

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (S) No.1075 of 2009

Rabi Bhushan Sharma, S/o Shri Hari Bansh Sharma, 49 yrs, R/o HIG-I/462, New Borsi Extn., Durg (C.G.) PIN-491001

---- Petitioner

Versus

1. Bank of Baroda, thru' its Chairman and Managing Director, Baroda Bhawan, R.C. Dutt Road, Alkapuri, Baroda (Gujarat) PIN 390007
2. AGM & Appellate Authority, Bank of Baroda, Regional Office, Opp: G.K. General Hospital, Bhuj-Kutch, Gujarat.
3. Chief Manager & Disciplinary Authority, Bank of Baroda, Regional Office, Opp: G.K. General Hospital, Bhuj-Kutch, Gujarat.

---- Respondents

-----  
For Petitioner: Petitioner in person.

For Respondents: Mr. Vinod Deshmukh, Advocate.

Amicus Curiae: Mr. Prasun Kumar Bhaduri, Advocate.  
-----

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board  
(Through Video Conferencing)

06/08/2021

1. The petitioner herein calls in question legality, validity and correctness of order dated 2-6-2008 (Annexure P-12) passed by the disciplinary authority of the then Dena Bank (now merged into Bank of Baroda with effect from April, 2019) in exercise of power under Regulation 7(3) of the Dena Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 (for short, 'the Regulations of 1976'). He also seeks quashment of the appellate order dated 8-10-2008 (Annexure P-14) by which the petitioner's appeal preferred under Regulation 17 of the Regulations of 1976 has been dismissed affirming the order of the disciplinary authority.
2. The aforesaid challenge has been made on the following factual

backdrop: -

3. On 7-5-2007, the petitioner was working as officer in the respondent Bank (erstwhile Dena Bank) and by order dated 7-5-2007, he was transferred from Rajnandgaon Branch to Bhuj Region and he is said to have been relieved from Rajnandgaon Branch and advised to join at Bhuj Region on 15-5-2007, which the petitioner protested and the Branch office at Rajnandgaon transmitted the protest representation of the petitioner to the concerned office at Bhuj on 19.05.2007 and intimated the petitioner to comply the transfer order and proceed to Bhuj to join at the transferred place which the petitioner did not comply and a telegram was sent to him on 21-5-2007 for joining at the transferred place of posting. Since the petitioner did not join at the transferred place at Bhuj he was placed under suspension by order dated 5-6-2007. On 12-10-2007, he was served with charge-sheet for conducting departmental enquiry against him for remaining absent without leave, demonstrating indiscipline and causing loss to the banking business by not joining at the transferred place. This charge-sheet was issued by Dena Bank at Bhuj which was served upon the petitioner on 23-10-2007 to which the petitioner informed that the charge-sheet which has been served to him is incomplete and by memo dated 1-11-2007, the petitioner was asked to submit response to the charge-sheet. These two letters i.e. 23-10-2007 and 1-11-2007 were issued from Bhuj Branch of the respondent Bank. Thereafter, enquiry officer was appointed on 26-11-2007 and on 17-12-2007, it was informed that the departmental proceeding would commence from 22-12-2007 at Bhilai, Chhattisgarh and accordingly, departmental enquiry commenced on 15-1-2008 and the petitioner was present. On 29-1-2008, in the enquiry proceeding, the petitioner has informed to

the enquiry officer that he has filed a writ petition before this Court challenging the order of transfer to Bhuj and this request was again reiterated by the petitioner on 5-2-2008 for suspending the departmental proceeding awaiting the decision of this Court in the writ petition filed by him. On 15-2-2008, finally departmental enquiry was fixed, on that day, the petitioner filed an application intimating the enquiry officer that he has to go to Nagpur for hearing of Criminal Case No.19/2005 pending before the Chief Judicial Magistrate, Nagpur which is fixed for 16-2-2008 and therefore he is unable to attend the proceeding which was received by the enquiry officer and when the enquiry commenced on the said date, the enquiry officer taken cognizance of the application filed by the petitioner but did not find favour with it and it has been held that the petitioner could have proceeded for Nagpur at the later hours of the day and declared the petitioner ex parte and on that day, documents No.1 to 9 were admitted on record and the matter was fixed for 19-2-2008. On 19-2-2008, before hearing could commence, the petitioner this time filed application that he is suffering from pain in scrotum and he also filed unfit certificate to the enquiry officer. The enquiry officer again, though took cognizance, but simply held that sufficient time has been given to the petitioner / charge-sheet officer (CSO) and proceeded further and accepted the nine documents filed by the Management witness namely Kajal Dasgupta and also recorded the statement of Kajal Dasgupta and thereafter, other compliances were made and ultimately, the enquiry officer submitted his report on 17-3-2008 in which allegation Nos.2 & 8 were not found proved and other allegations were found proved. The disciplinary authority did not agree with the report of the enquiry officer with regard to non-proof of

