to Annexure P-2 to P-13, it is submitted that these being the admitted documents, which were required to be taken into consideration to decide the quantum of penalty.

4. Per contra, learned counsel for the respondents would submit that the statement of witnesses recorded during preliminary enquiry were supplied to the petitioner. The petitioner adopted delay tactics. As the report of preliminary enquiry was not relied upon to prove the charges, non supply of the same would not vitiate enquiry, therefore, it cannot be said that the petitioner was prejudiced in defence. It was a case of loss of confidence in the matter of banking transactions and therefore, the penalty cannot be said to be shockingly disproportionate to the gravity of misconduct. According to learned counsel for the respondent-bank, the bank has taken lenient view in the case of the petitioner by not imposing extreme penalty of dismissal/removal from service. Reliance has been placed on ***State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya⁸***, ***State Bank of India and others vs. Narendra Kumar Pandey⁹*** and ***General Manager (Operations), State Bank of India and another vs. R. Periyasamy¹⁰***. Learned counsel for the respondent-bank lastly submitted that the documents (Annexure P-7 to P-13) were not placed before

6 (1979) 2 SCC 286

7 ILR 2017 Chhattisgarh 1570

8 (2011) 4 SCC 584

9 (2013) 2 SCC 740

10 (2015) 3 SCC 101

the Enquiry Officer, much less pressed into service on the quantum of penalty, therefore, they are liable to be ignored and the impugned order of penalty could not be faulted with on this newly created ground.

5. The first issue, which arises for consideration is whether the charges read as it is, would constitute misconduct. The petitioner is an employee of Regional Rural Bank. A copy of relevant service rules known as Durg-Rajnandgaon Rural Bank (Employee) Service (Amended) Regulations, 1982, was produced before the Court during the course of hearing. The relevant part of Regulation 30 reads as under:-

“ अन्य विनियमों के प्रावधानों के प्रांडग न्याय के बिना, कोई अधिकारी अथवा कर्मचारी जो कि इन विनियमों का उल्लंघन करता है, अथवा जो उपेक्षा अथवा अयोग्यता अथवा आलस्य प्रदर्शित करता है अथवा जो जानबूझकर ऐसा कुछ करता है जिससे बैंक के हित में क्षति पहुँचे अथवा उसके आदेशों में विरोधाभास उत्पन्न करता है अथवा अनुशासन का उल्लंघन करता है अथवा दुराचरण का दोषी पाया जाता है तो वह निम्नलिखित दण्ड का उत्तरदायी होगा:—”

A perusal of the same would show that in so far as services under the Regional Rural Bank is concerned, an Officer or employee, who violates the regulations or who exhibits negligence or inability or lethargy or who knowingly acts in a manner which harms the needs of the bank or who behaves in a indisciplined manner or continues with indisciplined manner, will be liable to be penalty enumerated in the rules. Thus, the word “ Duracharan” (misconduct) has been used in the rules with widest amplitude which even include acts of negligence or even incompetency. Therefore, with specific reference to the word 'misconduct', meaning thereby 'misconduct' in the services of the bank, has to be understood in that manner of wide amplitude and not in a restricted manner. In the case of **Shyam Lal Tiwari** (supra), the meaning and import of misconduct as defined in Chhattisgarh Civil Services (Conduct) Rules, 1965, came up for

consideration. Referring to various judgments of the Supreme Court, the expression of misconduct was elaborated, as below:-

10. “The term 'misconduct' has not been defined under the Rules, 1965. It only provides for certain norms which a government servant is required to adhere while discharging duties or to maintain probity in public life even while he is not on duty so that any of the act should not be branded as an act unbecoming of a government servant.

11. The Supreme Court had time and again considered as to what would be a “misconduct” within the particular service rules so that it may attract initiation or constitution of departmental enquiry for punishing the erring government servant.

