

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No. 6524 of 2016

Date of Decision : May 13th, 2020

Jaswinder Singh

..... PETITIONER

VERSUS

**U.T. Administration of Chandigarh,
through Secretary, Cooperative Societies,
Sector 17, Chandigarh, and others**

.... RESPONDENTS

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Sunil Chadha, Senior Advocate, with
 Mr. Saurav Kanojia, Advocate, for the petitioner.
 Mr. Harkesh Manuja, Advocate, for respondent Nos.1 and 2.
 Mr. K.K.Gupta, Advocate, for respondent No.3.

...

Sanjay Kumar, J:

The petitioner, a Senior Clerk (re-designated as Accountant) in the Chandigarh State Cooperative Bank Limited (hereinafter, 'the Bank'), the third respondent herein, was dismissed from service, *vide* order dated 09.03.2016. By way of this writ petition, he assails the said order on the grounds that it is arbitrary, illegal and violative of the principles of natural justice. He also seeks a direction to the Bank to treat him as in service and to pay him the emoluments that he was receiving prior to passing of the impugned order.

On 06.04.2016, this Court stayed the operation of the impugned order but directed that the petitioner should be kept under

deemed suspension. Thereafter, by order dated 23.10.2018, this Court made it clear that the petitioner would have to repay the subsistence allowance paid to him under the earlier interim order in case the writ petition was dismissed.

Facts, to the extent germane, unfold thus: The petitioner entered the service of the Bank as a Junior Clerk on 16.04.1992. He was promoted as a Senior Clerk in the year 1998. While working as such at the Sector 26 Branch of the Bank at Chandigarh, he was placed under suspension in contemplation of disciplinary proceedings, *vide* order dated 03.07.2009 passed by its Managing Director. Notice dated 18.07.2009 was then issued by the General Manager of the Bank calling upon the petitioner to explain why certain ledger sheets of his own SB A/c No.590 in the Sector 26 Branch of the Bank were missing and threatening disciplinary action. The petitioner submitted his reply on 21.07.2009 disclaiming responsibility for the missing record. The General Manager then addressed letter dated 24.09.2009 to the petitioner informing him that inspection of the records of the Sector 26 Branch by a team had revealed that he had swindled Rs. 7,03,062/-, of which Rs. 2,64,197/- had been recovered, and calling upon him to deposit the balance Rs. 4,38,865/- as per his assurance that he would deposit any amount found recoverable due to his fault, *vide* his letters dated 27.07.2009 and 21.08.2009. Be it noted that neither of these letters of assurance has been placed before this Court. The petitioner submitted his reply on 29.09.2009 seeking a copy of the final report of the inspection team. The General Manager then issued notice dated 02.01.2010 to the petitioner stating that, as he had already

deposited Rs. 8,49,230/- out of the total amount of Rs. 18,47,316/- swindled from the Sector 26 and the Burail Branches of the Bank, determined by the inspection team as per its final reports dated 22.09.2009 and 22.12.2009, he was required to deposit the remaining Rs. 9,98,086/- within 7 days. By his reply dated 07.01.2010, the petitioner stated that he did not know anything about the deposit of Rs. 8,49,230/- and asked for copies of the final reports along with the vouchers and other documents relied upon therein. He followed up with a reminder on 24.03.2010.

Separately, the Bank initiated surcharge proceedings before the Registrar, Cooperative Societies, UT Chandigarh, the second respondent, under Section 54 of the Punjab Cooperative Societies Act, 1961, seeking repayment of the amount allegedly misappropriated by the petitioner during the course of his employment.

While so, the Bank issued Memorandum dated 07.05.2010 along with a Statement of Articles of Charges and other annexures, framing four charges against the petitioner. The charges read thus:

'CHARGE NO.1

Shri Jaswinder Singh, Senior Clerk (U/S), while posted in Sector 26 Branch of the Bank has allegedly committed embezzlement of Bank funds amounting to Rs. 7,03,062/- in a fraudulent manner.

CHARGE NO.2

Shri Jaswinder Singh, Senior Clerk (U/S), while posted in Burail Branch of the Bank has allegedly committed embezzlement of Bank funds amounting to Rs. 11,44,254/- in a fraudulent manner.

CHARGE NO.3

While posted in Sector 26 Branch of the Bank, Shri Jaswinder Singh, Senior Clerk (U/S), allegedly has stolen the ledger sheets of his SB A/c No.590 in order to destroy the evidence for the period 29.11.2006 to 09.11.2008 of frauds allegedly committed by him.

CHARGE NO.4

While posted in Burail Branch of the Bank, Shri Jaswinder Singh, Senior Clerk (U/S), allegedly has stolen the ledger sheets of his SB A/c No.4610 in order to destroy the evidence for the period 01.03.2004 to 30.04.2004 of frauds allegedly committed by him.'

In response, the petitioner submitted letter dated 26.05.2010, denying the charges and requesting supply of the whole record so that he could submit his detailed reply.

Meanwhile, on 20.05.2010, the Bank got its surcharge proceedings petition dismissed as infructuous claiming that the entire defaulted amount had been deposited by the petitioner and as he was being charge-sheeted for major penalty proceedings.

Acting upon the petitioner's request, the General Manager of the Bank, *vide* letter dated 25.06.2010, directed the Branch In-charges of its Sector 26 and Burail Branches to show the petitioner the records relevant to the charge-sheet issued to him. He further directed that a proper receipt of the records shown to the petitioner should be taken and that the petitioner should be allowed to take photocopies. Separately, this had already been intimated to the petitioner by letter dated 07.06.2010.

By order dated 15.07.2010, the Bank appointed Joginder Pal Singh Puri, a retired IAS officer, as the Inquiry Officer to inquire into the charges framed against the petitioner. Dharam Pal, a Deputy Manager of the Bank, was appointed as the Presenting Officer. The Inquiry Officer was requested to submit his findings in the case at the earliest possible. By petitions dated 11.08.2010 and 25.08.2010, the petitioner requested the Inquiry Officer to advise the Presenting Officer to supply copies of the documents detailed by him before proceeding with the inquiry.

By letter dated 28.08.2010, the petitioner asked the General Manager of the Bank as to what action had been taken against various officers of its Burail Branch. In particular, he sought details as to why Sulinder Singh, a Senior Accountant, was reinstated in service even before the inquiry against him started. There was no response from the Bank. Thereafter, by petition dated 13.09.2010, the petitioner again prayed that the Inquiry Officer advise the Presenting Officer to supply certain documents to him to enable him to prove his innocence.

While so, by order dated 29.09.2010, the Managing Director of the Bank appointed R.K.Goyal, a retired General Manager of HARCO Bank Ltd., as the Inquiry Officer in the place of Joginder Pal Singh Puri. No reasons for this change are forthcoming from the order. This Inquiry Officer was also requested to submit his findings at the earliest possible.

By letter dated 27.10.2010, the General Manager, speaking on behalf of the Managing Director of the Bank, called upon the petitioner to deposit Rs. 6,18,987/- towards the interest due on the embezzled amount within 7 days so that his request for reinstatement in service could be considered. As the petitioner admittedly deposited the amount claimed by the Bank towards interest on 04.11.2010, his suspension from service was revoked pending the departmental inquiry, *vide* order dated 04.11.2010.