two charges and by its order dated 27-3-2008, held that both the charges are also proved. Accordingly, by order dated 2-6-2008, the disciplinary authority exercising the powers conferred upon him by Regulation 7(3) of the Regulations of 1976 imposed the punishment of dismissal from service without notice and with immediate effect disqualifying the petitioner from further employment on which the petitioner preferred appeal on 17-7-2008 in terms of Regulation 17 of the Regulations of 1976, but ultimately, the appellate authority in a brief order dismissed the appeal finding no merit and affirming the order passed by the disciplinary authority. As such, the aforesaid two orders have been challenged by the petitioner in this writ petition.

4. It has mainly been pleaded by the petitioner that on 15-2-2008, he has a valid reason to go to Nagpur to attend a criminal case pending against him before the Chief Judicial Magistrate, Nagpur for which application was made, but the application was not considered and without assigning any sufficient reason, the application was not considered properly and even it was not rejected on merits and on the basis of irrelevant consideration, he was declared ex parte. Again on 19-2-2008, though he filed an application supported by medical certificate that he is suffering serious pain in scrotum, but that was also not considered and it has been rejected without assigning any reason holding that sufficient opportunity has been given to him / CSO which is in breach of the principles of natural justice, particularly when on the aforesaid two dates, 9 documents filed by the respondent Bank have been admitted and one witness Kajal Dasgupta has been examined and based upon those admitted documents and the statement of Kajal Dasgupta, the petitioner's services have been terminated finding the charges proved as such the departmental

proceeding has been conducted in breach of the principles of natural justice. The appellate authority also did not consider the appeal in accordance with Regulation 17 of the Regulations of 1976 and did not record finding in accordance with the Regulations.

5. Return has been filed that this Court has no jurisdiction as the entire cause of action has been arisen at Bhuj office and even charge-sheet and orders have been communicated to the petitioner at Bhuj that will not give jurisdiction to this Court and as such, the writ petition deserves to be dismissed on that ground alone. It has also been pleaded that despite sufficient opportunity having been granted to the petitioner, the petitioner failed to attend the departmental proceeding on 15-2-2008 and on 19-2-2008 and therefore he was proceeded ex parte and documents were exhibited and witness was examined. As such, there is no violation of the principles of natural justice and the writ petition deserves to be dismissed.
6. Rejoinder has been filed opposing the allegations made in the return.
7. The petitioner appearing in person would submit that the proceeding has been conducted in total violation of the principles of natural justice as on 15-2-2008 on a valid reason to attend the court case at Nagpur he sought adjournment, but that was not even considered properly and the enquiry officer did not acted fairly, merely on the basis of instructions of higher officials to conclude the enquiry expeditiously, he was refused adjournment and declared ex parte which is ex facie illegal and arbitrary as well. Furthermore, on 19-2-2008, he submitted medical certificate and also the prescription of his illness, yet it was not considered and relying upon the earlier refusal, his application was not considered and the departmental witness was examined and all Bank documents were accepted and exhibited and those exhibited

documents have been relied upon to record finding against him, and the statement of Bank witness Kajal Dasgupta has been made basis for recording finding for the alleged misconduct. Therefore, the impugned order passed by the disciplinary authority deserves to be quashed. The petitioner would further submit that the appellate authority has failed to record finding as required under Regulation 17(4) of the Regulations of 1976 according to which the appellate authority was required to consider whether the findings are justified or whether the penalty is excessive or inadequate. He would also submit that the appellate authority has not considered the appeal in its proper perspective and the appellate authority has affirmed the order of the disciplinary authority. As such, the order of the appellate authority also deserves to be quashed.

