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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 2nd July, 2019

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LPA 865/2015 and C.M. Appl. No. 28936/2015 (for stay)

UNION BANK OF INDIA

..... Appellant

Through: Mr. O.P. Gaggar, Advocate.

versus

S.K. DHAWAN & ORS.

..... Respondents

Through: Mr. Jaspreet Singh Rai and Mr. Rohit
Napal, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. The present appeal has been filed challenging the judgment dated 4.9.2015 passed by the learned Single Judge in W.P.(C) 8216/2002 whereby the learned Single Judge has quashed the report of the Inquiry Officer, penalty order, appellate order as well as the order passed in the review filed by the respondent.
2. Brief facts necessary for the present appeal are that the respondent was appointed as a clerk on 1.3.1966 in the appellant-Bank and during the course of his service earned several promotions. Between the period

16.5.1996 and 20.2.1998 the respondent was posted as Chief Manager in Grade IV at Branch Office, Sadar Bazar, Delhi. On 21.2.1998, while the respondent was working at the Bank as the Branch Manager, he was placed under suspension pending departmental investigation. On 28.9.1998, a show cause notice was issued to the respondent for certain alleged acts of misfeasance, omissions and commissions and he was asked to file a reply within seven days of the receipt of the notice. Vide letter dated 24.5.1999 the respondent submitted his reply, wherein he denied having committed any of the alleged acts warranting disciplinary action.

3. Not satisfied with the reply of the respondent, the appellants issued a charge sheet on 13.10.1999 wherein certain alleged acts on his behalf were mentioned as constituting misconducts and he was informed that the contents of the show cause notice, given earlier, will form the statement of allegations of Articles of Charge. The charge sheet is extracted hereinunder for ready reference:-

“This has reference to the explanation dated 14.5.99 submitted by Shri S.K. Dhawan, Manager, Zonal Audit Office, Delhi in reply to memorandum no.CO:IRD: 7429/98 dated 28.9.98. Shri Dhawan is informed that the explanation submitted by him has not been found either convincing or satisfactory as the fact remains that Shri Dhawan while working as Officiating Chief Manager at Sadar Bazar branch accommodated M/s. Asian International and M/s. Manish International by various means inspite of the fact that he was aware both these accounts are sister concerns of M/s. Redson Tea Ltd., account at Karol Bagh branch for which limit has been sanctioned by General Manager. He also accommodated

M/s. Excel Cardmon Co. by purchasing cheques and allowing overdrafts in current account. The aforesaid acts constitute the following misconducts and he is hereby charged of the same: 1. Doing acts unbecoming of a Bank Officer; 2. Failure to take all possible steps to ensure and protect the interest of the Bank; 3. Failure to discharge his duties with utmost honesty, integrity, devotion and diligence; 4. Acting otherwise than in his best judgment in the performance of his official duties. Shri Dhawan is informed that memorandum no.CO:IRD:7429/98 dated 28.9.98 will form the statement of allegations for this Articles of Charge. Shri Dhawan is further informed that Shri P.S. Khuntia, CDI, Central Vigilance Commission, Satarkata Bhawan, GPO Complex, Block-A, INA, New Delhi has been appointed as Inquiring Authority to inquire into the aforesaid charges levelled against him. The date, time and place of enquiry will be intimated to Shri Dhawan directly by the Inquiring Authority. Shri Dhawan, if he so desires, may submit his written statement of defence directly to the Inquiring Authority within 10 days from receipt hereof by him.”

4. By the said letter, the respondent was permitted to submit his written statement of defence, directly to the Inquiring Authority after the Inquiry Officer had been appointed vide the same letter. The inquiry report was submitted on 25.2.2000 and the respondent submitted his representation against the said report. Vide order dated 18.1.2001, the Disciplinary Authority imposed a penalty of ‘removal from service’ on the respondent. An appeal preferred by the respondent on 21.2.2001 was dismissed by the appellate authority on 18.2.2002. A review petition was also moved on 30.4.2002, but was dismissed by an order dated 18.6.2002.