At his first inquiry meeting held on 10.11.2010, R.K.Goyal, the new Inquiry Officer, took note of the petitioner's complaint that he had not been shown all the documents and directed him to submit a list of all the documents required. The General Manager of the Bank was

directed to show the petitioner the relevant records. He was further directed to furnish reasons if any particular information was not shown/ provided to the petitioner. The petitioner was directed to file his final reply by the next hearing, *viz.*, 01.12.2010. On 15.11.2010, the petitioner furnished the list of documents sought by him to the General Manager.

In the meanwhile, FIR No.230/15.11.2010 was registered against the petitioner on the file of PS Sector 26, Chandigarh, under Sections 409, 420, 467, 468 and 471 IPC upon the Bank's complaint and he was arrested in connection therewith. In consequence, he was again placed under suspension, *vide* order dated 20.11.2010 passed by the Managing Director of the Bank.

Thereafter, as the petitioner was released on bail on 01.02.2011, the Bank again revoked his suspension, *vide* order dated 23.03.2011, and he was reinstated in service. As the criminal case against him was pending, the petitioner had addressed legal notice dated 07.03.2011 to the Bank requesting that the inquiry be kept in abeyance till completion of the criminal case. This request was acceded to till the year 2013. However, by Resolution No.1 dated 06.04.2013, the Administrative Committee of the Bank decided to restart the inquiry against the petitioner and also place him under suspension with immediate effect. The petitioner was accordingly placed under suspension once again, *vide* order dated 08.04.2013 passed by the President of the Bank. Aggrieved by this new suspension order dated 08.04.2013, the petitioner filed CWP No. 8765 of 2013 before this Court. No interim orders were passed therein and the said writ petition is still pending consideration. By a separate order dated

08.04.2013, the President also directed R.K.Goyal, the Inquiry Officer, to restart the inquiry and complete it in 3 months positively. Balwant Rai, a Senior Manager of the Bank, was appointed as the Presenting Officer.

The Inquiry Officer and the Presenting Officer were however changed soon thereafter. By order dated 10.05.2013, the President appointed Tilak Raj, HCS, LAO, UT Chandigarh, as the Inquiry Officer and requested him to complete the inquiry within 2 months positively. Kuldeep Kaur, a Senior Manager of the Bank, was made the Presenting Officer. This was followed by order dated 16.08.2014, whereby the Chairman of the Bank appointed V.K.Gupta, a retired Chief Manager of the State Bank of India, as the Inquiry Officer and he was requested to complete the inquiry before 15.10.2014 positively. Again, by order dated 24.01.2015, the Chairman of the Bank appointed Tara Singh Khubber, a serving General Manager of the Bank, as the Inquiry Officer and requested him to complete the inquiry by 31.03.2015 positively. The order referred to Resolution No.5 dated 01.08.2014 of the Administrative Committee of the Bank in this regard. As the earlier order dated 16.08.2014 appointing V.K.Gupta as the Inquiry Officer also referred to the same Resolution No.5 dated 01.08.2014 of the Administrative Committee, the petitioner sought a clarification at the inquiry meeting held on 23.03.2015 and by his letter dated 28.03.2015. Thereupon, order dated 25.03.2015 was passed by the Chairman of the Bank referring to Resolution No.2 dated 24.01.2015 of the Administrative Committee and affirming appointment of Tara Singh Khubber as the Inquiry Officer. He was requested to complete the inquiry by 30.04.2015 positively.

Attributing bias and as he was a serving General Manager of the Bank, the petitioner sought change of the Inquiry Officer, *vide* letter dated 26.05.2015. By order dated 30.05.2015, the Chairman of the Bank appointed M.M.Hurria, a retired IAS Officer, as the Inquiry Officer and requested him to complete the inquiry within 2 months positively.

The inquiry commenced thereafter but by letter dated 08.08.2015 addressed to the Bank, the petitioner's Defence Assistant complained that the Inquiry Officer was not following the rules/procedure and requested that he should be directed to do so. Reference was made to the hearings conducted on 14.07.2015, 17.07.2015, 21.07.2015 and 04.08.2015. Thereafter, the petitioner addressed letter dated 11.08.2015 to the Presenting Officer asking for the relevant rules and regulations.

While so, the Inquiry Officer issued Notice dated 25.08.2015 to the petitioner, noting that he was absent on the said day despite service of notice and directing him to be present on 31.08.2015, failing which *ex parte* proceedings would be initiated against him. On 26.08.2015, the petitioner informed the Inquiry Officer that he had not been provided the order appointing a Presenting Officer, as Kuldeep Kaur had stated that she would no longer continue as such. It appears that the Bank issued order dated 18.08.2015 appointing Dilbagh Singh, a Senior Manager of the Bank, as the Presenting Officer in the place of Kuldeep Kaur.

Again, on 03.09.2015, the petitioner addressed a letter to the Chairman of the Bank complaining about the procedure followed by the Inquiry Officer and requesting that he may either be changed or directed to follow the rules and procedure applicable to domestic inquiries. He

again made complaints in this regard on 11.09.2015, 14.09.2015 and 15.09.2015. He also addressed letter dated 15.09.2015 to the Inquiry Officer stating that he had not been supplied the documents mentioned in the charge-sheet and requesting that the Presenting Officer be directed to do the needful to enable him to defend himself. Again, by letter dated 19.09.2015, the petitioner informed the Chairman of the Bank that the Inquiry Officer had not allowed him to cross-examine a witness on the ground that he was set *ex parte* and sought his intervention to enable him to participate in the inquiry proceedings. He also addressed letter dated 22.09.2015 to the Inquiry Officer stating that he was not informed of the next date of the inquiry and expressing willingness to participate therein.

The petitioner then filed a petition before the Registrar, Cooperative Societies, UT Chandigarh, the second respondent, on 07.10.2015, seeking change of the Inquiry Officer. The Bank filed its response thereto on 04.11.2015 stating that the Inquiry Officer had already completed the inquiry and submitted his report. Thereby, the Inquiry Officer held that all the four charges framed against the petitioner stood proved. According to the Bank, the said Inquiry Report was placed before the Administrative Committee of the Bank on 31.10.2015 itself and the Committee decided to give a proper opportunity to the petitioner by issuing him a show-cause notice. Taking note of this stand, the Additional Registrar, Cooperative Societies, UT Chandigarh, dismissed the petition as infructuous on 04.11.2015.

However, the show-cause notice dated 15.01.2016 issued to the petitioner by the Managing Director of the Bank, forwarding a copy of

the Inquiry Report, stated that it had been placed before the Administrative Committee of the Bank on 23.12.2015 and that, at the said meeting, it was proposed that the penalty of dismissal from service should be imposed upon him but before arriving at a final decision, the Committee decided that the petitioner's representation should be sought on the Inquiry Report and the proposed penalty. He was accordingly called upon to submit his representation within 15 days.

The petitioner submitted representation dated 30.01.2016 to the Managing Director of the Bank refuting the findings recorded against him in the Inquiry Report and asserting that he was not supplied with the relevant documents despite his many requests. He concluded the representation with a request to afford him one opportunity to present his case before the Managing Director in a fair and unprejudiced hearing. No such hearing was however given to the petitioner. Acting upon the resolution and direction of the Administrative Committee of the Bank, its Managing Director passed the impugned order of dismissal dated 03.09.2016 against the petitioner, leading to the present writ petition.