8. Mr. Vinod Deshmukh, learned counsel appearing for the respondents, would submit that the entire charge-sheet was issued by the respondent Bank from Bhuj office and all other officers were appointed from Bhuj office and the disciplinary authority as well as the appellate authority were also posted therein, therefore this Court would have no jurisdiction to entertain this writ petition and as such, the writ petition deserves to be dismissed for want of territorial jurisdiction. Mr. Deshmukh, learned counsel, while replying the petitioner's argument on merits, would submit that the petitioner had already been accommodated on 29-1-2008 and 5-2-2008 in the departmental enquiry, but he did not join for enquiry on 15-2-2008 on the ground that he has to go to Nagpur for attending a criminal case before the CJM, Nagpur which was fixed for 16-2-2008, he could have proceeded to Nagpur on the later part of the day after participating in the departmental proceeding and it appears that the petitioner has

deliberately avoided for attending the enquiry proceeding on 15-2-2008. Mr. Deshmukh, learned counsel, would also submit that on 19-2-2008, again, the petitioner submitted medical certificate which was taken cognizance of by the enquiry officer and finding no reason to adjourn the matter, the matter was proceed ex parte and the Bank witness was examined and documents were exhibited. As such, there is no violation of principles of natural justice in proceeding ex parte against the petitioner by the disciplinary authority on these two dates of hearing. He would lastly submit that the appellate authority has also considered the appeal in accordance with Regulation 17(4) of the Regulations of 1976 and as such, the writ petition deserves to be dismissed.

9. Mr. Prasun Kumar Bhaduri, learned amicus curiae, would submit that this case is arising out of the petitioner's act of not obeying the transfer order dated 7-5-2007 by virtue of which the petitioner was transferred from Rajnandgaon, Chhattisgarh to Bhuj, Gujarat. It is the case of the Bank that this act of the petitioner is gross misconduct contrary to their service regulations and has caused harm in banking business, as such, it is an act of serious indiscipline on the part of the petitioner. He would bring to the notice of the Court, the order dated 15-2-2008 in which the enquiry officer proceeded ex parte and admitted documents and he would also bring to the notice of the Court the proceeding dated 19-2-2008 in which the enquiry officer did not consider the application of the petitioner and proceeded to record the statement of Kajal Dasgupta and accepted the documents relied upon by the Bank. In this regard, with regard to non-adjournment of the proceeding on medical ground, he has brought to the notice of the Court, decision of the Supreme Court in the matter of Union of India

and others v. I.S. Singh<sup>1</sup> wherein their Lordships of the Supreme Court have delineated the procedure for dealing with application for adjournment sought on medical grounds in departmental proceedings. He would also bring to the notice of the Court the decision of the Supreme Court in the matter of S.C. Girotra v. United Commercial Bank (UCO Bank) and others<sup>2</sup> to support his point and would submit that fatal errors had taken place in the enquiry itself, as the prayer for adjournment was rejected in hasty and mechanical manner and the petitioner was proceeded ex parte in the enquiry and therefore he could not cross-examine the management witness and raise objections to the documents exhibited on 19-2-2008. The said decision has resulted in denial of opportunity to the petitioner to cross-examine the management witness and to object to the documents exhibited. The approach of the appellate authority appears to be slipshod in the sense that it did not apply its mind to the entire facts and circumstances of the case and it did not sufficiently meet out the grounds raised by the petitioner in the appeal. In respect of territorial jurisdiction, he would submit that enquiry proceeding has taken place at Durg, Chhattisgarh and all the orders relating to the proceeding were passed at Bhuj, Gujarat, but communicated to the petitioner at Durg and therefore cause of action partly has arisen in the State of Chhattisgarh in terms of Article 226(2) of the Constitution of India and as such, this Court has jurisdiction to entertain this writ petition under Article 226 of the Constitution of India.

10. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

1 1994 Supp (2) SCC 518

2 1995 Supp (3) SCC 212

11. Before entering into the merits of the matter, it would be appropriate to consider the preliminary objection raised on behalf of learned counsel for the respondent Bank in which it has been raised that the petitioner was transferred to Bhuj, Gujarat and he was relieved for joining on 15-5-2007 and therefore the High Court of Gujarat has jurisdiction and this Court would not have jurisdiction against the order of dismissal dated 2-6-2008 and the appellate order dated 8-10-2008.