5. The contention of the respondent before the learned Single Judge was that the disciplinary authority acted in violation of Regulation 6(3) of the Union Bank of India Officer Employee's (Discipline and Appeal) Regulations, 1976 (hereinafter referred to as 'Regulations'), inasmuch as, it did not afford an opportunity to file written statement of defence in response to the charge sheet dated 13.10.1999. Another contention was that the charge sheet contained serious allegations such as doing acts unbecoming of a bank officer; failure to take steps to protect the interest of the bank, failure to discharge his duties with honesty, integrity, devotion and diligence, etc. which were not a part of the show cause notice dated 28.9.1998.
6. The respondents in the writ petition on the other hand defended the writ petition by contending that the scope of judicial review in departmental proceedings was very limited and no interference could be made in the order of the disciplinary authority and nor could the Court reappreciate the findings in the inquiry report. It was also contended that a bank employee stood on a different footing and loss of confidence was a sufficient ground to dismiss the employee. The bank also argued that due to the acts of the respondent in making unauthorized advances which were not sanctioned and on account of various other financial irregularities, the petitioner therein had exposed the bank to a bad loan of huge amount of Rs.1.7 crores. Defending the contention of the petitioner that he was not permitted to file a written statement of defence to the charge sheet, the bank had argued that the petitioner had filed a reply to the show cause notice

and thus there was no requirement for filing a separate written statement of defence.

7. The learned Single Judge, vide the impugned order has quashed the disciplinary proceedings and the penalty imposed on the ground that the requirement under Regulation 6(3) of filing a written statement of defence is a mandatory provision and the test of prejudice would thus not apply. It has been held that the statement of defence ought to have been permitted and only after considering the same the order of appointment of an Inquiry Officer should have been passed. In so far as the relief is concerned, the learned Single Judge has noted that the petitioner therein had retired and the charges are related to the year 1997 and thus neither reinstatement could be ordered nor a fresh inquiry. Accordingly, the learned Single Judge has allowed the writ petition by granting 50% of the salary and allowances from the date of dismissal till the date when the petitioner would have superannuated. Consequential benefits of retirement have also been granted.
8. Learned counsel for the Appellant assailing the judgment of the learned Single Judge contends that the appellants had given a show cause notice to the respondent and sought his reply. The allegations in the chargesheet were more or less on the same lines. Since an opportunity to controvert the contents of the show cause notice had been given, there was no requirement of seeking a written statement of defence in response to the chargesheet. He submitted that rules of procedure are handmaids to the ends of justice and therefore, the courts should only see if there is substantial compliance for affording

fair opportunity to a delinquent employee to prove his defence. He further contended that the learned Single Judge ought to have seen and determined if by not submitting the written statement of defence, any prejudice was caused to the respondent as it has been held in various judgments that even if there is non-compliance of the rules of procedure, in the absence of any prejudice to the delinquent employee, the inquiry proceedings cannot vitiate. He has vehemently argued that in the present case, no prejudice has been shown by the respondent on account of not filing the written statement of defence and also submits that due to the misconduct of the respondent, the Bank has suffered a loss of Rs. 1.7 Crores.

9. *Per contra*, the learned counsel for the respondent submits that rules of procedure are not meant to be violated but are meant to be complied with. He submits that the Regulations of the Bank have laid down a detailed procedure for imposing major penalties and these procedural safeguards are very important so that fair opportunity is given to the employee to put forth his defence. He submits that the learned Single Judge has rightly quashed the disciplinary proceedings and the penalty in the absence of the written statement of defence by the Respondent since it is at this stage that the Disciplinary Authority applies its mind after looking into the statement of the delinquent, whether the inquiry has to proceed or the charge has to be dropped or modified. Thus, the respondent has been deprived of the benefit of an important safeguard. It was possible that through his written statement, the respondent would have succeeded in convincing the Disciplinary Authority that

the inquiry was not to be proceeded with. He thus supports the impugned judgment and prays that the appeal be dismissed.

10. We have heard learned counsels for the parties and examined their contentions.
11. The prime reason for quashing the disciplinary proceedings and the penalty order by the learned Single Judge is that the respondent was not granted an opportunity of submitting his written statement of defence, in response to the chargesheet issued to him. The Union Bank of India, who is the appellant in the present appeal, has its own Regulations (supra) laying down an elaborate procedure for imposing major penalties. There is no dispute in the present case that the penalty of removal imposed on the respondent is a major penalty. Thus, Regulation 6 would apply to the present case and which we quote hereinunder:

“6. PROCEDURE FOR IMPOSING MAJOR PENALTIES:

(1) No order imposing any of the major penalties specified in clauses (f), (g), (h), (i) and (j) of Regulation 4 shall be made except after an inquiry is held in accordance with this Regulation.