12. In the matter of Union of India and others vs. J. Ahmed, (1979) 2 SCC 286, the concerned IAS Officer was posted as Deputy Commissioner and District Magistrate in an area which faced large scale disturbances leading to considerable damage to property. The Officer was charge-sheeted for failing to take effective measures to control the large scale disturbances and other related charges. Referring to several of its earlier decisions, the Supreme Court held that the code of conduct, as set out in the Conduct Rules, clearly indicates the conduct expected of a member of the service. It would follow that the conduct, which is blameworthy for the government servant in the context of Conduct Rules, would be “misconduct”. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is “misconduct”. A disregard of an essential condition of the contract of service may constitute “misconduct”. The Supreme Court then considered the definition of “misconduct” in Stroud's Judicial Dictionary, which runs as under:-

“Misconduct means, misconduct arising from ill motive; acts of negligence, errors or judgment, or innocent mistake, do not constitute such misconduct.”

13. Further, according to the Supreme Court, in industrial jurisprudence amongst others, habitual or gross negligence constitute misconduct but in Utkal Machinery Ltd. v. Workmen, Miss Shanti

Patnaik, AIR 1966 SC 1051, in the absence of standing orders governing the employee's undertaking, unsatisfactory work was treated as misconduct in the context of discharge being assailed as punitive. In *S. Govinda Menon v. Union of India*, AIR 1967 SC 1274, the manner in which a member of the service discharged his quasi judicial function disclosing abuse of power was treated as constituting misconduct for initiating disciplinary proceedings. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious or atrocious consequences the same may amount to misconduct as was held by the Supreme Court in *P. H. Kalyani v. Air France, Calcutta*, AIR 1963 SC 1756, wherein it was found that the two mistakes committed by the employee while checking the load-sheets and balance charts would involve possible accident to the aircraft and possible loss of human life and, therefore, the negligence in work in the context of serious consequences was treated as misconduct. It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. Leaving aside the classic example of the sentry who sleeps at his post and allows the enemy to slip through, there are other more familiar instances of which a railway cabinman signals in a train on the same track where there is a stationary train causing head on collision; a nurse giving intravenous injection which ought to be given intramuscular causing instantaneous death; a pilot overlooking an instrument showing snag in engine and the aircraft crashes causing heavy loss of life. Misplaced sympathy can be a great evil [See *Navinchandra Shakerchand Shah v. Manager, Ahmedabad Co- op. Department Stores Ltd.*, (1978) 19 Guj LR 108,

120. But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty.”

14. In the matter of *M. M. Malhotra vs. Union of India and others*, (2005) 8 SCC 351, the Supreme Court held that the range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed. It has, therefore, to be noted that the word "misconduct" is not capable of precise definition. But at the same time though incapable of precise definition, the word "misconduct" on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve.”

15. In the matter of *Baldev Singh Gandhi vs. State of Punjab and others*, the Supreme Court has held that the expression “misconduct” means unlawful behavior, misfeasance, wrong conduct, misdemeanour etc. Similarly, the Supreme Court in the matter of *State of Punjab and others vs. Ram Singh Ex-Constable*, AIR 1992 SC 2188 has held that the term 'misconduct' may involve moral turpitude, it amounts to improper or wrong behavior, unlawful behavior, willful in character, forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve.

16. 'Misconduct' as stated in *Batt's Law of Master and Servant* (4th Edn. at p.63) comprised positive acts and not mere neglects or

failures. The definition of the word as given in Ballentine's Law Dictionary (148th Edn.) is : 'A transgression of some established and definite rule of action, where no discretion is left except what necessity may demand, it is a violation of definite law, a forbidden act. It differs from carelessness.

17. In the matter of *Ravi Yashwant Bhoir vs District Collector, Raigad and others*, (2012) 4 SCC 407, the Supreme Court held thus in paras 18 & 19:

18. The expression 'misconduct' has to be understood as a transgression of some established and definite rule of action, a forbidden act, unlawful behaviour, wilful in character. It may be synonymous as mis-demeanour in propriety and mismanagement. In a particular case, negligence or carelessness may also be a misconduct for example, when a watchman leaves his duty and goes to watch cinema, though there may be no theft or loss to the institution but leaving the place of duty itself amounts to misconduct. It may be more serious in case of disciplinary forces.