In his written statement, at the very outset, the Chairman of the Bank stated that the petitioner was provided efficacious alternative remedies against the dismissal order and therefore, the present writ petition was not maintainable. Reference was made to an appellate remedy before the Registrar of Cooperative Societies and the remedies provided under the Industrial Disputes Act, 1947. On the merits of the matter, the Chairman stated that the petitioner had stalled the inquiry proceedings repeatedly and sought change of the Inquiry Officers. He asserted that the

petitioner had been supplied all the documents mentioned in the list of documents attached to the charge-sheet at the initial stage itself, but as when demanded, documents were again supplied to the petitioner under due acknowledgment. He asserted that the petitioner never submitted his final reply to the charge-sheet by taking shelter of non-supply of documents. The Chairman claimed that the petitioner was delaying the criminal case also as the challan was not even filed therein and that was the reason why the Administrative Committee of the Bank decided to restart the inquiry despite acceding to the petitioner's earlier request to keep the same pending till the closure of the criminal case. R.K.Goyal, the then Inquiry Officer, however confessed his inability to continue and that was the reason why Tilak Raj was appointed in his place. However, as he was busy with other duties, V.K.Gupta was appointed as the Inquiry Officer, but he also expressed his inability to hold the inquiry. Tara Singh was then appointed but the petitioner did not allow him to hold the inquiry on one pretext or the other. Further, as the petitioner sought change of the Inquiry Officer, M.M.Hurria came to be appointed in his place. He completed the inquiry and submitted his Inquiry Report dated 30.09.2015. *Ex parte* proceedings had to be initiated against the petitioner by the said Inquiry Officer as he declined to join the inquiry proceedings and took an aggressive stance, creating a scene during the proceedings. Extracts from the inquiry proceedings were set out in this regard. The penalty of dismissal was justified on the ground that it was just and proportionate to the petitioner's proved misconduct in embezzling bank funds by tampering with the record. The Chairman asserted that huge amounts were

found to have been deposited by the petitioner in his SB A/c No.642, fixed deposit accounts, RD Account No.197 in his wife's name, RD Account No.200 in his minor son's name, RD Account Nos.201 and 201-A in his minor daughter's name, besides other bank accounts, viz., SB A/c Nos. 786 and 590, standing in his own name. The petitioner was stated to have removed the ledger sheets of his bank accounts to destroy evidence. The petitioner was alleged to have returned the embezzled amount and the interest thereon to avoid the surcharge proceedings but he denied the same thereafter as it would amount to an admission of guilt on his part. The Chairman further stated that the petitioner had made statement dated 27.10.2010 that, as he had deposited the entire embezzled amount and as the charges in the criminal and the disciplinary proceedings were the same, the inquiry should be kept in abeyance. The inquiry was conducted in a fair and free manner. The petitioner's request for a personal hearing had to be turned down as the service rules did not provide for it. The petitioner's representation in response to the Inquiry Report and proposed penalty was duly considered by the Committee of the Bank. The Chairman claimed that in the reply filed before the Registrar of Cooperative Societies, there was a typographical error as to the date the Inquiry Report was placed before the Committee. He accordingly prayed for vacating of the interim order and dismissal of the writ petition.

The petitioner filed his rejoinder to the above written statement. Therein, he stated that the Chairman was not authorized to speak on the Bank's behalf. As regards the maintainability of this writ petition, he stated that the appellate remedy provided to him was not

speedy or effective and as the dismissal order was passed without giving him a reasonable opportunity to defend himself, the availability of an alternative remedy would not be a bar to his filing a writ petition. As regards the plea that he could invoke the provisions of the Industrial Disputes Act, 1947, the petitioner pointed out that the Bank itself had taken the plea that it was not amenable to the jurisdiction of the Courts constituted under the said enactment as it was a cooperative society. On merits, the petitioner denied that he had stalled the inquiry proceedings or sought change of the Inquiry Officers time and again. He admitted that he had sought change of Tara Singh but justified it on the ground that he was an in-service employee of the Bank. He denied supply of relevant documents to him. He stated that he could not file his final reply for want of necessary documents. He pointed out that no details had been furnished to him as to how and in what manner he had embezzled funds and from which accounts/account holders. He denied the allegation that he had delayed the criminal case. He asserted that M.M.Hurria, the sixth Inquiry Officer in a span of five years, completed the inquiry in haste without giving him a reasonable opportunity to defend himself. He denied the allegation that he had declined to participate in the inquiry. He also denied the Bank's claim that he was supplied the documents on demand or at the initial stage. He contended that the penalty of dismissal from service was harsh and disproportionate as there was no proof of his embezzling any amount from particular accounts in the two Branches of the Bank. He denied the allegation that he had deposited huge amounts into the accounts of his family members or himself. He also denied that he had

removed any bank record. He admitted that he had deposited Rs. 6,18,987/- towards the interest claimed by the Bank upon the embezzled amount but stated that he had done so as it was set as the condition precedent for revocation of his suspension and to release his fixed deposits. He asserted that he had not deposited the embezzled amount and denied making a statement to the contrary on 27.10.2010. He reiterated his claim that the inquiry was not conducted fairly and as per due procedure.

It appears that the management of the Bank underwent a transformation and an Administrator took over its reins. Affidavit dated 18.05.2018 was filed by the said Administrator, in compliance with the order dated 15.05.2018 passed in this case requiring the Bank to state the source of the Bank Drafts, *vide* which the embezzled amount was returned. Therein, he stated that after registration of FIR No.230 dated 15.11.2010, the original record pertaining to the embezzlement of Rs. 18,47,317/- had been requisitioned by the Economic Offences Wing of the Chandigarh Police, *vide* letter dated 02.12.2010, and the same was handed over to it. He further stated that, as on date, the said record was either with the police or the criminal Court and he could not state the source of the deposited Bank Drafts, returning the embezzled amount.

Thereafter, Affidavit dated 30.10.2018 was filed by the Administrator of the Bank in compliance with this Court's order dated 23.10.2018 requiring the Bank to explain the *modus operandi* allegedly adopted by the petitioner. Therein, he stated that the petitioner's job was to make entries of transactions in the books of account from the stage of posting in the Day Book till the manual preparation of the Trial Balance

on each Friday (Friday Book). The petitioner was stated to have made 1917 fake entries, amounting to Rs. 11,44,252/-, at the Burail Branch of the Bank and 1632 fake entries, amounting to Rs. 7,03,062/-, at its Sector 26 Branch. In this way, the petitioner was stated to have embezzled a total amount of Rs. 18,47,317/-. This amount was returned by way of Bank Drafts made out in the name of the Bank for varying amounts of less than Rs. 50,000/-, so to avoid furnishing of identity proof. These Drafts were issued by different banks and were deposited by different persons in the drop-box of the Bank. The money was returned after the petitioner was placed under suspension. According to the Administrator, the petitioner verbally claimed that he had deposited the amount and was accordingly asked to deposit the interest amount of Rs. 6,18,987/- also, *vide* letter dated 27.10.2010. This interest amount was paid by the petitioner on 04.11.2010 by way of a cheque. Five instances were cited by the Administrator as to how the petitioner went about falsifying the record to embezzle monies. He stated that these were only a few instances as the petitioner had made as many as 3549 fake entries. He stated that the original record was in the custody of the Economic Offences Wing of the Chandigarh Police in connection with the criminal case, which was presently under trial. The petitioner was stated to have stolen the ledger sheets of his bank accounts and it was pointed out that the charge in this regard stood duly proved.