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an Officer Employee, it may itself inquire into, or appoint any other person who is, or has been public servant (hereinafter referred to as Inquiring Authority) to inquire into the truth thereof.

Explanation: When the Disciplinary Authority itself hold the inquiry any reference in sub-regulation (8) to Sub-Regulation (21) to the Inquiring Authority shall be construed as a reference to Disciplinary Authority.

(3) Where it is proposed to hold an inquiry, the Disciplinary Authority shall frame definite and distinct charges on the basis of the allegations against the Officer Employee and the Articles of Charge, together with a Statement of the allegations, list of documents and list of witnesses alongwith copy of statement of witnesses, if any, on which they are based, shall be communicated in writing to the Officer Employee, who shall be required to submit, within such time as may be specified by the Disciplinary Authority (not exceeding 15 days) or within such extended time as may be granted by the said Authority, a written statement of his defence.

“Provided that wherever it is not possible to furnish the copies of documents, Disciplinary Authority shall allow the officer employee inspection of such documents within a time specified in this behalf;

(4) On receipt of the written statement of the Officer Employee, or if no such statement is received within the time specified, an inquiry may be held by the Disciplinary Authority itself, or if it considers it necessary to do so appoint under Sub-Regulation (2), an Inquiring Authority for the purpose;

Provided that it may not be necessary to hold an inquiry in respect of the Articles of Charge admitted by the Officer Employee in his written statement but shall be necessary to record its findings on each such charge.

(5) The Disciplinary Authority shall, where it is not the Inquiring Authority, forward to the Inquiring Authority :-

(i) a copy of the Articles of Charge and Statements of Imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of defence, if any, submitted by the Officer Employee;

(iii) a list of documents by which and list of witnesses by whom the Articles of Charge are proposed to be substantiated;

(iv) a copy of statements of the witnesses, if any;

(v) evidence proving the delivery of Articles of Charge under Sub-Regulation (3);

(vi) a copy of the order appointing the “Presenting Officer” in terms of SubRegulation (6).

(6) Where the Disciplinary Authority itself inquires or appoints an Inquiring Authority for holding an inquiry, it may, by an order, appoint a public servant to be known as the “Presenting Officer” to present on its behalf the case in support of the Articles of Charge.”

12. Regulation 6(3) stipulates that where an inquiry is proposed, the disciplinary authority shall frame definite and distinct charges on the basis of the allegations against the employee and the said Articles of Charge along with list of documents and list of witnesses shall be communicated to the employee who shall then be required to submit a written statement of his defence. Regulation 6(4) postulates that on receipt of the written statement, an inquiry may be held by the Disciplinary Authority itself or it may appoint an inquiring authority for the person. It is at this stage when the written statement to the chargesheet is received by the Disciplinary Authority that it is required to apply its mind to the Articles of Charges, the Imputations therein and the defence set up by the employee. In case the Disciplinary Authority is satisfied that the employee has a plausible defence and the allegation in the chargesheet are not made out, it can drop the

charge. If the Disciplinary Authority is not satisfied with the reply, then it would send the Articles of charge with statement of imputation as well as the copy of the written statement of defence and the list of documents and witnesses to the inquiring authority and appoint a presenting officer.

13. Regulation 6(3), in our view, provides a very important safeguard to the employee because, if through his written statement of defence, he is able to prove his innocence then the inquiry may not proceed against him. It cannot therefore be contended by the learned counsel for the Appellant that the requirement of the employee submitting a written statement of defence is merely procedural and non-compliance of this procedure is not fatal to the inquiry. We also cannot agree with contention of the appellant that though there is non-compliance, the respondent had to show prejudice. Where the procedural requirements are mandatory and have to be followed, the employee need not show any prejudice. Regulation 6(3) in our view, cannot be interpreted to say that the provision is directory. A reading of the Regulation itself shows that the procedure is intended to be mandatory and rather is a very important step in the procedure of imposing penalties and is in the nature of a safeguarding provision. Additionally, in the present case, we are also constrained to come to a conclusion that non-compliance of Regulation 6(3) has in fact resulted in grave prejudice being caused to the Respondent. If the appellant would have permitted the respondent to file written statement of defence, the respondent could have proved his innocence and there was a possibility that

looking at his defence in the written statement, the disciplinary authority would have dropped the charge. The respondent has undergone complete inquiry proceedings without being able to set up his innocence at the threshold and therefore, it can hardly be said that no prejudice has been caused to the Respondent. In our view, non-compliance with a provision like Regulation 6(3) is also a facet of violation of the principles of natural justice.