19 Further, the expression 'misconduct' has to be construed and understood in reference to the subject matter and context wherein the term occurs taking into consideration the scope and object of the statute which is being construed. Misconduct is to be measured in the terms of the nature of misconduct and it should be viewed with the consequences of misconduct as to whether it has been detrimental to the public interest."

It is thus clear that the expression 'misconduct' has to be construed and understood in reference to the subject matter and context wherein the term occurs taking into consideration the scope and object of the statute which is being construed. Misconduct is to be measured in the terms of the nature of misconduct and it should be viewed with the consequences of misconduct as to whether it has been detrimental to the public interest, as explained in the case of ***Ravi Yashwant Bhoir vs District Collector, Raigad and others*¹¹**.

6. Five charges, which have been found proved against the petitioner are charges of gross negligence. It was alleged that various withdrawals were passed for payment without verifying the posting/debits in the respective accounts. As a Branch Manager, the petitioner did not make ledger posting

11 (2012) 4 SCC 407

either on the dates of his presence nor on the dates after he returned from tours/leave. He did not verify transactions made by the customers of the Branch and did not verify the ledger postings in the respective accounts from the pay-in-slip and scroll leading to misappropriation of funds by the Clerk. He did not deposit the amount of field recovery collected by him deposited by the customers of the Branch and thereby failed to detect the defects found in violation of orders/instructions of the Bank. Therefore, the first contention raised by learned counsel for the petitioner deserves to be rejected.

7. A reading of the impugned order shows that the petitioner's grievance that he was not supplied copy of preliminary enquiry report and statements was taken into consideration and the disciplinary authority noticed that the statements and documents collected during preliminary enquiry were made available to the petitioner. The impugned order of penalty does not show that the disciplinary authority, in order to hold the charges proved against the petitioner, relied upon the evidence recorded in the preliminary enquiry. Indeed, the order passed by the appellate authority shows that the grievance of non affording of proper opportunity of hearing on account of non supply of report of preliminary enquiry, was not even raised before the appellate authority. From the order sheets of enquiry proceedings (Annexure P/6), it is found that during the course of enquiry, though the petitioner demanded copy of preliminary enquiry report, the Presenting Officer stated before the Enquiry officer that the enquiry was initiated after receiving the report of preliminary enquiry, which contains statements as well as statement of charges levelled against the petitioner, therefore, it is not required to be given separately to the delinquent employee. The Enquiry Officer, upon due consideration of the respective contentions of the delinquent employee and the Presenting Officer, concluded that the report of preliminary enquiry has not been made a basis to prove the

charges and the documents, on the basis of which, charges are sought to be proved, have already been supplied to the petitioner. It is also relevant to mention here that the Officer, who had conducted the preliminary enquiry, was one of the witnesses of the prosecution and he was cross-examined by the petitioner. In addition, the petitioner was also allowed to examine number of defence witnesses.

8. In the petition, the petitioner has raised specific ground that he was not supplied copy of statement of witnesses recorded by the Officer In charge of the Preliminary Enquiry as also list of witnesses were not supplied along with the charge sheet. As those witnesses, whose statements were recorded during preliminary enquiry, were examined during enquiry, a case of denial of reasonable opportunity to defend has been raised. In para 2.5 of the return, it has been averred that the petitioner was supplied with all the documents including the statements of the witnesses, examined during the course of preliminary hearings which formed part of the charge sheet served upon the petitioner and the petitioner had also cross-examined those witnesses. In the order dated 19-11-2004 (Annexure R-1), it is reflected that the documents from Page No.MD-01 to MD-459 were made available to the petitioner.