The petitioner filed his Reply Affidavit dated 12.11.2018 in response to the above Affidavit. Therein, he stated that though it was his job to post entries of daily transactions in the Day Book, the Friday Book

used to be submitted under the signature of the Bank's Branch Manager. He denied having made any fake entries. He also denied returning the embezzled amount by way of Bank Drafts and relied upon the Bank's earlier acceptance that it could not prove that it was he who had deposited the money. He denied claiming verbally that he had deposited the money or seeking reinstatement on that ground. He stated that he had paid the interest amount out of compulsion. According to the petitioner, it was the duty of the Branch Manager to prepare the General Ledger/Friday Book as well as the monthly statements, which would then be sent to the Head Office of the Bank. He asserted that the Branch Manager or the Head Office would have detected any embezzlement of funds and pointed out that no fraud or embezzlement had ever been detected despite due audit of the Bank's accounts. He asserted that the amounts credited to the bank accounts of his family members and himself in connection with the five cited instances had been permitted to be withdrawn by the Bank. He claimed that he had not been shown the original record on the basis of which he had been charge-sheeted, which was admittedly not even in the Bank's possession. He denied the allegation that he had stolen the ledger sheets of his own accounts. He pointed out that the evidence in this regard in so far as the Sector 26 Branch was concerned was wholly inadequate and there was no evidence whatsoever when it came to the Burail Branch.

Additional Affidavit dated 30.01.2020 was then filed by the Administrator of the Bank detailing the documents furnished to the petitioner. The events in relation to the change of Inquiry Officers was set out. The Administrator stated that the petitioner had been paid more than

Rs. 14,00,000/- towards subsistence allowance since 06.04.2016, viz., the date of the interim order passed in this writ petition.

This being the factual milieu, it would be appropriate to first deal with the preliminary objection as to the maintainability of this writ petition. Trite to state, mere availability of an alternative remedy does not constitute an absolute embargo to invocation or exercise of the extraordinary writ jurisdiction vesting in this Court under Article 226 of the Constitution. The 'doctrine of alternative remedy' is not a straitjacket formula that can be uniformly applied across the board to non-suit every litigant who comes before this Court by way of a writ petition ignoring the alternative remedy available to him. Ultimately, it would be within the discretion of this Court to decide, on a case to case basis, as to whether it should exercise such jurisdiction notwithstanding the existence of the other remedy. Violation of the principles of natural justice would be reason enough for this Court to intervene even if another remedy is available to the aggrieved writ-petitioner [See **Whirlpool Corporation v/s. Registrar of Trade Marks, Mumbai {(1998) 8 SCC 1}** and **L.K. Verma v/s. H.M.T. Ltd. and another {(2006) 2 SCC 269}**].

Pertinent to note, even in **U.P. State Spinning Company Limited v/s. R.S. Pandey [(2005) 8 SCC 264]**, while holding that a writ petition under Article 226 should not be entertained when a statutory remedy is available, the Supreme Court added the caveat that this norm would not apply if exceptional circumstances are made out. As it is the specific case of the petitioner that the impugned dismissal order is *per se* illegal and arbitrary and that he was denied a reasonable opportunity to

defend himself, thereby violating the rule of *audi alteram partem*, exceptional grounds are made out justifying examination of his grievance. The petitioner therefore cannot be non-suited on the ground that another remedy was available to him.

That being said, this Court is very much conscious of the scope and extent of judicial review in the context of the subject disciplinary proceedings. In **State Bank of India and others v/s. Narendra Kumar Pandey [(2013) 2 SCC 740]**, the Supreme Court observed that the High Court, while exercising powers under Article 226, does not act as an appellate authority and its jurisdiction is confined to correct errors of law or procedural errors resulting in manifest miscarriage of justice or violation of the principles of natural justice. Earlier, in **Om Kumar v/s. Delhi Development Authority [(2001) 2 SCC 386]**, the Supreme Court had observed that where an administrative action is challenged as arbitrary, the question would be whether the administrative order is rational or reasonable and the test therefor would be the Wednesbury test. The Court would then be confined only to a secondary role and would see whether the administrator has done well in his primary role and whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant facts into consideration or whether his view is one which a reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. It was reiterated that when an administrative decision relating to punishment in disciplinary cases is questioned as arbitrary, the Court is confined to Wednesbury principles as a secondary reviewing authority.

Keeping in mind the aforestated parameters, the case on hand may now be examined.

The factual backdrop emerging as set out *supra*, certain crucial facts may be noted. The disciplinary proceedings initiated against the petitioner as long back as in the year 2010 culminated only in the year 2016. The inquiry into the charges framed against him commenced in July, 2010 but concluded only in September, 2015 and in the process, six separate Inquiry Officers dealt with it. The last Inquiry Officer, M.M.Hurria, came to be appointed on 30.05.2015. He started his inquiry on 14.07.2015 and completed it on 24.09.2015. He is stated to have submitted his Inquiry Report on 30.09.2015. There is a controversy as to this date. The body of the report does not indicate a date but beneath the signature of M.M.Hurria, the date '30.09.2015' was written by hand. Significantly, the Bank asserted before the Registrar, Cooperative Societies, Chandigarh, that this report was placed before the Administrative Committee of the Bank on 31.10.2015, but in the show-cause notice dated 15.01.2016 issued to the petitioner, the Bank informed him that the said report was placed before the Administrative Committee on 23.12.2015. The Chairman of the Bank explained this by claiming that there was a typographical error while conveying the date to the Registrar, Cooperative Societies, Chandigarh.

Be that as it may.

What is of greater import is the manner in which this Inquiry Report was considered by the Bank, ultimately leading to the passing of the impugned dismissal order against the petitioner. Notably, the

petitioner had been subjected to disciplinary proceedings on four specified charges – embezzling bank funds from the Sector 26 and the Burail Branches of the Bank and stealing the ledger sheets of his bank accounts, viz, SB A/c No.590 in the Sector 26 Branch and SB A/c No.4610 in the Burail Branch. The Inquiry Report held these charges duly proved.

The impugned dismissal order reproduced, at length, the consideration of the matter by the Administrative Committee of the Bank on the strength of this Inquiry Report and its final decision thereon. Perusal thereof manifests, in no uncertain terms, that the said Committee went far beyond its brief.

While dealing with the issue of embezzlement of bank funds, the Committee recorded that the petitioner had made entries of huge amounts in his savings bank account, fixed deposit account and recurring deposit account as well as in the recurring deposit accounts of his wife, his minor son and his minor daughter. Significantly, neither the charge-sheet nor the Inquiry Report made any mention of the petitioner making entries of amounts in his own fixed deposit or recurring deposit accounts or the accounts of his family members, viz., his wife and minor children. There is no explanation forthcoming as to how and wherefrom the Committee came upon this information. To compound matters further, the written statement filed by the Chairman of the Bank referred to the specific accounts of the petitioner's family members, by number, wherein the petitioner allegedly made huge deposits after embezzling bank funds. There is again no disclosure as to how and when the Bank gleaned this information. Unfortunately, neither of the final reports dated 22.09.2009

and 22.12.2009 submitted by the inspection team constituted by the Bank has been produced before this Court. It is therefore in the realm of the unknown as to whether details of these other accounts of the petitioner and of his family members found mention therein. In any event, if the Bank had knowledge of such specific accounts in relation to diversion of the embezzled monies, the same should have been made part and parcel of the charges framed against the petitioner. Apparently, this was not done.