12. In order to decide the dispute, it would be appropriate to notice clause (2) of Article 226 of the Constitution of India, which states as under: -

**“226. Power of High Courts to issue certain writs.—**

(1) xxx      xxx      xxx

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”

13. Under clause (1-A) {renumbered as clause (2) by the Constitution (Forty-second Amendment) Act}, if the cause of action arises, wholly or in part, within the territorial jurisdiction of that High Court, it may issue a writ against a person or authority resident within the jurisdiction of other High Courts. Thus, as a result of insertion of the instant clause, a petition under Article 226 can be presented before any of the High Courts under the following heads: -

1. The High Court within whose territorial jurisdiction, the person or authority against whom relief is sought resides or is situate.
2. The High Court within whose jurisdiction, the cause of action in respect of which relief is sought under Article 226 has arisen, wholly or in part. (See Navinchandra N. Majithia v. State of

**Maharashtra and others<sup>3</sup>.)**

14. The Bombay High Court in the matter of **Damomal Kausomal Raisinghani v. Union of India and others<sup>4</sup>** relying upon its earlier judgment in the matter of **W.W. Joshi v. State of Bombay<sup>5</sup>** held that if an order is passed by an authority in a particular State, but the said order is served in another State, the High Court within whose jurisdiction, the order was served, has jurisdiction to entertain the writ petition under Article 226 of the Constitution of India and observed as under: -

“(5) ... The question that arises is whether the cause of action for the exercise of the power invoked by the petitioner arose wholly or in part within the territories in relation to which this Court exercises jurisdiction. The petitioner, as it appears, was a resident of Ullasnagar, a place situated in the District of Thana of Maharashtra State. The impugned order itself shows that the case was heard in Bombay. It is indeed true that the order on the face of it does not show the place where it was made. Even assuming that this order was made by the third respondent in New Delhi, there can hardly be any doubt that the effect of this order fell on the petitioner at Ullasnagar where he resides. It is also not in dispute that the proceedings that would be taken against the petitioner in consequence of the impugned order would be by officers located within the territories in relation to which this Court exercises jurisdiction. Though in different context, the question arose as to the place where the cause of action would arise, the question was considered by a Division Bench of which I was a member in *W.W. Joshi v. State of Bombay*, 61 Bom LR 829: (AIR 1959 Bom 363). A civil servant was removed from service and the question arose as to where the cause of action to get quashed the order of the removal from service arose, and it was held that the cause of action would arise at the place where the order of termination of service was made and also at the place where the consequences fell on the servant. In view of this decision, there can hardly be any doubt that the place where the consequences of the order fell on the petitioner would be a place where at least the

3 (2000) 7 SCC 640

4 AIR 1967 Bombay 355

5 AIR 1959 Bom 363

cause of action in part would arise. No good ground is shown to us by Mr. Vaidya to differ from the view taken by the Division Bench in the aforesaid case. The second ground also should fail.”

15. The issue raised in this writ petition is no longer res integra. The Supreme Court in the matter of Nawal Kishore Sharma v. Union of India and others<sup>6</sup> has settled the dispute in this regard and held that High Court within whose jurisdiction letter of rejection of disability pension received would also have jurisdiction to entertain the writ petition and observed as under: -

“16. Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court’s jurisdiction.

17. ... Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscle disease). As a result, the Shipping Department of the Government of India issued an Order on 12-4-2011 cancelling the registration of the appellant as a seaman. A copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the District of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar.

Admittedly, the appellant was suffering from serious heart muscle disease (dilated cardiomyopathy) and breathing problem which forced him to stay in native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation.”

16. Reverting to the facts of the case in the light of the principle of law laid down by the Supreme Court in Nawal Kishore Sharma (supra), it is quite vivid that in the instant case, the factors giving rise to the cause of action namely suspension, appointment of enquiry officer, order of termination and even the order in appeal have been passed from the office of the respondent Bank at Bhuj, Gujarat, however, the enquiry itself which is the vital link in chain of events has taken place in Chhattisgarh and apart from that, all orders particularly, the order of suspension, the order of dismissal from service and the appellate order have been served to the petitioner at Durg, Chhattisgarh, therefore, this is a case where enquiry has been conducted at Durg and all adverse orders of departmental proceeding even of removal were served at Durg, as such, significant and vital part of cause of action has taken place in Chhattisgarh. Therefore, it can safely be said that cause of action has arisen in part in Chhattisgarh in terms of Article 226 of the Constitution of India and following the principle of law laid down by their Lordships of the Supreme Court in Nawal Kishore Sharma (supra) and by the Bombay High Court in Damomal Kausomal Raisinghani (supra), this Court will have territorial jurisdiction to entertain the writ petition against the orders dated 2-6-2008 (Annexure P-12) and 8-10-2008 (Annexure P-14) i.e. the dismissal order and the appellate order, respectively. As such, the preliminary objection of learned counsel for the respondents in this