14. Reading of Regulation 6(3) clearly shows that as soon as the Articles of Charges are drawn up they would be communicated to the employee along with list of documents and witnesses and he would be required to submit his written statement of defence. Regulation 6(4) provides the appointment of an Inquiring Authority after receipt of the written statement of the employee. Therefore the procedure which is clearly contemplated is: (a) written statement of defence has to be submitted to the Disciplinary Authority as soon as the Article of Charges are served on him within the time prescribed in Regulation 6(3) and the Inquiry Officer would be appointed after the written statement had been received. There is no exception to this procedure in the Regulation and therefore it is not permitted in the domain of the Disciplinary Authority to follow any other procedure contrary to this Regulation. Unfortunately, in the present case a reverse procedure has been followed which is evident from a reading of the letter dated 13.10.1999 which we have extracted above. The Inquiry Officer was appointed first and the respondent was called upon to submit his statement of defence to the Inquiry Officer. Thus, the inquiry in our

view stood vitiated on account of non-compliance of Regulations 6(3) and 6(4). No explanation has been given by the appellant either before the learned Single Judge or before us to explain or justify as to why the respondent was not permitted to file his statement of defence in response to the Article of Charges before appointment of the Inquiry Officer and under what law this violation is justified.

15. The contention of the appellant that prior to the issue of the chargesheet a show cause notice was given, to which the respondent had filed his reply and therefore, there was no need to seek a written statement of defence to the Article of Charges, has absolutely no merit. The procedure applicable to the inquiry proceedings in the case of the appellant is prescribed under Regulation 6. Regulation 6(3) provides that whenever an inquiry is proposed, definite and distinct charges on the basis of allegations have to be framed. If the show cause notice was to be the basis of the inquiry, then there would be no requirement of following Regulation 6(3) and framing definite and distinct charges. The whole purpose of Regulation 6(3) is that the employee would know exactly what are the definite and distinct charges against him and respond to each one of them specifically by a written reply and therefore, to contend that the reply to the show cause notice would be enough to answer the article of charges is in complete violation of Regulation 6(3) and 6(4). Time and again, various courts have held that if the inquiry is not done in accordance with the procedure laid down in the Rules governing a particular organization,

or is in disregard of principles of natural justice, the inquiry would be vitiated and the penalty order would be illegal.

16. We cannot permit a departmental inquiry to be carried out as a casual exercise. More particularly in a case like this where a major penalty of removal has been imposed, which has had the effect of taking away the livelihood of the respondent. In the case of ***Shaugnessy vs. United States 345 US 206***, a Judge of the United States Supreme Court had said as under:-

“Procedural fairness and regularity are of indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied.”

17. In fact, the Apex Court in the case of ***State of Punjab vs. VK Khanna & Ors. 2001 (2) SCC 330***, has observed that in service jurisprudence, the concerned authority has to apply its mind on receipt of reply to the chargesheet, as to whether a further inquiry is called for. If after due consideration, it comes to the conclusion that there is substance in the allegations, the inquiry will follow but not otherwise. We quote the relevant para as under:

“34. ... It is well settled in service jurisprudence that the authority concerned has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative-the inquiry follows but not otherwise...”