Further, the fact that the Inquiry Report never alluded to these accounts or the deposits allegedly made therein indicates that the same were not even the subject matter of consideration before the Inquiry Officer. In such circumstances, reliance placed by the Administrative Committee upon this extraneous material cannot be countenanced. To what extent such reliance weighed upon the Committee in deciding upon the penalty of dismissal of the petitioner from service cannot be surmised. Further, it is not within the scope or power of this Court to even undertake such an exercise.

That apart, the Administrative Committee also recorded the finding that the petitioner used to keep the ledger sheets of his own accounts in his personal custody so that the same may not be noticed by the other officials of the Bank. This was never the charge against the petitioner. No such finding was recorded in the Inquiry Report, and rightly so. When the petitioner was never put on notice of any irregularity having been committed by him in maintaining the record of his own account, no such finding could have been rendered against him. All the more so, when no prevailing guidelines or norms were cited prohibiting such a practice.

There is no explanation forthcoming as to why and how the Committee recorded this adverse finding against the petitioner. Again, it is not for this Court to evaluate the weightage given by the Committee to this unsustainable finding while determining the final penalty.

It may also be noted that the Committee recorded its opinion that the petitioner had already deposited the embezzled amount along with the interest thereon which confirmed his admission of the charges and the probable reason why he had failed to come forward to defend himself against these allegations. This was not so, as the petitioner had never admitted depositing the embezzled amount through Bank Drafts. On the other hand, at the earliest opportunity, he categorically disclaimed knowledge of the returning of any amount. The petitioner, however, admitted having paid the interest on the embezzled amount and he justified it by pointing out that the Bank had set compliance with its request in this regard as a condition precedent to consider his request to revoke his suspension and release his fixed deposits.

Even before this Court, when the controversy as to the return of the embezzled amount arose, the Bank was given an opportunity to produce any available proof of this money having been returned by the petitioner himself. The Bank failed to produce any proof and the Affidavit filed by its Administrator makes it clear that the Bank is not in a position to substantiate its claim that it was the petitioner who was responsible for or behind the deposit of the Bank Drafts. Further, Pardeep Singh, a Senior Clerk of the Bank, who was one of the witnesses examined during the inquiry, stated in his letter dated 28.11.2011 addressed to the Economic

Offences Wing of the Chandigarh Police that, as per the record, the demand drafts were not made by the petitioner. Significantly, the statement allegedly made by the petitioner on 27.10.2010 admitting deposit of the embezzled amount, if in writing, was never produced.

It is also to be noted that 23 out of the 45 deposited Bank Drafts were issued by the Bank itself but no proper or thorough inquiry seems to have been undertaken by the Bank to ascertain as to who were the various persons who applied for and secured these Bank Drafts and as to why they deposited them in the Bank's drop-box. This aspect gains significance in the light of the petitioner's allegations against the Bank in relation to Sulinder Singh, a Senior Accountant, who was also suspended from service along with him on 03.07.2009 in connection with the embezzlement issue. At that stage itself, the petitioner had asked the Bank to explain why the said individual was reinstated in service even before commencement of the inquiry against him. The Bank however remained mute and unresponsive. The record produced by the petitioner discloses that Sulinder Singh was thereafter permitted to retire peacefully on 30.12.2011 from the service of the Bank.

No explanation is forthcoming from the Bank as to why it chose to deal with Sulinder Singh in this benevolent manner, if he was initially suspected of complicity in the embezzlement warranting his being placed under suspension along with the petitioner. It is the claim of the petitioner that the reinstatement of Sulinder Singh in service on 28.06.2010 was after the deposit of the aforestated Bank Drafts which, in all, curiously exceeded the embezzled amount. The record bears out this

fact. There is no response from the Bank in the written statement or any of its affidavits on these aspects as it chose to skirt the entire issue of Sulinder Singh and why his case was dealt with in the manner it was, by maintaining a deafening silence.

In any event, as the Bank neither had nor has any proof of the petitioner having returned the embezzled amount, reference by the Committee to his having done so, as an accomplished fact, cannot be countenanced. The Committee's further assumption that this amounted to an admission of guilt on his part and was the reason why he remained *ex parte* in the inquiry was, in consequence, wholly unfounded. The record reflects that, even after 15.09.2015, the petitioner addressed letters complaining that he was being prevented from participating in the inquiry and seeking intervention. This conduct on his part clearly negated any possibility of the Bank assuming that he admitted his guilt and deliberately chose not to defend himself in the inquiry proceedings. This aspect was altogether ignored by the Administrative Committee.

Lastly, the Committee also recorded that the petitioner was found to have delayed the inquiry proceedings on one pretext or the other. No details were furnished as to how the petitioner went about doing so. The record reflects that, but for one Inquiry Officer, the petitioner had nothing to do with the change of the other Inquiry Officers. There is no evidence of the petitioner adopting dilatory tactics at any stage. Thus, the finding to the contrary, with no basis therefor, is unacceptable. In effect, the decision of the Committee, based on these misguided and untenable deliberations, cannot be sustained. The impugned dismissal order based

thereon is, therefore, equally unsustainable on facts and in law.

Viewed thus, the impugned dismissal order beseeches invalidation on counts more than one. However, there remains one other important issue to be considered. The petitioner assailed the said dismissal order not only on its own inherent weaknesses but also on the ground that it was preceded by a one-sided inquiry wherein he was deprived of a reasonable opportunity to defend himself. Though it has been contended on behalf of the Bank that the petitioner cannot maintain this attack as he did not independently challenge the Inquiry Report or the proceedings during the inquiry, the said argument needs mention only to be rejected. The petitioner challenged the final order that culminated out of the inquiry on the various grounds set out in the writ petition. One of the grounds was that he was not provided all the relevant documents to enable him to defend himself and another was that he was wrongfully denied the opportunity of participating in the inquiry proceedings. That being so, there was no necessity for him to separately challenge the Inquiry Report or the proceedings that preceded it. Such a challenge is implicit in his attack against the final order.

In this regard, it may be noted, at the cost of repetition, that the inquiry initiated against the petitioner took over five years to conclude and passed through the hands of six Inquiry Officers. This is despite the fact that the Bank sought quick disposal every time it appointed an Inquiry Officer and went to the extent of even prescribing a time limit of two months or an outer date. However, the record demonstrates that the actual inquiry, in right earnest, was conducted only before M.M.Hurria, the sixth Inquiry Officer. Though he was appointed in May, 2015, the first

inquiry meeting was convened by him only on 14.07.2015 and the last such meeting held by him was on 24.09.2015.