regard is hereby overruled. The judgment of the Supreme Court in Nawal Kishore Sharma (supra) has been followed by this Court also in the matter of Constable No.833350033 A.P. Sharma v. Secretary, Home Department, Government of India and others<sup>7</sup>.

17. Now, the merits of the matter comes in. The main grievance raised in this regard is conducting of departmental enquiry in breach of the principles of natural justice. Admittedly, the case was fixed for holding further departmental enquiry on 15-2-2008 with due notice to the petitioner which is not in dispute, but on that day itself, the petitioner made an application to the enquiry officer expressing his inability to attend the enquiry proceeding, as he was leaving for Nagpur to attend the hearing of Criminal Case No.19/2005 pending against him which was fixed before the CJM, Nagpur on 16-2-2008. The said application was duly received by the enquiry officer and the enquiry officer in the second paragraph of the proceeding (page 142 of the writ petition) recorded his finding as under: -

“Since the Court hearing is on 16.02.2008 at Hon’ble Court of the Chief Judicial Magistrate, Nagpur, the CSO could have attended the proceedings and left for Nagpur in the later hours. As the Inquiry has to be completed at the earliest as per C.M.D. & H.O. Directive letter and as per our D.A.’s instruction, I order the inquiry proceedings to be started Ex-Parte.”

18. A careful perusal of the aforesaid finding recorded by the enquiry officer would show that the enquiry officer did not consider the application on merits and remain impressed with the fact that the Chairman-cum-Managing Director and Head Office have already directed and the disciplinary authority has also instructed to conclude the enquiry expeditiously / at the earliest and therefore the petitioner was declared ex parte and thereafter proceeded to admit documents

<sup>7</sup> W.A.No.226/2018, decided on 9-4-2019

No.1 to 9 of the Management / respondent Bank.

19. The role of the enquiry officer, it is well settled, has to be fair and impartial while dealing with the enquiry proceeding; there may be direction of the disciplinary authority/higher officer of the Bank, but once he has been appointed as enquiry officer, he has to act not only fairly, but impartially too; and direction of disciplinary authority/ Chairman-cum-Managing Director to conclude the enquiry expeditiously may not be a sole ground to refuse adjournment where the charge-sheeted officer has made out a valid ground and shown sufficient cause for adjournment of the proceeding on a particular date of hearing. The application for adjournment should be considered on merit and despite direction to conclude the enquiry, the enquiry officer was obliged to consider the merits of the application filed by the CSO / petitioner on its own merit. Further finding of the enquiry officer that the petitioner could have proceeded for Nagpur on later hours of the day is also equally fallacious to note, because, the petitioner's case was scheduled before the CJM, Nagpur on 16-2-2008, that too it was a criminal case, therefore, the decision of the petitioner to leave for Nagpur in the early part of the day to reach there and to take steps for preparation of his case, and to give instructions to his counsel after making necessary arrangements for travelling, lodging, boarding, etc., that too in other State i.e. the State of Maharashtra (Nagpur), could not have been faulted by the enquiry officer on irrelevant consideration. In that situation, it cannot be prejudged by the enquiry officer that the petitioner / CSO could have left for Nagpur on later hours of the day and as such, refusal by the enquiry officer on 15-2-2008 was wholly on untenable grounds.

20. At this stage, it would be pertinent to note the decision of the Supreme

Court in the matter of State of Uttar Pradesh and others v. Saroj Kumar Sinha<sup>8</sup> in which their Lordships of the Supreme Court while dealing with the role of enquiry officer held that enquiry officer acting in quasi-judicial authority, is in the position of an independent adjudicator, he is not supposed to be a representative of department/disciplinary authority/Government, he must be wholly unbiased, he should not act as a prosecutor as well as a judge, and his function is to examine evidence presented by Department, even in absence of delinquent official to see as to whether unrebutted evidence is sufficient to hold that charges are proved, and observed in paragraph 30 of the report as under: -

“30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

21. The principle of law laid down in Saroj Kumar Sinha's case (supra) was followed with approval by their Lordships of the Supreme Court in the matter of Union of India and others v. Ram Lakhan Sharma<sup>9</sup> in which their Lordships have further reiterated that the Enquiry Officer, who has to be independent and not representative of the disciplinary authority, if starts acting in any other capacity and proceeds to act in a manner as if he is interested in eliciting evidence to punish an employee, the principle of bias comes into picture.