18. A coordinate Bench of this Court in fact, dealt with an identical issue in the case of ***M.P. Rajpoot vs. Union Bank of India 2009 V AD***

(*Delhi*) 330. The Union Bank of India which is the appellant herein was a respondent in that matter and the Regulation under which enquiry was conducted in that case, was the same as in this case viz. Regulation 6(3). One of the issues involved there was the effect of non-compliance of Regulation 6(3) as in that case also the petitioner was not given an opportunity to submit his written statement of defence under Regulation 6(3) in response to the Article of Charges. The Division Bench relied on the judgment of the Supreme Court in the *State of Punjab vs. V.K. Khanna (supra)* and held as under:

“14. The conjoint reading of the aforesaid provisions manifestly brings the legal position to the force, viz., after framing definite and distinguished charges on the basis of allegations and communicating the same to the Officer employee, he is required to submit if a written statement of his defence to the said charges within the time specified by the Disciplinary Authority, not extending 15 days or within such extended time that may be granted by the Disciplinary Authority. It is on receipt of the written statement of defence that a decision is to be taken whether an inquiry is to be held by the Disciplinary Authority itself or by appointing other Inquiring Authority. After Inquiring Authority is appointed certain records are to be forwarded to him, which includes a copy of the written statement of defence. It thus follows from the above that normally Inquiry Officer is to be appointed after receipt of the written statement of defence.

15. The question which falls for consideration, in these circumstances, is as to whether appointment of Inquiry Officer would stand vitiated if that is done without first giving delinquent employee a chance to submit his written statement of defence.

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18. The dicta of the Supreme Court in the aforesaid judgment leads us to the conclusion that is inescapable, viz., the appointment of Inquiry Officer before even the receipt of written statement of the petitioner would be in violation of Sub-rule (3), (4) & (5) of the Regulation 6. The effect would be that the entire proceedings conducted by the Inquiry Officer and the punishment imposed on that basis would also stand vitiated.

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21. We are thus of the view that the inquiry conducted against the petitioner suffers from various lacunae and is contrary to the procedure laid down in the Regulations of the Bank as well principles of natural justice. It is not necessary to go into the other arguments raised by the learned counsel for the petitioner. Such an inquiry and the impugned orders of the Disciplinary Authority, Appellate Authority and Reviewing Authority are therefore liable to be set aside. We order accordingly.”

19. We may also highlight that in the said judgment, the Coordinate Bench has also examined the Statutory force of Regulation 6 and held that Regulations 1976 were framed in exercise of power conferred by Section 19 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, and thus the Regulations have a statutory force. It was further held that the procedure mentioned in the Regulations was required to be scrupulously followed. We quote the relevant para as under:

“13. It is not in dispute that Regulations 1976 are framed in exercise of powers conferred by Section 19 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. These were framed by the Board of Directors of Union Bank of India in consultation with the Reserve Bank with the previous sanction of the Central Government. These Regulations thus have

statutory force. Regulation 6 contains detailed procedure, which is required to be followed for imposing major penalties. In the present case, since two charge-sheets served upon the petitioner were for major penalty proceedings and extreme penalty is awarded, undoubtedly procedure contained in Regulation 6 had to be followed.....”

20. We also find that the issue of denial of filing the written statement was raised by the Respondent in his representation dated 15.05.2000 to the findings of the inquiry officer and which has been quoted by the learned Single Judge in paragraph 16 of the impugned judgment. The Disciplinary Authority has not even bothered to consider this important ground/objection raised by the respondent. Even the Appellate Authority and the Reviewing Authority have paid no heed to this important submission.
21. The learned Single Judge has rightly held that this was a mandatory provision and in view of the judgment of the Apex Court in ***State Bank of Patiala vs. S.K. Sharma AIR 1996 SC 1669***, the respondent was not required to prove any prejudice. The allegations against the respondent were of a serious nature. He has been deprived of a very important right of proving his innocence in response to the chargesheet at the very threshold stage. In our opinion, the disciplinary proceedings and the penalty order have been rightly quashed and set aside by the learned Single Judge.
22. Since the respondent has retired and the charges relate to the year 1997, we are also in agreement with the observation of the learned Single Judge that neither can an order of reinstatement be passed nor

for a fresh inquiry. The only direction that could have been passed was of salary and allowances from the date of dismissal till the age of superannuation. The learned Single Judge in its discretion and wisdom has granted, 50% of the salary and allowances for the said period along with consequential benefits of retiral benefits. There is no infirmity even in the said direction by the learned Single Judge. We find no grounds to interfere with the impugned judgment.

23. There is no merit in the present appeal and the same is accordingly dismissed along with all accompanying applications.

JYOTI SINGH, J

G.S.SISTANI, J.

JULY 02, 2019

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