It would thus appear that the witnesses, whose statements were recorded during preliminary enquiry and relied upon by the prosecution, those statements were made available to the petitioner. However, the petitioner, though demanded a copy of report of preliminary enquiry, the same was not supplied on the ground that those documents have not been relied upon by the prosecution. Even the disciplinary authority did not record any finding on the preliminary enquiry nor relied upon it to hold the charges proved against the petitioner.

9. In the case of ***State of Punjab vs. Bhagat Ram*** (supra), statement of

witnesses recorded during preliminary enquiry were not supplied, it was held that non supply resulted in denial of reasonable opportunity to show cause against the action, it was held, as below:-

7. "The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the Government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross examining the witnesses produced against him. The object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the Government servant. Unless the statements are given to the Government servant he will not be able to have an effective and useful cross-examination.

8. It is unjust and unfair to deny the Government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the Government servant. A synopsis does not satisfy the requirements of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken."

10. In the case of ***State of U.P. Vs. Mohd. Sharif (dead) through L.R.s*** (supra), it was undisputed that the preliminary enquiry had preceded the disciplinary enquiry and during the preliminary enquiry, statements of witnesses were recorded but copies of these statements were not furnished to the employee at the time of the disciplinary enquiry. Even the request to inspect the file pertaining to the preliminary enquiry was also rejected. In these factual background, it was held that the employee was prejudiced in defence.

11. In the case of ***Kashinath Dikshita vs. Union of India and others*** (supra), it was found on facts that the copy of statements of witnesses were not supplied nor the delinquent employee was allowed to inspect the records. In these factual backdrop, it was held that the delinquent employee was denied reasonable opportunity for exonerating himself, it was held thus:-

11. “Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents, it is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself. We do not consider it necessary to quote extensively from the authorities cited on behalf of the parties, beyond making passing reference to some of the citation, for, whether or not there has been a denial to afford a reasonable opportunity in the backdrop of this case must substantially depend upon the facts pertaining to this matter.

12. The appellant relied on [Tirlok Nath v. Union of India](#) 1967 SLR 759 in support of the proposition that if a public servant facing an inquiry is not supplied copies of documents, it would amount to denial of reasonable opportunity. It has been held in this case:

“Had he decided to do so, the documents would have been useful to the appellant for cross-examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, will have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish to the appellant with copies of the documents such as the FIR and statements recorded at Shidhipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry.”

Reliance has also been placed on [State of Punjab v. Bhagat Ram S.C R. 1975 \(2\) p. 370](#) and [State of Uttar Pradesh v. Mohd. Sharif \(dead\) through LRs LLJ 1982 \(2\) 180](#) in support of the proposition that copies of statements of witnesses must be supplied to the Government servant facing a departmental inquiry. It has been emphatically stated in [State of Punjab v. Bhagat Ram S.C R. 1975 \(2\) p. 370](#) by this Court as under:

The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given an opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

The meaning of a reasonable opportunity of showing cause

against the action proposed to be taken is that the Government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the Government servant. Unless the statements are given to the Government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the Government servant copies of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the Government servant. A synopsis does not satisfy the requirements of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken .”

12. In the case of ***Babulal vs. State of Rajasthan and Others*** (supra) also, it was found that the delinquent employee had demanded copies of statements of witnesses which was not supplied to him. Their Lordships in the Supreme Court held thus:-

7. “We regret our inability to agree with that view. It is true that only obligation of the disciplinary authority is to supply without askance all relevant materials which is relied by the prosecuting authority for establishing the charges against the delinquent officer where such copies are not supplied, the disciplinary authority is bound to supply such copies when demanded. It is also true that though the disciplinary authority is not bound to supply copies of other documents or statements on their own which are not relied on by them whether such statements were earlier recorded during the course of preliminary enquiry or preceding enquiry but, is duty bound to supply the same when demanded by the delinquent officer for his defence.
8. The delinquent officer apart from being entitled to receive the copies of the statements and documents relied on by the prosecuting authority is also entitled to demand copies of such documents and statements which he considers relevant for preparing his defence and which are in possession of the prosecuting authority. Simply because the authority is not bound to disclose and give those statements on its own, it cannot be inferred that even when such documents are demanded by the delinquent officer to prepare his defence, the same can be denied on the ground that because the prosecution has not relied on them, they are not bound to supply them. Non supply of such