The inquiry proceedings produced by the Bank throw up certain significant facts. Though M.M.Hurria was appointed as the Inquiry Officer in the place of Tara Singh on 30.05.2015, there seems to have been no effective action taken thereon, as Tara Singh held inquiry meetings even on 01.06.2015 and again, on 08.06.2015. This manifests the level of application of mind by the Bank. M.M.Hurria held his first inquiry on 14.07.2015 and the petitioner informed him that he was not provided with all the documents. Kuldeep Kaur, the Presenting Officer, was directed to do the needful, under acknowledgment, within two days. The inquiry was adjourned to 21.07.2015. On that day, the petitioner acknowledged receipt of the inspection reports and applied for some documents that found mention therein. The inquiry was posted on 04.08.2015 and the Presenting Officer was asked to submit her comments on the petitioner's application. On that day, the Presenting Officer stated that she would supply certain documents sought by the petitioner. She further stated that the Rules sought by the petitioner were available in the market and he could buy them. Thereupon, the Inquiry Officer directed the petitioner to do so and the Presenting Officer was directed to certify the same before being taken on record. The inquiry was adjourned to 18.08.2015. It was however not taken up on that day as Kuldeep Kaur informed the Inquiry Officer that she was not going to continue as the Presenting Officer and that her substitute was being appointed.

The Inquiry Officer was separately informed by the General

Manager of the Bank that Dilbagh Singh was appointed as the Presenting Officer and the said individual also met the Inquiry Officer and confirmed the same. The Inquiry Officer accordingly fixed the next date of the inquiry as 25.08.2015. However, on the said day, the petitioner was absent, despite intimation. The Inquiry Officer noted so and adjourned the inquiry to 31.08.2015. He made it clear that if the petitioner failed to attend, *ex parte* proceedings would be taken against him. Thereafter, at the request of the petitioner, the Inquiry Officer adjourned the inquiry to 03.09.2015. On that day, three witnesses were present. The proceedings however did not go on as there was an altercation between the petitioner and the Inquiry Officer on various issues. The petitioner was informed by the Inquiry Officer that *ex parte* proceedings would be taken against him as he was not cooperating in the recording of the prosecution's evidence. Though this was recorded, no separate order was passed by the Inquiry Officer setting the petitioner *ex parte*. The inquiry was adjourned to 15.09.2015 for evidence and the petitioner and his Defence Assistant were told that the matter would be taken up *ex parte* as they were not ready to join the proceedings. However, on 15.09.2015, the petitioner and his Defence Assistant were both present. They submitted a written request to direct the Presenting Officer to provide them the documents already asked for. The Presenting Officer however stated that the documents had already been provided. The Inquiry Officer recorded that the petitioner declined to join the proceedings despite being invited to do so. The three witnesses however sought an adjournment to produce the detailed record. The matter was accordingly posted on 19.09.2015. On that day, five witnesses were

present and some of them were examined in part. The Inquiry Officer recorded that *ex parte* proceedings had been ordered against the petitioner and that he was not present. The inquiry was adjourned to 22.09.2015. On that day, further evidence was recorded and the inquiry was posted on the next day for the remaining evidence. On 23.09.2015, the evidence concluded and the Presenting Officer was asked to submit his brief by 28.09.2015. He did so on 24.09.2015 itself, and the same was recorded.

To sum up, the inquiry that was hanging fire for over five years practically took just three days to complete! The question is whether the petitioner was dealt with fairly in the process of these rather brisk proceedings. To begin with, it may be noticed that the inquiry seems to have taken place in great haste as the Inquiry Officer did not even pause to satisfy himself that the earlier orders passed in the course of the inquiry, with regard to supply of documents to the petitioner, had been complied with. Further, the approach adopted by him seems to have been rather casual and lackadaisical. No doubt, strict rules of procedure would not be applicable to departmental inquiries but the least that was expected of the Inquiry Officer was to pass a specific order setting the petitioner *ex parte* before treating him as such. On the other hand, the record reflects that the petitioner was present even after being told that *ex parte* proceedings would be taken against him and the Inquiry Officer also invited him to participate in the inquiry. In such a situation, the Inquiry Officer could not have dispensed with putting the petitioner on notice as to the future dates of the inquiry or conclude the inquiry precipitately behind his back.

Coming back to the supply of documents, the petitioner's

complaint, time and again, was that he was not provided with all the relevant documents and that was the reason why he could not even submit his final reply to the charge-sheet. In this regard, it may be noted that the first two charges framed against the petitioner baldly spoke of embezzlement of the named sums of money from the Sector 26 and the Burail Branches of the Bank. No specific details or particulars thereof were furnished either in the Articles of Charges or the Statement of the Imputations of Misconduct annexed therewith. Reference was made in the latter document only to the wrongful entries said to have been made by the petitioner in the bank records. No specifics of such entries were detailed however. It has now been brought out by the Bank that the petitioner allegedly made as many as 3549 fake entries in the record. As the details thereof were not disclosed to the petitioner, he necessarily had to be put on proper notice of the same by permitting him to peruse the bank records that formed the basis for the incriminating findings in the inspection team's final reports. This was the least that was expected of the Bank.

In **R.P. Chhabra v/s. Punjab National Bank [2004(3) LLJ 560]**, a learned Judge of the Delhi High Court observed that none can dispute the right of a charged officer to have a fair defence at the departmental inquiry which would also include his right to inspect the relevant record and have the same produced. The learned Judge held that the principles of natural justice guaranteed fair procedure to be followed and not the most favourable procedure that can possibly be imagined.

Admittedly, the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter, 'the Rules of 1970'), apply to the Bank

and it is bound to follow the procedure prescribed therein while taking disciplinary action against its employees. Rule 5 of the said Rules sets out the penalties that may be imposed on a delinquent employee. Minor penalties are detailed under Rule 5(i) to Rule 5(iv) while major penalties are set out in Rule 5(v) to Rule 5(ix). Dismissal from service which shall ordinarily be a disqualification for future employment is the penalty provided under Rule 5(ix). Rule 8, titled 'Procedure for imposing major penalties', states that the penalties prescribed under Rule 5(v) to Rule 5(ix) shall only be imposed after an inquiry is held as prescribed thereunder and in Rule 9. Rule 8(3) requires that the punishing authority should draw up/cause to be drawn up the substance of the imputation of misconduct or misbehaviour into definite and distinct articles of charge; a statement of imputation of misconduct or misbehaviour in support of each article of charge, which shall contain (a) a statement of all relevant facts including any admission or confession made by the employee; and (b) a list of documents, by which, and a list of witnesses, by whom, the charges are proposed to be sustained. Rule 8(4) states that the punishing authority should deliver or cause to be delivered to the employee a copy of the articles of charge, the statement of the imputation of misconduct or misbehaviour and a list of documents and witnesses, by which/whom each charge is proposed to be sustained. The punishing authority is required to call upon the employee to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person. If, thereafter, an inquiry is held into the charges by an inquiring authority other than the punishing authority, Rule 8(6) requires

the punishing authority to forward to such inquiring authority, a copy of the articles of charge and the statement of imputation of misconduct or misbehaviour; a copy of the written statement of defence, if any, submitted by the employee; a copy of the statement of witnesses, if any; evidence proving the delivery of documents required to be delivered to the employee under Rule 8(4); and a copy of the order appointing the Presenting Officer. Rule 8(23) states that after conclusion of the inquiry, a report should be prepared and it should contain (a) the articles of charge and the statement of imputations of misconduct or misbehaviour; (b) the defence of the employee in respect of the articles of charge; (c) the assessment of the evidence in respect of each article of charge; and (d) the findings on each article of charge and the reasons therefor.