22. As such, for both the reasons, refusal by the enquiry officer to adjourn the matter even for few days, on 15-2-2008 cannot be justified, he

<sup>8</sup> (2010) 2 SCC 772

<sup>9</sup> (2018) 7 SCC 670

could have adjourned the matter giving a short date, as on 15-2-2008, the enquiry officer did not act with fairness, rather acted as a representative of the disciplinary authority / Chairman-cum-Managing Director by abiding to his direction by refusing to adjourn the matter despite having been shown valid and sufficient ground for adjournment on 15-2-2008. It is pertinent to mention here that thereafter, proceeding ex parte, the enquiry officer admitted nine documents filed by the Management and fixed the case for hearing on 19-2-2008.

23. Unfortunately, on 19-2-2008, it is the case of the petitioner that he submitted an application for adjournment along with medical certificate issued by the Senior Consultant, Department of Surgery (Unit-I), JLN Hospital & RC, Bhilai, BSP that he is suffering pain on scrotum and the Senior Consultant has advised him for two weeks to recover and he has also been advised to take rest and avoid sitting. The application was duly acknowledged by the enquiry officer and it was taken cognizance of and it was held by the enquiry officer as under in the proceeding dated 19-2-2008 (page 149 of the writ petition): -

“Since the CSO has again shown his disability to be present for today’s hearing and has submitted a letter dt. 18.02.2008 along with medical unfit certificate from Sr. Consultant Dept. of Surgery, J.L.N. Hospital & R.C. Bhilai, through hand delivery through our staff Shri Mayani, Sub-Staff/Driver, L.B.O., Durg.

Inspite of giving sufficient chance to the CSO in the last proceedings, he is not yet present in the proceedings to defend his case, so I instruct you to proceed with the Inquiry.”

24. A careful perusal of the aforesaid order passed by the enquiry officer would show that though illness of the petitioner was duly certified by the Senior Consultant, Department of Surgery, JLN Hospital & RC,

Bhilai, BSP, but it was not considered by the enquiry officer on its merit holding that “in spite of giving sufficient chance to the CSO in the last proceedings, he is not yet present in the proceedings to defend his case” and proceeded with the enquiry.

25. The Supreme Court in I.S. Singh's case (supra) has clearly held that where adjournment is sought on medical grounds the proper course of action is to call for medical report from the delinquent himself, or get him medically examined by specified medical officer to satisfy himself regarding genuineness of the ground. There has to be a discussion to this effect in the enquiry report by the enquiry officer to refuse to grant adjournment and decide to proceed ex parte and it was held that in absence thereof, enquiry was conducted in violation of the principles of natural justice. This case squarely applies to the facts of the present case. Despite the fact that the petitioner filed medical certificate of his illness, the enquiry officer refused to adjourn the matter holding that sufficient chance has already been given. The Supreme Court in the matter of State Bank of India v. Chandra Govindji (Km.)<sup>10</sup> while dealing with the issue of adjournment clearly held that in ascertaining whether a party had reasonable opportunity to put forward his case or not, one should not ordinarily go beyond the date on which adjournment is sought for. The earlier adjournment, if any, granted would certainly be for reasonable grounds and that aspect need not be once again examined if on the date on which adjournment is sought for the party concerned has a reasonable ground. It was further held that the mere fact that in the past adjournments had been sought for would not be of any materiality. If the adjournment had been sought for on flimsy grounds the same

would have been rejected.

26. At this stage, it would be appropriate to notice the procedure for imposing major penalty provided in the Regulations of 1976. Sub-regulation (1) of Regulation 6 of the Regulations of 1976 provides that no order imposing any of the major penalties specified in clauses (e), (f), (g) and (h), of regulation 4 shall be made except after an inquiry is held in accordance with this regulation. In this case, Regulation 4(j) of the Regulations of 1976 i.e. dismissal which shall ordinarily be a disqualification for future employment is imposed against the petitioner. Sub-regulation (13) of Regulation 6 of the Regulations of 1976 provides for cross-examination by the said employee which states as under: -

“(13) On the date fixed for the inquiry, the oral and documentary evidence by which the article of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses produced by the Presenting Officer shall be examined by the Presenting Officer and may be cross-examined by or on behalf of the officer employee. The Presenting Officer shall be entitled to re-examine his witnesses on any points on which they have been cross-examined, but not on a new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.”

27. On 19-2-2008, ignoring the petitioner's request for adjournment on medical ground, the enquiry officer proceeded further and accepted documents Exs.1 to 8(2) produced by the Management and also simultaneously recorded the statement of Kajal Dasgupta as the sole departmental witness. Relying upon the statement of Kajal Dasgupta and the documents exhibited at the instance of Kajal Dasgupta i.e. Management Exs.1 to 8(2), the enquiry officer held that the alleged misconduct against the petitioner was found proved, but the fact

remains that the petitioner was deprived of the opportunity to cross-examine the sole Management witness and also with reference to the documents exhibited by Management witness Kajal Dasgupta, that has resulted into denial of reasonable opportunity of defence to the petitioner.

28. The Supreme Court in S.C. Girotra (supra) while dealing with the principles of natural justice, reasonable opportunity and right to cross-examine witnesses in departmental enquiry, observed as under: -

“3. ... From the above extract it is clear that the report on which reliance was placed by the disciplinary authority was a comprehensive document in which conclusions were reached against the appellant on the basis of materials including the books and records of the bank as well as some certificates issued by officers of the bank which constituted evidence in support of the charges levelled against the appellant. It is also clear that no opportunity was given to the appellant to cross-examine either the makers of that report, Mr V.P. Jindal and Mr J.R. Sharma or the officers who had granted such certificates which formed evidence to prove the charges which led to the order of dismissal passed by the disciplinary authority, even though those persons were examined for the purpose of proving the documents relating to them. In our opinion, the grievance made by the appellant that refusal of permission to cross-examine these witnesses was denial of reasonable opportunity of defence to the appellant, is justified.”

29. In the considered opinion of this Court, since on the basis of statement of sole management witness Kajal Dasgupta and the documents exhibited by him, the order of misconduct was found proved against the petitioner, this has resulted in denial of reasonable opportunity to the petitioner to defend his case by which serious prejudice has been caused to the petitioner ignoring his request for adjournment on valid medical ground and thereby it is a pure and simple case of denial of reasonable opportunity to defend himself against the charges as held

by their Lordships of the Supreme Court in S.C. Girotra (supra).

30. Though the petitioner could not cross-examine the management witness and also could not cross-examine with reference to the documents so exhibited, but thereafter, as per sub-regulation (16) of Regulation 6 of the Regulations of 1976, the case could have been fixed for evidence of the petitioner employee in which it has clearly been provided that the evidence on behalf of the officer employee should be produced. The officer employee may examine himself in his own behalf and the witnesses produced by the officer employee shall then be examined by the officer employee and may be cross-examined by the Presenting Officer. Sub-regulation (16) of Regulation 6 states as under: -

“(16) The evidence on behalf of the officer employee shall then be produced. The officer employee may examine himself in his own behalf, if he so prefers. The witnesses produced by the officer employee shall then be examined by the officer employee and may be cross-examined by the Presenting Officer. The officer employee shall be entitled to re-examine any of his witnesses on any points of which they have been cross-examined, but not on any new matter without the leave of the Inquiring Authority.”

31. It appears from the record that on 19-2-2008 the management / Bank witness was examined and documents filed by the Bank management were exhibited and on 23-2-2008, the enquiry officer simply informed that departmental enquiry against the petitioner is completed and intimated the petitioner to submit his rejoinder synopsis. As such, the enquiry is in violation of sub-regulation (16) of Regulation 6 of the Regulations of 1976. The petitioner at no point of time was given opportunity to either adduce evidence of himself and / or offer to examine his witnesses in support of his defence in terms of sub-regulation (16) of Regulation 6.

32. The argument in this behalf that since the petitioner was declared ex parte when the case was fixed on 15-2-2008, therefore, he was not given opportunity in terms of sub-regulation (16) of Regulation 6 of the Regulations of 1976 deserves to be noted for rejection. Enquiry is not to be conducted like civil court proceeding. The Regulations of 1976 floated by the bank authorities itself provide for enquiry to be conducted in the manner prescribed in the Regulations. There is no procedure in the Regulations for declaring the petitioner ex parte. True it is that the petitioner did not appear on 15-2-2008 and he was proceeded ex parte, but the proceeding was adjourned for 19-2-2008, on that date also he could not appear and participate in the enquiry (on 19-2-2008). Non-appearance of the petitioner on these two dates would not take away the right of the petitioner provided under sub-regulation (16) of Regulation 6 of the Regulations of 1976 to examine himself and his other witnesses in support of his defence, if any. This has caused serious prejudice to the petitioner, as he could not examine himself and his other witnesses. The enquiry officer after examining the Bank / management witness on 19-2-2008, could have fixed the case for evidence of the petitioner / the petitioner's other witnesses, but that course has not been followed and straightway after examination of the Bank / management witness, the enquiry officer has declared the departmental enquiry closed. As such, the enquiry conducted by the enquiry officer is in sheer breach of sub-regulations (13) and (16) of Regulation 6 of the Regulations of 1976 by which serious prejudice has been caused to the petitioner and he has been deprived of reasonable opportunity to defend himself in the departmental enquiry held against him and thus, the order passed by the disciplinary authority is liable to be set aside.

33. Not only this, when the petitioner preferred appeal against the order of dismissal before the appellate authority in terms of Regulation 17 of the Regulations of 1976, the said appeal was also dismissed affirming the order of the disciplinary authority. Sub-regulation (4) of Regulation 17 clearly provides that the appellate authority shall consider whether the order of suspension / findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders thereto confirming, enhancing, reducing or setting aside the penalty / suspension or remitting the case to the authority which imposed the penalty. However, a careful perusal of the order of the appellate authority reveals that the appellate authority has recorded a finding that the order dated 2-6-2008 passed by the disciplinary authority is a well reasoned order and the disciplinary authority has applied his mind while awarding punishment. The appellate authority further held that the misconduct alleged against the petitioner is proved and punishment imposed by the disciplinary authority is justified with the gravity of misconduct.

34. In the considered opinion this Court, the Regulations of 1976 clearly mandates the appellate authority to consider whether the findings of the disciplinary authority are justified and whether the punishment is excessive or inadequate and record a finding thereof. The provision clearly suggests that he has to apply his mind to the facts of the case and to the material available on record and thereafter record finding whether the findings of misconduct which have been found to be proved against the delinquent employee are justified or not, but any how, the appellate authority only certified the order of the disciplinary authority and considered none of the material available on record except certifying the order to be in accordance with law which is not

an order in terms of Regulation 17(4) of the Regulations of 1976.

35. In view of the aforesaid legal analysis and discussion, this Court is of the considered opinion that the order of the disciplinary authority dated 2-6-2008 (Annexure P-12) and that of the appellate authority dated 8-10-2008 (Annexure P-14), both, are liable to be quashed and are hereby quashed.

36. However, since the petitioner had already attained the age of superannuation on 28-2-2019 and departmental enquiry was conducted in full breach of the principles of natural justice and it was in teeth of sub-regulations (13) & (16) of Regulation 6 of the Regulations of 1976, and even the enquiry officer acted as a representative of the respondent Bank, it would be inappropriate to direct the conduct of departmental enquiry afresh. As such, the petitioner would be entitled for all consequential benefits from the date of termination till the date of his superannuation i.e. 28-2-2019. He will also be entitled for full pay and allowances during the suspension period.

37. The decisions of the Supreme Court cited by Mr. Deshmukh, learned counsel for the respondents, in the matters of Y.P. Sarabhai v. Union of India and another<sup>11</sup> and Lalit Popli v. Canara Bank and others<sup>12</sup> are clearly distinguishable to the facts of the present case in light of the finding recorded herein-above.

38. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

39. While parting with the record this Court appreciates the assistance rendered by Mr. Prasun Kumar Bhaduri, learned amicus curiae, who

<sup>11</sup> 2006 SCC (L&S) 1101

<sup>12</sup> (2003) 3 SCC 583

in short notice appeared and assisted this Court in the highest tradition of the Bar. I thank him for his useful assistance.

Sd/-  
(Sanjay K. Agrawal)  
Judge

Soma