documents would be denying the delinquent officer fair opportunity to prepare and raise his defence against the allegations levelled against him. In such event, the supply of the copies of documents in the possession of the prosecution agency can only be refused if any privilege is claimed in respect thereof in the public interest. It may be relevant to mention here that the delinquent officer in his defence is entitled to produce the evidence relied on by him and if necessary to secure the assistance of the enquiry of officer to summon the witnesses for their oral testimony or for production of relevant documents in their possession. If that can be done, we see no reason why the prosecuting authority is absolved from that responsibility from supplying the documents which are in its possession and are demanded by the delinquent officer for the purpose of preparation of his defence against the allegations levelled against him. The admitted facts of the case are that the petitioner has been consistently demanding the copies of the statements recorded by the authorities in the proceedings concerning the same event namely the loss/theft of 24 of Injector assemblies between the fateful period. Such statements may not be relevant for substantiating charges, but may be relevant for the purpose of substantiating defence of the delinquent or for cross examining such witnesses if and when examined during the course of enquiry. Non supply of such documents, in possession of prosecuting agency, results in denial of fair opportunity to defend the delinquent officer by withholding the relevant material evidence with them even after the same is demanded. In such event, the enquiry is vitiated.”

Meaning of reasonable opportunity was also explained, as below:-

9. The contours of reasonable opportunity in the context of departmental enquiry that may lead to imposing punishment on a public servant are well settled. In *Khem Chand vs. U.O.I.(1)*, S. R. Das, CJ, speaking for the Court said:

“The reasonable opportunity envisaged to the Government servant by the provision contained in Article 311 (2) includes (a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based; (b) an opportunity to defend himself by crossexamining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him,

10. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the Government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against

him are. 'He can do so by cross examining the witnesses produced against him. The object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the Government servant. Unless the statements are given to the Government servant he will not be able to have an effective and useful cross-examination.

11. This principle was reiterated by the Supreme Court in *Kashinath Dikshita vs Union of India* (3). The Court held denying the copies of the statements of the witnesses recorded during preliminary enquiry before the commencement of enquiry amounts to breach of natural justice.

12. It will be apposite to invite attention to following observations made by the Apex Court in *Trilok Nath vs. U.O.I.*(4):

“We shall assume for the present that R.55 of the Civil Services (Classification, Control and Appeals) Rules applies to this case. But this rule requires that the public servant concerned must be afforded an adequate opportunity of defending himself. It is for this reason that it is obligatory upon the Inquiry Officer not only to furnish the public servant concerned with a copy of the charges levelled against him, the grounds on which those charges are based and the circumstances on which it is proposed to take action against him. Further, if the public servant so requires for his defence, he has to be furnished with copies of all the relevant documents, that is, documents sought to be relied on by the Inquiry Officer or required by the public servant for his defence.

13. From the above both the obligations are distinctly discernible viz. (i) to supply such documents and witnesses as on which prosecution rests to substantiate the charges and (ii) document and statement which delinquent requires for the purpose of his defence and require the prosecuting agency to furnish copies of the same to him for his defence. The latter five of the document may or may not be one on which prosecution relies. Such documents can only be withheld if any privilege is claimed in respect thereof and so found to exist.

13. In all the aforesaid decisions, it was found that the copies of statements of witnesses recorded during preliminary enquiry were not supplied, and therefore, on this factual background, it was held that the delinquent employee was denied reasonable opportunity of hearing.