Rule 8(4) of the Rules of 1970 does not speak of the documents sought to be relied upon to prove the misconduct to be supplied to the delinquent employee along with the charge-sheet. However, there is no clarity in the stand of the Bank in this regard. On one hand, the Bank stated in its written statement that it had provided all the relevant documents to the petitioner at the initial stage and again, upon his demand, but on the other hand, it has been argued before this Court that the Bank was not required to furnish the relevant documents at the stage of issuance of the charge-sheet.

In Nawanshahr Central Cooperative Bank Limited, Nawanshahr v/s. The Deputy Registrar (Enforcement) Punjab and another [2011(16) S.C.T. 182], a learned Judge of this Court noted that in terms of Rule 8(4) of the Rules of 1970, the punishing authority is only

required to deliver or cause to be delivered the statement of imputations of misconduct along with a list of documents and witnesses which/who would be pressed into service to sustain each article of charge. The learned Judge however noted the submission made on behalf of the employee that this Rule had been interpreted by this Court to hold that for proper compliance with the principles of natural justice, the employee is required to be supplied the documents on which reliance would be placed by the Management to prove the charge and observed that this would depend on the facts of the case and it would be for the delinquent employee to prove the prejudice caused to him. On facts, the learned Judge noted that the mandate of the Rule was sufficiently complied with as the employee was supplied the lists of documents and witnesses with the charge-sheet and he was also given due opportunity to inspect the documents relied upon. The learned Judge accordingly held that no prejudice had been caused to the employee.

Significantly, the normal scenario obtaining under Rule 8(4) of the Rules of 1970 would hold good where the alleged misconduct and, in consequence, the charge levelled against an employee is fully discernible from the charge-sheet itself and/or the statement of imputations of such charge. In such a situation, the employee concerned would be in a position to explain his stand *vis-à-vis* the charge framed against him without further ado and he cannot ordinarily ask for copies of the documents that would be relied upon at a later stage to substantiate such charge. Rule 8(4) supports this. However, when the charge is omnibus, as in the case on hand, and the specifics underlying such charge,

viz., 3549 alleged fake entries, are not forthcoming from the charge-sheet or the statement of imputations, the petitioner necessarily had to be shown or supplied with the documents relevant to the alleged fake entries before he could be expected to submit his reply to the charge-sheet.

In **State of Punjab v/s. V.K. Khanna and others [(2001) 2 SCC 330]**, the Supreme Court observed that the concept of fairness is synonymous with reasonableness but a mere general statement would not be sufficient to impute ill-will and there must be cogent evidence available on record to come to the conclusion that there was bias or a *malafide* move which resulted in miscarriage of justice. In **Jai Hind, Ex-Clerk v/s. State of Punjab and others [2007(3) S.C.T. 827]**, a learned Judge of this Court observed that strict rules of evidence would not be applicable to a domestic inquiry and the Court is only required to scrutinize and find out whether any prejudice has been caused to the delinquent officer or not. It was further observed that as the documents which were produced before the Inquiry Officer were well within the knowledge of the delinquent officer and had been mentioned in the list attached to the charge-sheet, no prejudice was caused to him in any manner. In **Union of India v/s. Alok Kumar [(2010) 5 SCC 349]**, the Supreme Court observed that insistence on *de facto* prejudice has been accepted as an essential feature where there is violation of non-mandatory rules or violation of natural justice, as it is understood in its common parlance. Speaking of departmental inquiries, the Supreme Court noted that where the department relies on a large number of documents, majority of which are furnished, and an opportunity is granted to the officer to

defend himself, but copies of formal documents are not furnished, the onus would lie upon the employee to show that non-furnishing of the formal documents resulted in *de facto* prejudice and he was put to a disadvantage. It was observed that every case has to be examined on its own merits keeping in view the statutory rules applying to departmental proceedings. The Court held that prejudice *de facto* should not be based on mere apprehension or suspicion and it would be important that the element of prejudice should exist as a matter of fact or there should be a definite inference of likelihood of prejudice flowing from such default. It was held that it would not be permissible to set aside departmental inquiries merely on the basis of apprehended prejudice. In **State of U.P. v/s. Harendra Arora and another [(2001) 6 SCC 392]**, it was held that a delinquent must show the prejudice caused to him by non-supply of documents where an order of punishment is challenged on that ground.

Tested against the above legal principles, failure to show or furnish the details and the record of the 3549 alleged fake entries would invariably cause prejudice to the petitioner as he would be completely in the dark as to what was the basis for the action initiated against him. The question, presently, is whether the petitioner was ever supplied such relevant documents, be it at any stage of the inquiry.

It is pertinent to note that, pursuant to the letter dated 07.06.2010 of the General Manager, the petitioner addressed letter dated 18.06.2010 to the Bank seeking photocopies of particular records which formed the basis of the report dated 22.12.2009. These records were:

1. Duty List from 12.07.2002 to 09.11.2006.
2. Friday Statements from 19.12.2003 to 09.11.2006.

3. Vouchers concerned with the inspection team's report.
4. Day Book concerned with the inspection team's report.
5. General Ledger concerned with the inspection team's report.
6. List of Staff members and Managers who worked with him in that period concerned with the inspection team's report.

Again, when R.K.Goyal, the second Inquiry Officer, took up the inquiry on 10.11.2010, the petitioner stated that he had not been shown all the documents and the said Inquiry Officer directed the petitioner to give a list of documents to the General Manager of the Bank who, in turn, was directed to show/provide the same to him. In the event of failure, reasons therefor were to be furnished. Pursuant thereto, the petitioner addressed letter dated 15.11.2010 to the General Manager enumerating as many as 18 sets of documents. The inquiry did not proceed thereafter for a while but the important fact is that there is no evidence of the petitioner being shown/provided all those documents.

The proceedings of the inquiry during February, 2011, demonstrate that the petitioner was unable to peruse the relevant records despite visiting both the Branches of the Bank as the said records were in the custody of the Economic Offences Wing. Surprisingly, the same seems to have been the situation even till recently as the Administrator of the Bank conceded this fact in the Affidavits filed by him. It is therefore a mystery as to what was the original record produced by the witnesses before M.M.Hurria, the Inquiry Officer, during the significant three days of the inquiry. Though there is a recital in the Inquiry Report that the original record was perused and returned, no evidence is produced in proof of the Bank securing the original record from the police authorities for the purpose of the inquiry or returning it thereafter. It is pertinent to

note that when this Court asked for some information, the Bank confessed its inability to comply as the original record was with the police, implying that it could not lay its hands on it.