14. However, in the present case, those statements recorded during preliminary enquiry were supplied to the petitioner because those documents formed part of the charge sheet itself. The petitioner was afforded opportunity to

cross-examine those witnesses. Therefore, the petitioner's right of effective cross-examination was not denied.

15. If the report of preliminary enquiry has not been supplied, but statement of witnesses recorded during preliminary enquiry were supplied, the enquiry is not vitiated when disciplinary authority has not relied upon the findings of the preliminary enquiry to hold the charges proved. In other words, had the disciplinary authority, in order to lay credence to story of prosecution and the oral as well as the documentary evidence led by it, placed reliance upon the finding of the preliminary enquiry, the delinquent employee would be entitled to the copy of preliminary enquiry report, but, if the disciplinary authority did not rely upon the report of preliminary enquiry, the enquiry cannot be said to be vitiated on the ground of denial of reasonable opportunity of hearing because statement of witnesses recorded during preliminary enquiry were made available to the delinquent employee and the delinquent employee was afforded opportunity to cross-examine those witnesses, who were produced as witnesses of the prosecution in the preliminary enquiry. Mere non supply of the preliminary enquiry report, would not vitiate the enquiry unless prejudice is shown to have been caused which is well settled legal position. As the preliminary enquiry report was not relied upon by the disciplinary authority to hold charges proved, no prejudice was caused.

16. Therefore, on facts of the present case, this Court is inclined to hold that mere non supply of report of preliminary enquiry would not vitiate the enquiry as denial of reasonable opportunity of hearing.

17. On the aspect of quantum of penalty, it is well settled legal position that scope of interference by the Writ Court is extremely limited. It is only when it is found that the penalty imposed on the delinquent employee is shockingly disproportionate to the gravity of misconduct, interference may be called for.

The post, which the delinquent employee was holding and the services, in which, the delinquent employee occupied position and nature of work as also the findings of enquiry are relevant consideration and it would essentially be a matter of consideration depending upon the facts of each and every case as to whether the penalty imposed on the delinquent employee is shockingly disproportionate to the gravity of misconduct. In the present case, the petitioner was holding the post of Branch Manager in a Regional Rural Bank and because of his gross negligence, huge funds were misappropriated, which might not happen, but for the gross negligence of the petitioner, the penalty, which has been imposed on the petitioner is reduction to lower pay and it is not a case of removal or dismissal from service.

18. In the case of ***State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaya*** (supra), a bank employee, where the bank losses confidence on the employee and imposed penalty of dismissal, it was held, as below:-

8. “When a court is considering whether punishment of ‘termination from service’ imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor. When an unknown person comes to the bank and claims to be the account-holder of a long inoperative account, and a bank employee, who does not know such person, instructs his colleague to transfer the account from “dormant” to “operative” category (contrary to instructions regulating dormant accounts) without any kind of verification, and accepts the money withdrawal form from such person, gets a token and collects the amount on behalf of such person for the purpose of handing it over to such person, he in effect enables such unknown person to withdraw the amount contrary to the banking procedures; and ultimately, if it transpires that the person who claimed to be account holder was an imposter, the bank can not be found fault with if it says that it has lost confidence in the employee concerned. A Bank is justified in contending that not only employees who are dishonest, but those who are guilty of gross negligence, are not fit to continue in its service.”

19. It is also found that the petitioner has been imposed penalty of reduction in pay and not an extreme penalty of dismissal or removal from service.

Therefore, the penalty imposed on the petitioner cannot be said to be shockingly disproportionate to the gravity of misconduct.

Learned counsel for the respondent-bank is quite right in submitting that the lenient view has been taken against the petitioner.

20. In view of above consideration, no interference in the matter of imposition of penalty on the petitioner is called for. It is noted that the order passed by the appellate authority was not assailed. Moreover, the petitioner seeks indulgence of the Court on the quantum of punishment before this Court for the first time which was not available before the appellate authority or the disciplinary authority.

21. In the result, the petition is dismissed.

SD/-
(**Manindra Mohan Shrivastava**)
J U D G E