More importantly, there is no evidence of the petitioner being shown or provided with all the relevant documents in relation to the 3549 fake entries allegedly made by him. Even on 14.07.2015, the first inquiry hearing before M.M.Hurria, the petitioner complained that he was not provided all the documents. On 04.08.2015, Kuldeep Kaur, the Presenting Officer, informed the Inquiry Officer that she would furnish certain documents to the petitioner. However, she exited from the inquiry thereafter and Dilbagh Singh became the Presenting Officer. On 15.09.2015, the petitioner again requested the Inquiry Officer to direct the Presenting Officer to provide him the documents already asked for. Thereupon, Dilbagh Singh, the Presenting Officer, informed the Inquiry Officer that the documents were already provided. Significantly, no evidence in that regard was produced by him. Be it noted that M.M.Hurria, the Inquiry Officer, had specifically directed on 14.07.2015 that documents should be furnished to the petitioner under acknowledgment. No such acknowledgment was produced on 15.09.2015 or even finds mention in the Inquiry Report.

Curiously, the Inquiry Officer recorded that the petitioner confirmed receipt of the documents. That was not so, as the petitioner only affirmed that he had received the inspection reports and renewed his request for some documents. No acknowledgment was ever produced in proof of his request being satisfied. The acknowledgements filed by the

Bank before this Court, in evidence of the relevant documents having been supplied to the petitioner, fall woefully short. Therein, the petitioner categorically asserted that he was unable to correlate various findings in the inspection team's reports with the vouchers shown to him.

The record sought by the petitioner for the named periods was also not shown/provided to him in entirety. There is no evidence of the Day Book, the General Ledger and the list of staff members and Managers sought by the petitioner, *vide* letter dated 18.06.2010, having been supplied to him. Similarly, there is no proof of the Audit Reports, Quarterly Reports of the Bank's Branch Managers, Balance Sheets and the Balancing Certificates sent to the Head Office having been shown or provided to him. These documents were sought by the petitioner under his letter dated 15.11.2010, and as per the order dated 10.11.2010 of R.K.Goyal, the Inquiry Officer, the bank was bound to show/provide these documents to him or explain the reasons why it could not do so. There is no proof of compliance with this order.

Pertinently, in **Chandrama Tewari v/s. Union of India [1988 SCC (L&S) 226]**, the Supreme Court observed that it is well settled that if copies of relevant and material documents are not supplied to the delinquent officer facing the inquiry and if such documents are relied upon to hold the charges proved against the officer, the inquiry would be vitiated for violation of the principles of natural justice. It was further observed that the decision on the question as to whether a document is material or not would depend upon the facts and circumstances of the case. Again, in **The Government of Andhra Pradesh and others v/s. A.**

Venkata Rayudu [(2007) 1 SCC 338], the Supreme Court observed that it is a settled principle of natural justice that if any material is used in an inquiry, then copies of that material should be supplied to the party against whom such inquiry is held.

This being one crucial aspect, it may be noted that the Inquiry Report does not even reflect any consideration, worth the name, of the documentary evidence by the Inquiry Officer to support his ultimate findings. The Inquiry Officer patently went by the oral evidence adduced before him, which was discussed at length, but there is neither any detailed reference to nor discussion about the documentary evidence marked through the said witnesses. Though the Bank cited five instances before this Court to demonstrate the *modus operandi* allegedly adopted by the petitioner, there is not even mention of one such instance in the Inquiry Report. Though it would not have been possible for the Inquiry Officer to record individual findings on each of the 3549 fake entries allegedly made by the petitioner, he did not even choose to randomly test and analyze at least some such entries and record proper findings thereon.

This is in so far as the embezzlement issue is concerned.

In so far as the other two charges pertaining to destruction of record are concerned, the Bank did not even choose to examine any witness from the Burail Branch in that regard. The witness, Mann Singh, a Daftari from the Sector 26 Branch, baldly claimed that the petitioner never handed over the ledger sheets of his account to him. This witness had retired from service and in the absence of any record being maintained by him as to what ledger sheets were given to him, it is rather difficult to

believe that he could quote from memory as to what documents were handed over to him by various officials of the Bank at some distant point of time in the past. To compound matters further, the Inquiry Officer merely noted that the ledger sheets were missing and held that 'there was no evidence to rebut that ledger sheets missing have not been stolen/destroyed/concealed by the Charged Official'. The Inquiry Officer thereupon opined that the allegation that these documents were destroyed or stolen by the petitioner stood proved. In effect, the burden of proving the third and fourth charges was shifted upon the petitioner in reverse. It was for the Bank to substantiate and prove that the petitioner had stolen the ledger sheets of his own accounts from the two Branches and not for the petitioner to rebut such a presumption, as postulated by the Inquiry Officer. *Ergo*, there was no evidence whatsoever to prove that the petitioner had anything to do with the missing ledger sheets. The finding to the contrary could not have been rendered on the sole premise that the petitioner alone would have interest in the records pertaining to his own accounts. Mere surmise and/or conjecture cannot be the basis for returning a positive finding against the petitioner on these two charges.

Lastly, the petitioner's complaint that he was unjustly kept out of the inquiry proceedings also merits acceptance. As already stated *supra*, the inquiry had already dragged on for over five years by the time the sixth Inquiry Officer entered the frame. There was thus no immediate urgency warranting the speed with which he proceeded in the matter. All the more so, when his approach and ultimate consideration were utmost casual and desultory, as already pointed out hereinabove. The

non-cooperation attributed to the petitioner to justify his exclusion from the inquiry is wholly insufficient as the Inquiry Officer himself recorded that even thereafter, he invited the petitioner to participate in the proceedings. However, there is no indication of the Inquiry Officer putting the petitioner on notice as to the further dates of the inquiry towards the end. Reliance, in this regard, placed by the Bank on the decision of the Gauhati High Court in **President, Indian Council of Agricultural Research, New Delhi and others v/s. Dr. Sarveshwar Dayal [2013(16) S.C.T. 940]** is of no avail as the said case is clearly distinguishable on facts. The petitioner therefore ought not to have been deprived of an opportunity to at least cross-examine the witnesses, two of whom were the authors of the final reports dated 22.09.2009 and 22.12.2009, even if he had been set *ex parte*, which, in fact, he was not. He was however denied such opportunity as he was not even put on notice of the later dates of the inquiry by the Inquiry Officer. Thus, the inquiry proceedings stand vitiated on this ground also.

On the above analysis, this Court finds that the dismissal order dated 09.03.2016 as well as the inquiry that preceded it and culminated in the Inquiry Report, ostensibly dated 30.09.2015, are incurably tainted by illegality and arbitrariness apart from being violative of the principles of natural justice. In the light of this finding, the incidental issues, as to whether the petitioner ought to have been afforded a personal hearing before passing of the final order and as to whether the punishment imposed upon him was harsh and disproportionate to the charges framed and held proved against him, are rendered purely

academic and do not warrant further discussion.

The writ petition is accordingly allowed to the extent of setting aside the impugned order of dismissal dated 09.03.2016 as well as the Inquiry Report that formed the basis thereof. The Bank shall resume the disciplinary proceedings against the petitioner from scratch after furnishing him relevant documents or permitting perusal and photocopying thereof, in terms of the observations made *supra*, and after allowing him adequate time to submit his detailed reply to the charges leveled against him. The said disciplinary proceedings shall be concluded expeditiously and preferably, within six months from the date of receipt of a certified copy of this order. As the petitioner remained under deemed suspension all through the pendency of this case owing to the interim order dated 06.04.2016, the Bank shall continue him in the same status with concomitant benefits pending completion of the disciplinary proceedings.

There shall be no order as to costs.

May 13th, 2020

(Sanjay Kumar)
Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes