



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 25th July, 2022**
Pronounced on: 13th October , 2022

+ **W.P.(C) 2903/2003**

VIJAY MALHAN Petitioner

Through: Ms. Srishti Agnihotri and Ms.
Sanjana Grace Thomas, Advocates

versus

UOI & ORS Respondents

Through: Ms. Saroj Bidawat, Senior
Standing Counsel with Ms. Priti
and Ms. Anupriya, Advocates
Ms. Kittu Bajaj, Advocate for
OBC

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant civil writ petition under Article 226 of the Constitution of India has been filed by the Petitioner who was earlier posted as the Assistant General Manager, Regional Inspectorate at Chandigarh, challenging the order dated 23rd January 2003 directing the removal of Petitioner from services of Oriental Bank of Commerce (hereinafter referred to as "Respondent Bank") passed by the Disciplinary Authority and upheld by the Appellate Authority vide order dated 28th February 2003.



FACTUAL MATRIX

2. The brief facts for the disposal of the instant writ petition are that the Petitioner was appointed as a Branch Manager in the Respondent Bank in the year 1975. On the pretext of an anonymous complaint, the Petitioner was initially issued a show cause letter dated 15th March 1996 by the Respondent Bank on four charges and was asked for his explanation. The Petitioner sent his comments on the charges levelled against him, pointing out the baselessness thereof vide communication dated 25th March 1996 and 8th April 1996.

3. Upon receipt of explanation from the Petitioner, the Chief Vigilance Officer of the Respondent Bank addressed a letter dated 22nd June 1996, to the DGM, Reserve Bank of India, Mumbai saying that:

"We have examined the reply given by Sh. Malhan and are of the view that on the basis of the evidence furnished, we have no reason to disbelieve the statement of Sh. Malhan"

4. The Disciplinary Authority issued another memo dated 14th July 1998, to the Petitioner containing seven charges altogether, including the aforesaid four charges. The Petitioner submitted his reply to the said memo and on 23rd October 1999 a charge sheet was issued to the Petitioner on the said seven charges. A regular inquiry was set up to enquire into the aforesaid seven charges against the Petitioner and Commissioner of Departmental Inquiries was deputed as the Inquiry Authority.

5. The Inquiry Authority vide report dated 27th June 2002 exonerated the Petitioner of all the charges as nothing could be brought against the Petitioner by the bank during the inquiry. The Disciplinary Authority sent



a disagreement note dated 13th August 2002 and thus invited representation from the Petitioner. In response to the aforesaid disagreement as communicated by the Disciplinary Authority, the Petitioner sent his representation dated 28th September 2002 to the Disciplinary Authority. Receiving no response to the communication from the Disciplinary Authority, Petitioner filed a writ petition in the High Court of Delhi bearing number C.W.P. 1033 of 2003 on 5th February 2003 praying for directions to the Respondent Bank to communicate the decision on the representation of the Petitioner dated 28th September 2002. At the time of the hearing of that writ petition, on 7th February 2003 the counsel for the Respondent Bank informed a Coordinate Bench of this Court that the Disciplinary Authority has already disposed of the representation of the Petitioner and has removed him from the service vide its order dated 23rd January 2003. The relevant portion of the judgment of the Coordinate Bench of this Court has been reproduced herein below:

“Counsel appearing for the Oriental Bank of Commerce, respondents 2 and 3 has placed a copy of the order passed by the Disciplinary Authority, removing the petitioner from service but without any disqualification would not be a disqualification for future employment. Documents placed on record indicate that the Disciplinary Authority passed the said order on-23.1.03 in exercise of powers under Regulation 4(1) of Oriental Bank of Commerce, Officer Employees (Discipline & Appeal) Regulations, 1982. Since an effective order is passed by respondents 2 and 3 against the petitioner removing him from service on 23.10.99 i.e., prior to the presentation of this writ petition, the petitioner is to seek remedy in accordance with the provisions of the said



regulations which provides that an appeal is maintainable as against such an order passed by the Disciplinary Authority. It is needless to point out that all the pleas that are raised in this writ petition would also be open to be raised and for consideration before the Appellate Authority and such pleas, if and when raised before the Appellant Authority could also be considered by him and disposed off by passing a reasoned order. In that view of the matter, I am not inclined to entertain the petition as at this stage the petitioner has an efficacious alternative remedy open to him. The petition stands disposed of with the aforesaid observations giving Opportunity to the petitioner to approach the Appellate Authority as against the impugned order of removal in accordance with the provisions of the regulations. In case the petitioner invokes the jurisdiction of the Appellate Authority in terms of the observations made herein, the Appellate Authority shall consider the appeal and dispose of the same as expeditiously as possible, preferably within a period of four weeks from the date of receipt of the aforesaid appeal. In case the petitioner is still aggrieved, it shall be open to the petitioner to approach this Court with afresh writ petition.”

6. The order dated 23rd January 2003 was served on the Petitioner and he challenged the order passed by the Disciplinary Authority vide statutory appeal dated 14th February 2003. The Appellate Authority dismissed the said Appeal vide order dated 28th February 2003.

7. Thus, aggrieved by the findings arrived at by the Disciplinary Authority as well as the Appellate Authority in spite of the exoneration given by the Inquiry Authority, the Petitioner has filed the instant writ petition.



SUBMISSIONS

8. Learned counsel appearing on behalf of the Petitioner has contended that the findings arrived at by the Disciplinary Authority as well as the Appellate Authority are vitiated by the vice of malafide as the Inquiry Authority as appointed by the Chief Vigilance Commissioner had already exonerated the Petitioner of all the charges after a detailed and thorough examination of all the evidence on record.

9. It is also contended that the inquiry by the Disciplinary Authority is vitiated by the efflux of mandatory period of time provided for such inquiries in the vigilance manual, which governs the procedure for such inquiries. Relevant portion of the rule is reproduced below for reference:

*“12.3.1 APPOINTMENT OF INQUIRING
AUTHORITY/OFFICER*

(i)... The inquiring Authority should also be directed to ensure submission of the report mandatorily within a period of six months of his appointment. This time limit should be invariably adhered to at all costs.”

10. Therefore, it was submitted that in the case of Petitioner as the inquiry has continued for more than three years in complete violation of and derogation of the aforesaid rule, the inquiry and all subsequent proceedings are hit by such illegality.

11. As in the case of the Petitioner the inquiry has continued for more than three years in complete violation and derogation of the aforesaid rule, the inquiry as well as all the subsequent proceedings emanating there from is patently illegal.



12. It has also been submitted that the Respondent No. 3 while recording its disagreement against the report of the Inquiry Authority, instead of recording its reasons for such disagreement, has wrongly and illegally recorded the conclusions, holding the charges as 'proved' against the Petitioner. It is submitted that the law as laid down in catena of Judgements is clear on the subject that such recording of conclusion vitiates the proceedings. After the disciplinary authority records its conclusions, the representation of the charged officer remains a mere formality and the entire purpose of the proceedings before the Disciplinary Authority including the show cause stands defeated.

13. Learned counsel appearing on behalf of petitioner also submitted that the note of disagreement dated 13th August 2002 with the report of Inquiry authority, has been passed by Sh. A.K. Gupta, the then Disciplinary Authority, while the order of removal dated 23rd January 2003 has been passed by Sh. S.C. Gupta, the officer in succession to Sh. A.K. Gupta, as disciplinary authority, who stood transferred by then. While passing the order, instead of applying its mind afresh to the findings of the Inquiry Authority, for the purpose of arriving at agreement/disagreement and that too for its own reasons to be recorded and communicated afresh to the petitioner, the authority in succession unmindfully and illogically followed the disagreement note communicated by his predecessor Sh. A.K. Gupta and mechanically passed the order of removal in line with the disagreement note. It is submitted that the officer in succession could not have proceeded further upon the basis of the disagreement arrived at by his predecessor officer,



which is purely subjective in nature, as the new officer may agree or disagree and for its own reasons.

14. Further, it has been argued that the Appellate Authority as well as Disciplinary Authority have not only repelled the well-founded defence evidence, but challenged the evidence given by the sole Management witness also, substituting the same with their personal knowledge, and proceeded on the basis of pure conjectures with malicious intention to implicate the petitioner herein, deliberately ignoring all evidence in favour of the Petitioner.

15. It has also been argued that a total of six amendments have been carried out to the chargesheet during the course of inquiry, but neither a show cause nor an opportunity was ever given to the Petitioner to represent against such amendments to the chargesheet. No amended chargesheet was ever supplied to the Petitioner by the Disciplinary Authority. It is added that the amendments made are vague that no person of ordinary prudence can gather anything concrete from them. It has also been added that none of the authority has made any reference nor has taken into consideration these amendments, rather have proceeded on the basis of initial chargesheet, which shows mechanical and superficial application of mind by both the authorities even to facts of the matter.

16. Learned counsel appearing on behalf of petitioner also argued that the illegal and unwarranted delay caused in the matter, initially in setting up the inquiry then during the inquiry and then even thereafter keeping the case pending without any reason has already resulted in grave prejudice and injustice to the Petitioner, whose all service, prospects like promotion etc. have been held up only on account of pendency of such



proceedings. It is submitted that the ease, was being kept pending by the Respondent no.3, who is batch mate of the Petitioner, with malafide intention of keeping the Petitioner in a state of stagnation.

17. It has also been argued that the charges which have been made subject matter of the chargesheet subsequently, were already investigated into by the Chief Vigilance Officer of the Bank and the case was closed after the Chief Vigilance Officer arrived at the finding that no such charge was made out against the Petitioner and submitted his report dated 22nd June 1996 to the Reserve Bank of India. It has been submitted that the Petitioner could not have been once again issued a charge sheet in relation to the same charges. This constitutes an illegality patent on the face of the record itself and banks upon double jeopardy.

18. Learned counsel appearing on behalf of petitioner submitted that neither in the chargesheet nor in the finding of any authority, there is any allegation or finding as to any material loss to the Bank from commissions / omissions of the alleged acts of the Petitioner. The Bank is thus not aggrieved by any of the acts of the Petitioner.

19. It has also been contended that the presenting officer of the Respondent Bank failed to produce the documents as summoned by the Petitioner in his defence and has rather given certificate of '*not available*' without any explanation thereof. It is submitted that the Bank Officials have deliberately suppressed the relevant documents from the inquiry and have adopted a policy of pick and choose so as to fabricate story against the petitioner and implicate him.

20. Learned counsel appearing on behalf of petitioner has attempted to impute malafide on the Disciplinary Authority by contending that both



Sh. A.K. Gupta & S.C. Gupta, successive Disciplinary Authorities, are batch mates of the Petitioner herein, whom the Petitioner had taken over in the interview for promotion to the post of AGM and as such are highly interested in seeing the petitioner grounded down. The professional jealousy and rivalry in the mind of these authorities is the probable cause of the bias which is clearly reflected in the actions and omissions of these authorities. The Officials in the Respondent Bank had been bent upon to harm the Petitioner herein by hook or by crook at the crucial juncture of his career as well as his life. The promotion of the Petitioner to the highest post in the Bank i.e., General Manager, was kept on hold because of undue pendency of the disciplinary proceedings against him in complete derogation of the rules etc.

21. Lastly, learned counsel appearing on behalf of petitioner has extensively relied upon the report of the Inquiry Authority to submit that the said report is well reasoned and well founded and is constructed by a person who is an expert in this field of departmental inquiries, so as to plead his innocence.

22. *Per Contra*, learned counsel appearing on behalf of the Respondents No. 2 to 4 has taken a preliminary objection that this Court cannot sit as an appellate authority over the findings of the Disciplinary Authority and the Appellate Authority. The order of removal dated 23rd January 2003 was passed by the Disciplinary Authority on the proved charges in an inquiry conducted as per the service regulations and in consonance with the principles of natural justice. The proved charges are regarding embezzlement of funds by a senior executive of the Bank. It is submitted that the Respondent No.2 is a nationalized financial institution



who cannot afford to keep a senior executive like the Petitioner who was Assistant General Manager and against whom serious charges of siphoning of funds has been established.

23. Further, it has been contended that the Petitioner was charge sheeted under Regulation 6 of the Oriental Bank of Commerce Officers Employees (Discipline and Appeal) Regulations, 1982, vide memorandum dated 23rd October 1999, that while posted as Incumbent In charge at Branch Office Fort, Mumbai, he unauthorisedly allowed loans to 88 borrowers, in contravention of Para 13(B)(10) of the Exchange Control Manual. He indulged in trading of securities of third party N.R.E. deposits without any written mandate from the N.R.E. depositor. He allowed the opening of account in the name of M/s Asian Consolidated Industries Ltd. on 10th October 1995, without introduction, in violation of the laid down procedure and extended credit facility of large magnitudes without observing norms, on the same day; he further allowed loan of Rs. 1.00 crores against the deposits of Shri Prem Khanna which is showing a debit balance of Rs. 136.25lacs as on 16th December 1997 against the value of deposit of Rs. 135.05 lacs, he unauthorisedly allowed overdraft of Rs. 50.00 lacs each in current account No.4205. On 4th March 1993, he got issued four NRNR CDRs of Rs. 1.00 Lac each in the joint name of his minor daughters and SM Prem Khanna as NRI and did not disclose the source and details of such CDR's in his annual statement of Assets and Liabilities submitted to the Bank for the year ending 31st March 1993.

24. Further, it has been contended that the Disciplinary Authority exercising his jurisdiction under Regulation 7(2) of the Oriental Bank of Commerce Officers Employees (Discipline & Appeal) Regulations, 1982,



considering the evidence and the record of the inquiry, disagreed with the findings of Inquiring Authority and tentatively came to the conclusion of establishing of five charges in the departmental inquiry. Vide show cause dated 13th August 2002, the tentative conclusions of the Disciplinary Authority were forwarded to the delinquent employee for making a representation thereon, in consonance with the spirit of the law laid down in ***Punjab National Bank and Ors. v. Kunj Behari Mishra, AIR 1998 SC 2713***. The Petitioner submitted a detailed representation thereon which was duly considered by the Disciplinary Authority, and vide the final order dated 23rd January 2003, the Disciplinary Authority concluded that only three charges out of the five charges are to be proved. Admittedly, no prejudice has been occasioned to the Petitioner whilst passing the final order dated 23rd January 2003 by the Disciplinary Authority. The action of the Respondent Bank is in consonance with the principles of natural justice and statutory regulations and hence the writ petition is therefore liable to be dismissed.

25. Further, learned counsel for the Respondents no. 2 to 4 has contended that it has been consistently held by the Hon'ble Supreme Court that in cases where serious financial irregularities like siphoning of funds are established against executives of the Bank, the Bank is fully justified in taking disciplinary action and dismissing them from the services of the Bank.

26. Learned counsel for the Respondents no. 2 to 4 has denied that the Petitioner was appointed as the youngest A.G.M. in the Respondent Bank. He has further submitted that the matter was not closed by the Chief Vigilance Officer. The observations of Chief Vigilance Officer are



merely recommendatory in nature and not binding on the Disciplinary Authority. He has further submitted that the provisions of the vigilance manual are merely recommendatory in nature.

27. It has been argued that though every endeavour is made to complete the departmental enquiries within six months period, the proceedings are sometimes delayed owing to the acts of the delinquent employee and sometimes owing to unforeseen circumstances beyond the control of the Presenting Officer. The delay was occasioned owing to the conduct of delinquent employee himself. However no inordinate delay was there and the same would not vitiate the inquiry proceedings.

28. Learned counsel for the Respondents no. 2 to 4 has denied all the allegations of bias and non-application of mind by the Disciplinary Authority and has submitted that a speaking order dated 23rd January 2003 was passed by the Disciplinary Authority after concurring with the disagreement note communicated by his predecessor and after considering the entire inquiry record, the evidence adduced therein, the representations made by the delinquent employee and his past service record. No personal knowledge or conjectures and surmises were indicted by the Disciplinary Authority, as alleged. No prejudice has occasioned to the petitioner by the said order of the Disciplinary Authority.

29. Learned counsel for the Respondents no. 2 to 4 has denied that six amendments were made to the chargesheet and has submitted that only two amendments were made in the charge sheet which are self-exhaustive and the Respondent was within its jurisdiction to amend the charges. The Petitioner was given due opportunity to reply and contest the same, and therefore, no prejudice was occasioned to him by the said amendments.



Moreover, the amendments so made were mere rectification of the typographical errors which crept in the charge sheet dated 23rd October 1999 and were duly taken into consideration both by the Disciplinary Authority as well as the Appellate Authority.

30. Learned counsel *lastly* submitted that case of the Petitioner was again referred to the Chief Vigilance Commissioner for 2nd stage advice. Seeing the gravity of the charges, even the Chief Vigilance Commissioner suggested stiff major penalty to the Petitioner. Further, it has been denied that the Petitioner was not submitted with the requisite documents as the documents not available with the Bank were certified "Not available". The non-availability of the said documents was genuine and not a policy of pick and choose to implicate him, as alleged. The documents available with the Bank were supplied to him, during the inquiry proceedings, on his request.

31. In *Rejoinder*, learned counsel appearing on behalf of the Petitioner has submitted that this Court is not invited to sit over as an Appellate Authority over the findings of the Disciplinary Authority but as the findings are vitiated on the grounds of being in violation of the principles of natural justice, being perverse in nature to the records of the case, vitiated by self-abrogating findings of the authority etc. and as such the impugned orders are liable to be struck down in the exercise of the powers of this Court under Article 226 of the Constitution of India.

32. It has been further contended that the Respondents have never communicated the advice received from the Chief Vigilance Commissioner to the Petitioner at any stage despite being aware that the advice was to be obtained at two stages as per the circular of Chief



Vigilance Commissioner. Moreover, the arrival of the Authority beforehand upon certain conclusions shows the bias and prejudice in the mind of Authority and makes the representation and subsequent proceedings meaningless and a mere formality and hence, before recording the conclusions the Disciplinary Authority necessarily had to communicate the disagreement note to the Petitioner for his representation against the same.

33. Learned counsel appearing on behalf of the Petitioner has taken a vehement plea that six amendments were made to the chargesheet vide two letters and neither the amended chargesheet was ever supplied to the Petitioner nor the Petitioner was given opportunity to represent against the amended chargesheet.

34. Learned counsel appearing on behalf of the Petitioner has also posited that the provisions of the vigilance manual are binding and mandatory in nature as these are the provisions which govern the procedure of departmental inquiries falling in their purview. Completion of inquiry was mandatory within a maximum period of 3 months and under any circumstance within 6 months. It is vehemently denied that the inquiry was delayed by the petitioner. The Petitioner did not seek even a single adjournment during the entire inquiry; rather the presenting officer of the Respondent bank has deliberately delayed the inquiry.

35. *Lastly*, it is submitted that out of the 42 documents demanded by the petitioner and allowed by the inquiry officer, only 13 were supplied by the Bank, that too in illegible copies, for some others 'certificate of not available' was given without any further explanation and for rest of the documents neither certificate nor any explanation was given. Even after



indictment from the inquiry officer, the documents were not produced. The petitioner was preceded against this way by depriving him deliberately of all defence in the inquiry.

FINDINGS AND ANALYSIS

36. Heard learned counsel for the parties and perused the record. I have given my thoughtful consideration to the submission made by the parties. At the outset, it becomes necessary to delineate the following issues on the basis of which the final outcome of the instant writ petition would depend.

ISSUE I-Whether the Petitioner was supplied with the amended chargesheet? If not, then whether any prejudice can be said to have been caused to the Petitioner and the disciplinary proceedings impugned herein can be sustained in the eyes of law?

ISSUE II-Whether the procedure adopted by the Disciplinary Authority vis-à-vis communicating a disagreement note to the Petitioner is in consonance with the settled norms of providing a fair opportunity of hearing?

ISSUE III-Whether the Disciplinary Authority is bound by the advice of the Chief Vigilance Officer? OR, whether the advice of exoneration by the Chief Vigilance Officer amounts to closing the case against the delinquent employee?

ISSUE IV-Whether non-communication of Central Vigilance Commissioner's advice to the Petitioner is violative of procedural fairness and amounts to '*acting at the back of the Petitioner*'?



ISSUE V-Whether there is any delay in the initiation of the Disciplinary proceedings against the Petitioner? If yes, whether such delay has prejudiced the case of Petitioner?

ISSUE I-

37. Before delving into this issue, it is pertinent to highlight the importance of principles of natural justice in a disciplinary proceeding as compliance with the principles of natural justice is not an empty formality but a mandatory requirement.

38. In ***Chamoli District Co-operative Bank Ltd. &Anr. vs. Raghunath Singh Rana &Ors.***, Civil Appeal No. 2265 of 2011, the Hon'ble Supreme Court held that:

“19. The compliance of natural justice in domestic/disciplinary inquiry is necessary has long been established. This Court has held that even there are no specific statutory rule requiring observance of natural justice, the compliance of natural justice is necessary. Certain ingredients have been held to be constituting integral part of holding of an inquiry.....”

39. The Apex Court in ***Sur Enamel and Stamping Works Pvt. Ltd. v. Their Workmen***, (1964) 3 SCR 616, has laid down following:-

“4.An enquiry cannot be said to have been properly held unless,

(i) the employee proceeded against has been informed clearly of the charges levelled against him,

(ii) the witnesses are examined – ordinarily in the presence of the employee – in respect of the charges,

(iii) the employee is given a fair opportunity to cross-examine witnesses,



(iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and

(v) the inquiry officer records his findings with reasons for the same in his report....”

40. The Apex Court again in ***State Bank of India Vs. R.K. Jain and Ors., reported in (1972) 4 SCC 304*** held that if an inquiry is vitiated by violation of principles of natural justice or if no reasonable opportunity was provided to the delinquent to place his defence, it cannot be characterized as a proper domestic inquiry held in accordance with the rules of natural justice. In paragraph 23, the following was laid down:-

“23.As emphasised by this Court in Ananda Bazar Patrika (P) Ltd. v. Its Workmen, (1964) 3 SCR 601, the termination of an employee's service must be preceded by a proper domestic inquiry held in accordance with the rules of natural justice. Therefore, it is evident that if the inquiry is vitiated by violation of the principles of natural justice or if no reasonable opportunity was provided to a delinquent to place his defence, it cannot be characterized as a proper domestic inquiry held in accordance with the rules of natural justice...”

41. The Hon'ble Supreme Court in ***State of Uttaranchal & Ors. Vs. Kharak Singh, (2008) 8 SCC 236*** had occasion to examine various contours of natural justice which need to be specified in a departmental inquiry. It is useful to refer to paragraph 15:-

“15. From the above decisions, the following principles would emerge:



i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

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(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any."

42. Therefore, what becomes necessary is that the employee against whom the inquiry has been initiated must be clearly informed as to what are the charges against him/her. As a necessary corollary, it becomes quintessential to inform the employee as to whether any amendments have been made in the charges framed against him and if any, then what are the amendments which have been made. It cannot be more emphasised that this stage in any disciplinary inquiry is pivotal as otherwise the alleged delinquent employee would be met by surprise while leading his defence and meeting the case as set up by his/her employer.

43. Be that as it may, in the present case it has been alleged by the Petitioner that six amendments have been made by the Respondent Bank in the charges against him without giving him an opportunity to meet the



said amendments. It is pertinent to reproduce the contention of the Petitioner in the present writ petition:-

“....The frivolous nature of these charges is clear from the fact that several of them pertain to alleged irregularities committed even beyond the tenure of the Petitioner, which fact has been pointed out and accepted even by the Inquiry Authority. Each time the Petitioner asked for supply of the documents pertaining to these charges, the charges were amended in all their details, by the authority. At least 6 such amendments have been carried out by the respondent bank to the charges, making virtual mockery of the charges and the chargesheet.

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Because total of six amendments have been carried out to the chargesheet, that too during the course of inquiry, substantially and in all details, but neither a show cause nor an opportunity was ever given to the Petitioner to represent against such amendment of chargesheet. The amendments as made are so vague that no person of normal prudence can gather anything concrete from them.

Because no amended chargesheet was ever issued by the disciplinary authority after the amendments. It is why even both the authorities have failed to take notice of the amendments incorporated in the chargesheet two times by the disciplinary authority itself. It is submitted that none of the authority has made any reference nor has taken into consideration these amendments, rather have proceeded on the basis of initial chargesheet. This shows mechanical and superficial application of mind by both the authorities even to facts of the matter.”

44. It becomes important to reproduce the relevant portion of the counter affidavit of the Respondent Bank to understand as to how these allegations have been countered by them:-



“The issuance of charge sheet dated 23.10.1999 to the petitioner is admitted. The irregularities were proved to be during the tenure of the petitioner at Branch Fort, Mumbai. The petitioner was charge sheeted for serious charges of siphoning of Bank's funds, which was proved in a departmental enquiry held in consonance with the respondents Regulations and principles of natural justice. The respondent was within its jurisdiction to amend the charges. Only two amendments were made in the charge sheet dated 23.10.1999. The petitioner was given due opportunity to reply and contest the same, and therefore no prejudice was occasioned to him by the said amendments. The petitioner participated in the enquiry proceedings and contested the charges, and thus no prejudice has been occasioned to him during the enquiry proceedings.

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The contents of Ground G. are wrong and hence denied. The two amendments made in the charge sheet are self exhaustive. The respondent was within its jurisdiction to amend the charges. The petitioner was given due opportunity to reply and contest the same, and therefore no prejudice was occasioned to him by the said amendments.

The contents of Ground H are wrong and hence denied. The two amendments made in the charge sheet were duly taken into consideration by the Disciplinary Authority and the Appellate Authority. The amendments were mere rectification of the typographical errors which crept in the chargesheet dated 23.10.1999. The petitioner has admitted that two amendments were made in the charge sheet and in the preceding paras had been misleading the court by giving false statements on oath that the charge sheet dated 23.10.1999 was amended six times by the respondents.”



45. In the rejoinder affidavit, the Petitioner has re-iterated his stand *qua* amendments made in the chargesheet. The relevant portion has been reproduced below:-

“It is submitted that the 6 amendments made to the chargesheet vide two letters, have been made at the time when inquiry proceedings were going on. Neither amended chargesheet was ever issued nor the petitioner was given opportunity to represent against the amended chargesheet. It is note worthy that the disciplinary authority itself has failed to take note of such amendments and has made references to the contents of original charges. Thus, a state of total misconception and chaos has erupted due to illegal action of the respondents in amending the chargesheet in improper way and not affording the opportunity to the petitioner to represent against the amended, chargesheet. It is emphasised that no amended chargesheet was issued by the disciplinary authority, though 6 amendments were incorporated into the same.”

46. So, what appears is that by way of two different letters six amendments were made by the Respondent Bank. Before proceeding to determine as to whether the Petitioner was given any notice or opportunity *qua* the amended chargesheet it becomes more essential to determine as to whether any prejudice can be said to have been caused to the Petitioner in leading his defence by way of the amendments so made in the charge sheet. For determining the same, it is quintessential to refer to the written submissions of the Petitioner before the Disciplinary Authority. The relevant portion of the same has been reproduced below:

“Neither the Disciplinary authority, nor the PO are sure of the allegations/charges and in fact the entire case is based on mere presumptions, wild and imaginary charges where none exist. It is on record that the DA has been repeatedly



changing the charges and in fact whenever the documents, demanded by the defense reflected the hollowness of the allegations. The specific instances are summarised below for a ready preview:

S. No.	Date of Memorandum	Date of Altercation/Amendment	Reason	Existing uncertainty charges/allegations Memorandum	Article of Charges
1.	Mem. dt. 23-10-99 under article of charge 2 (b)_ as well as statement of Imputation at Annex.11 depict letter of application and security form as L/D-l	06-04-2000 amendment of security form from LD-1 to LD-5	On demanding defence document vide letter dt. 31-03-00 as D-122	LD-5 allegedly pertaining to the period of CO's tenure did not come into existence at that time.	The article of charge is ill founded and thrust on the CO though the CO was not posted in the branch at that time. Unspecific regarding accounts in which manipulation are alleged.
2.	Annex.11 of Mem. Alleges outstanding loans to 34 borrowers	22-04-00 amendment modifies out-standing loan to, 16 borrowers instead of 34 borrowers	--do--	Amendment to Mem. Does not depict even a single borrower	PO in his brief is still contending outstanding loans to 34 borrowers without naming any.
3.	Article Chg. No.2 (d) depict the dates of over-draft to Mr.Nitin. Chhatwal as 14-10-95 and 16-10-95	Amendment depict dates of over-draft and 4-10-95 & 06-10-95 instead 6-10-95 & 14-10-95.	--do--	Dates of over-draft to Nitin Chhatwal as 14-10-95 and 16-10-95.	Dates of over draft as 6-10-95 and 14-10-95.
4.	Pg. No.3 of memo.	Pg. 2 of Annex-II	--do--	No document has	The



	<i>In Annex-1 as well in page No.2 of Annexure-11 allege loan to Sh.Nitin Chhatwal against security of NRNR Deposits</i>	<i>under, charge 2(d)amended from authorized overdrafts against 3rd party deposits to Unauthorised clean overdrafts.</i>		<i>been cited to support the allegation.</i>	<i>reasons for the amendment are still a mystery.</i>
5	<i>No reference of clean O/D of Rs. 1,00,36,322/45</i>	<i>Addition of clean O/D to Nitin Chhatwal in CC A/c. No.2732 of Rs. 1,00,36,322/45</i>	<i>--do--</i>	<i>Loaning documents have been ignored which are of prime significance.</i>	<i>PO as a spokesman of the Mgt. Still religiously maintains his stand.</i>
6.	<i>Pg. 2 of Annex. II of Article of charge allegedly states 2 NRNR CDRs of Rs. 1 lac each.</i>	<i>Amendment from two NRNR CDRs to four CDRs</i>	<i>No ref. of number of CDRs.</i>	<i>Two CDRs</i>	<i>NRNR</i>

It is also on record that the PO is even to date not sure of the real charges/allegations and as such the corrigendum issued to alter the charges do not find any mention in the written brief/arguments presented by the PO. Thus, it is apparent that the PO is himself not sure of what are the allegations and as such it is ironical on his part to assert that the defense has not disproved the same. Such kind of fishing and roving exercise has not only wasted the time, money and energy of the Government agency but has also spoiled and ruined the career of the CO.”

47. At this stage, it becomes pertinent to refer to certain judicial dicta as laid by the Hon’ble Supreme Court of India with reference to the present discussion. In ***State Bank of Patiala vs. S.K. Sharma***, AIR 1996 SC 1669, their lordships of the Supreme Court while considering an appeal against the quashing of a Disciplinary Authority held that:



“It is not brought to our notice that the State Bank of Patiala (Officers’) Service Regulation contains provision corresponding to Section 99 C.P.C. or Section 465 Cr. P.C. Does it mean that any and every violation of the regulations renders the enquiry and the punishment void or whether the principle underlying Section 99 C.P.C. and Section 465 Cr. P.C. is applicable in the case of disciplinary proceedings as well. In our opinion, the test in such cases should be one of prejudice, as would be later explained in this judgment. But this statement is subject to a rider. The regulations may contain certain substantive provisions, e.g., who is the authority competent to impose a particular punishment on a particular employee/officer. Such provisions must be strictly complied with. But there may be any number of procedural provisions which stand on a different footing. We must hasten to add that even among procedural provisions, there may be some provisions which are of a fundamental nature in the case of which the theory of substantial compliance may not be applicable. For example, take a case where a rule expressly provides that the delinquent officer/employee shall be given an opportunity to produce evidence/material in support of his case after the close of evidence of the other side. If no such opportunity is given at all in spite of a request therefore, it will be difficult to say that the enquiry is not vitiated. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. The position can be stated in the following words: (1) Regulations which are of a substantive nature have to be complied with and in case of such provisions, the theory of substantial compliance would not be available. (2) Even among procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case, the theory of substantial compliance may not be available. (3) In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available. In such cases, complaint/objection on this scope have to be judged on the



touch-stone of prejudice, as explained later in this judgment. In other words, the test is: all things taken together whether the delinquent officer/employee had or did not have a fair hearing. We may clarify that which provision falls in which of the aforesaid categories is a matter to be decided in each case having regard to the nature and character of the relevant provision.

XXX

21. Pausing here, we may notice two decisions of this Court where the test of prejudice was rejected, viz., Chintapalii Agency T.A.S.C.S. Limited v. Secretary (F&A) Government of Andhra Pradesh and S.L. Kapoor v. Jagmohan both rendered by three-Judge Benches. But if one notices the "facts of those cases, it would be evident that they were cases of total absence of notice as in the case of Ridge v. Baldwin.

XXX

33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee):

(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature of (b) whether it is procedural in character.

(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.



(3) In the case of violation of a procedural provision, the position is this: Procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed.-Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To report, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle slated under (4) herein below is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.



(4)(a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived it, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not it or that the provision could not be waived by him, then the Court on Tribunal should make appropriate directions (include the setting aside of the order of punishment) keeping in mind the approach adopted by the Constitution Bench in B. Kaninakar. The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action-the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/no hearing" and "no fair hearing", (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty



will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No. 5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and over-riding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arises before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision.”

48. In **Janakinath Sarangi v. State of Orissa, (1969) 3 SCC, Hidayatullah, CJ.** (speaking for the Bench comprising himself and G.K. Mitter, J.) made the following pertinent observations :

“5. From this material it is argued that the principles of natural justice were violated because the right of the appellant to have his own evidence recorded was denied to him and further that the material which was gathered behind his back was used in determining his guilt. In support of these contentions a number of rulings are cited chief among



which are State of Bombay v. Narul Latif Khan; State of Uttar Pradesh and Anr. v. Sri C.S. Shanna and Union of India v. T.R. Varma. There is no doubt that if the principles of natural justice are violated and there is a gross case this Court would interfere by striking down the order of dismissal; but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right.... Anyway the questions which were put to the witnesses were recorded and sent to the Chief Engineer and his replies were received. No doubt the replies were not put in the hands of the appellant but he saw them at the time when he was making the representation and curiously enough, he used those replies in his defence. In other words, they were not collected behind his back and could be used to his advantage and he had an opportunity of so using them in his defence. We do not think that any prejudice was caused to the appellant in his case by not examining the two retired Superintending Engineers whom he had cited or any one of them.”

49. In **K.L. Tripathi v. State Bank of India and Ors., (1984) 1 SCC 43, Sabyasachi Mukharji, J.**, speaking for a three-Judge Bench, considered the question whether violation of each and every facet of principles of natural justice has the effect of vitiating the inquiry. The learned Judge observed:

“32. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitable form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was



no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version of the credibility of the statement.

The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation to the acts, absence of opportunity to cross-examination does not create any prejudice in such cases.

The principles of natural justice will, therefore, depend upon the facts and circumstances of each particular case. We have set out hereinbefore the actual facts and circumstances of the case. The appellant was associated with the preliminary investigation that was conducted against him. He does not deny or dispute that. Information and materials undoubtedly were gathered not in his presence but whatever information was there and gathered namely, the versions of the persons, the particular entries which required examination were shown to him. He was conveyed the information given and his explanation was asked for. He participated in that investigation. He gave his explanation but he did not dispute any of the facts nor did he ask for any opportunity to call any evidence to rebut these facts.”

50. Therefore, it is crystal clear from the aforesaid discussion that the Petitioner was well aware of the amendments which were made by the Respondent Bank in the charges against him and hence it cannot be said that the Petitioner had no notice of the amendments or was not given an



opportunity to lead his defence in consonance with the principles of natural justice. Therefore, it is clearly established that no prejudice was caused to the Petitioner qua the amendments so made by the Respondent Bank and in the consonance with the *prejudice test* as has been laid down by the Hon'ble Supreme Court in the cases referred to above, I am inclined to answer this issue in favour of the Respondent Bank and against the Petitioner.

ISSUE II-

51. It is pertinent to refer to the Regulation 7 of the Oriental Bank of Commerce Officer Employees (Discipline and Appeal) Regulations, 1982 (hereinafter referred to as "Bank Regulations"). Regulation 7(2) of the Bank Regulations reads as follows:

*"7. Action on the inquiry report:
(2) The Disciplinary Authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence or record is sufficient for the purpose."*

52. Therefore, on a preliminary view of the Bank Regulations it cannot be gainsaid that the Disciplinary Authority was within its powers to disagree with the findings of the Inquiry Officer and record its own independent reasons for disagreement supported by evidence taken on record. But what is pivotal is to the manner in which the disagreement has to be registered and an opportunity has to be given to the alleged delinquent employee to meet the charges so framed against him.

53. In this context it becomes necessary to a landmark decision of the Hon'ble Supreme Court of India in *Yoginath D Bagde v. State of*



Maharashtra, AIR 1999 SC 3734, wherein their lordships of the Supreme Court were confronted with a similar situation, i.e., the Disciplinary Authority had disagreed with the findings of the Inquiry Authority. It is relevant to cite certain paragraphs from this judgment:-

“28.... If it does not agree with the findings of the Inquiring Authority, it may record its own findings. Where the Inquiring Authority has found the delinquent officer guilty of the charges framed against him and the Disciplinary Authority agrees with those findings, there would arise no difficulty. So also, if the Inquiring Authority has held the charges proved, but the Disciplinary Authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the Inquiring Authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the Disciplinary Authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the Rules made under Article 309 of the Constitution or the Disciplinary Authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent and the Disciplinary Authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the Inquiring Authority that the charges were established, "an opportunity of hearing" may have to be read into the Rule by which the procedure for dealing with the Inquiring Authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be 'not guilty' by the Inquiring Authority, is found 'guilty' without being afforded an opportunity of hearing on



the basis of the same evidence and material on which a finding of "not guilty" has already been recorded.

29. We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which enables the Disciplinary Authority to disagree with the findings of the Inquiring Authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The Rule does not specifically provide that before recording its own findings, the Disciplinary Authority will give an opportunity of hearing to a delinquent officer.

But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before Disciplinary Authority finally disagrees with the findings of the Inquiring Authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to - indicate that the findings recorded by the Inquiring Authority do not suffer from any error and that there was no occasion to take a different view. The Disciplinary Authority, at the same time, has to communicate to the delinquent officer the "Tentative" reasons for disagreeing with the findings of the Inquiring Authority so that the delinquent officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the Inquiring Authority are not germane and the finding of "not guilty" already recorded by the Inquiring Authority was not liable to be interfered with.

33. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry



*Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. **The formation of opinion should be tentative and not final.** It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event, punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."*

54. In ***Punjab National Bank and Ors. v. Kunj Behari Mishra***, AIR 1998 SC 2713, the Hon'ble Supreme Court propounded the law on the subject as follows:

"20.It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not



completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer, but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the finding of the disciplinary authority.

21.....When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed.”



55. The application of these principles to the facts of the present case, it becomes pertinent to cite the relevant portion of the disagreement note dated 13th August 2002:-

“Please refer to our letter dated 6.12.1999 vide which departmental enquiry was instituted against you. Shri AK Aggarwal, Commissioner of Departmental Enquiries, Central Vigilance Commission, Inquiring Authority had submitted his findings. The undersigned has examined the findings of I.A. and come to the conclusion that evidence have not been properly scrutinised by the Inquiring Authority regarding some of the charges. The undersigned has recorded its own findings where he disagreed with the findings of I.A. under Regulation 7(2) of Oriental Bank of Commerce Officer Employees (Discipline & Appeal) Regulations, 1982.

We are forwarding a copy of the note along with the findings of Inquiring Authority for your representation in the matter. If you desire to make any representation or submission in regard to the findings of the Inquiring Authority you may do so within 15 days. The undersigned will take the suitable decision after examining the same.”

56. Though at the first glare it might appear that the disagreement so reached by the Disciplinary Authority is conclusive and not **tentative** as is required in terms of the law laid down by the Hon’ble Supreme Court, but emphasising on the wordings of the disagreement note predominantly on the phrase bold-marked, it will direct to the irresistible conclusion that the conclusion so reached by the Disciplinary Authority was not conclusive and only **tentative**. This is further fortified by the fact that in the disagreement note dated 13th August 2002, the Disciplinary Authority was of the tentative opinion that all the charges namely, Charge No. 1,



Charge No. 2(a), Charge No. 2(b), Charge No. 2(c) and Charge No. 3 stands proved but in the final order dated 23rd January 2003, only Charge No. 2(a), Charge No 2(c) and Charge No. 3 stood proved against the Petitioner. Therefore, this issue is also answered in favour of the Respondent Bank and against the Petitioner.

ISSUE III-

57. The Petitioner has taken a contention that after exoneration by the Chief Vigilance Officer the proceedings against him came to an end and the Disciplinary Authority ought not to have issued a chargesheet against the Petitioner. The contention of the Petitioner in the writ petition is reproduced herein below:

*“Because the charges which have been made subject matter of the chargesheet subsequently, were already investigated into by the Chief Vigilance Officer of the Bank and the case was closed after the CVO arrived at finding that no such charge was made out and submitted his report dated 22.6.1996 to the Reserve Bank of India. The Petitioner could not have been once again issued a charge sheet in relation to the same charges. **This constitutes an illegality patent on the face of the record itself and banks upon double jeopardy.**”*

58. The Respondents have denied the application of Double Jeopardy in the facts and circumstances of the present case in their counter affidavit in the following words:-

“The contents of Ground K are wrong and hence denied. The Chief Vigilance Officer was not the Disciplinary Authority of the petitioner and thus his report was not conclusive about the establishment of charges against the petitioner. The case was never closed by the CVO, as alleged, but was merely referred to the Disciplinary



Authority. Moreover, the CVO has no jurisdiction to close the case. The Disciplinary Authority was within his jurisdiction to initiate disciplinary proceedings against the petitioner. The initiation of departmental proceedings against the petitioner is legal and justified and doesn't constitute double jeopardy, as alleged.”

59. It is settled by a catena of judgments by the Hon'ble Supreme Court that the Disciplinary Authority is not bound by the advice of the Chief Vigilance Commissioner and the same is merely recommendatory in nature. It is pertinent to cite relevant paras of ***Nagraj Shivarao Karjagi v. Syndicate Bank, AIR 1991 SC 1507:-***

*“17. We are indeed surprised to see the impugned directive issued by the Ministry of Finance, Department of Economic Affairs (Banking Division). Firstly, under the Regulation, the Bank's consultation with Central Vigilance Commission in every case is not mandatory. Regulation 20 provides that the Bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle. Even if the Bank has made a self imposed rule to consult the Central Vigilance Commission in every disciplinary matter, it does not make the Commission's advice binding on the punishing authority. In this context, reference may be made to Article 320(3) of the Constitution. The Article 320(3) like Regulation 20 with which we are concerned provides that the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted-on all disciplinary matters affecting a civil servant including memorials or petitions relating to such matters. This Court in A.N. D'Silva v. Union of India has expressed the view that the Commission's function is purely advisory. It is not an appellate authority over the inquiry officer or the disciplinary authority. **The advice tendered by the Commission is not binding on the Government. Similarly, in the present case, the advice tendered by the Central Vigilance Commission is not***



binding on the Bank or the punishing authority. It is not obligatory upon the punishing authority to accept the advice of the Central Vigilance Commission.

XXX

*19. The corresponding new bank referred to in Section 8 has been defined under Section 2(f) of the Act to mean a banking company specified in column 1 of the First Schedule of the Act and includes the Syndicate Bank. Section 8 empowers the Government to issue directions in regard to matters of policy but there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in different cases. The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. **The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government.** No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See: De Smith's Judicial Review of Administrative Action, Fourth Edition, p. 309). The impugned directive of the Ministry of Finance, is therefore, wholly without jurisdiction, and plainly contrary to the statutory Regulations governing disciplinary matters."*

60. Therefore, the allegation by the Petitioner of application of Double Jeopardy in the present facts and circumstances of the case cannot be accepted and hence falls to the ground. This issue is accordingly decided against the Petitioner.

**ISSUE IV-**

61. At the outset, it is necessary to reproduce the circular of the Central Vigilance Commission dated 28th September 2000:

“Subject:- Consultation with the CVC- Making available a copy of the CVC’s advice to the concerned employee.

Sir,

Para 3.6 (iii), chapter XI and para 8.6, Chapter XII of the Vigilance Manual, Vol. I, provide that the advice tendered by the Central Vigilance Commission is of a confidential nature meant to assist the disciplinary authority and should not be shown to the concerned employee. It also mentions that the Central Vigilance Commission tenders its advice in confidence and its advice is a privileged communication and, therefore, no reference to the advice tendered by the Commission should be made in any formal order.

2. The Commission has reviewed the above instructions in view of its policy that there should be transparency in all matters, as far as possible. The Commission has observed that the Hon'ble Supreme Court had held a view in the case - State Bank of India Vs. D.C. Aggarwal and another [Date of Judgement: 13.10.1992] - that non-supply of CVC's instructions, which was prepared behind the back of respondent without his participation, and one does not know on what material, which was not only sent to the disciplinary authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. Further, the Hon'ble High Court of Karnataka at Bangalore, in writ Petition No. 6558/93, has also observed that if a copy of the report (CVC's advice) was furnished to the delinquent officer, he would have been in a position to demonstrate before the disciplinary authority either to drop the proceedings or to impose lesser punishment instead of following blindly the directions in the CVC's report.



3. *The Commission, at present, is being consulted at two stages in disciplinary proceedings, i.e. first stage advice is obtained on the investigation report before issue of the charge sheet, and second stage advice is obtained either on receipt of reply to the charge sheet or on receipt of inquiry report. It, however, does not seem necessary to call for the representation of the concerned employee on the first stage advice as the concerned employee, in any case, gets an opportunity to represent against the proposal for initiation of departmental proceedings against him. Therefore, a copy of the Commission's first stage advice may be made available to the concerned employee along with a copy of the chargesheet served upon him, for his information. However, when the CVC's second stage advice is obtained, a copy thereof may be made available to the concerned employee, along with the IO's report, to give him an opportunity to make representation against IO's findings and the CVC's advice, if he desires to do so.*

4. *In view of the position stated above, para 3.6 (iii), Chapter XI and para 8.6, Chapter XII of the Vigilance manual, Vol. I, and also para 2 of the Commission's letter No. 6/3/73-R dated 20.08.1973 may be treated as deleted.*

5. *Para 12.4.4 of Special Chapter on Vigilance Management in Public Sector Banks and para 22.6.4 of the Special Chapter on Vigilance Management in Public Sector Enterprises envisage that the inquiring authorities, including the CDIs borne on the strength of the Commission, would submit their reports to the disciplinary authority who would then forward the IO's reports, along with its own tentative views to the Commission for its second stage advice. The existing procedure in this regard may broadly continue. The disciplinary authority may, after examination of the inquiry report, communicate its tentative views to the Commission. The Commission would thereafter communicate its advice. This, along with the disciplinary authority's views, may be made available to the concerned employee. On receiving his*



representation, if any, the disciplinary authority may impose a penalty in accordance with the Commission's advice or if it feels that the employee's representation warrants consideration, forward the same, along with the records of the case, to the Commission for its reconsideration.

6. Thus, if on the receipt of the employee's representation, the concerned administrative authority proposes to accept the CVC's advice, it may issue the orders accordingly. But if the administrative authority comes to the conclusion that the representation of the concerned employee necessitates reconsideration of the Commission's advice, the matter would be referred to the Commission.”

62. In the counter affidavit of the Respondent Bank in the context of seeking advice from the Chief Vigilance Commissioner, it has been stated that:

“As per the respondents [Discipline and Appeal] Regulations, the case was referred to the Chief Vigilance Commissioner for IInd stage advice. Seeing the gravity of the charges, even the CVC suggested stiff major penalty to the petitioner. The representation made by the petitioner was duly considered by the Disciplinary Authority, and vide the final order dated 23.1.2003, the Disciplinary Authority struck down two charges and concluded that only three charges out of the five charges were proved. However, it is submitted that it was within the specific knowledge of the petitioner that he had been awarded the penalty of removal from service vide order dated 23.1.2003 of the Disciplinary Authority, still concealed the said material fact from the Hon'ble High Court and chose to file civil writ bearing No. 1033/2003.”



63. In the rejoinder affidavit, the Petitioner has taken a stance that the advice was never communicated to him. The relevant portion has been reproduced below:

“That the contents of para (ix) of the counter reveal that the case was sent to CVC for advice, but the respondents have never sent the copy of such advice to the petitioner herein at any stage. In fact the advice was to be obtained at two stages as per the circular of CVC but none of the advice has been communicated to the petitioner herein, which is in utter violation of the circular.... It is clear from perusal of the circular that the sending of the advice of CVC to the petitioner was mandatory. As no such advice has ever been sent to the petitioner, the petitioner was deprived of the opportunity to represent against the same. On this count also the impugned orders stand vitiated.”

64. In ***State Bank of India v. D.C. Aggarwal***, AIR 1993 SC 1197, the question which was posed before the Hon’ble Supreme Court was whether a Disciplinary Authority while imposing punishment, major or minor, act on material which is neither supplied nor shown to the delinquent employee? The Hon’ble Supreme Court held that:

“4. Although correctness of the order passed by the High Court was assailed from various aspects, including the power of the High Court to interfere on quantum of punishment, in writ jurisdiction, but we propose to confine only to the question of effect of non-supply of CVC recommendations as if the order was invalid and void on this score only it is not necessary to decide any other issue. Law on natural justice is so well settle for series of decisions of this Court that it leaves one bewildered, at times, that such bodies like State Bank of India, who are assisted by hierarchy of law officers, commit such basic and fundamental procedural errors that courts are left with no



option except to set aside such orders. Imposition of punishment to an employee, on material which is not only not supplied but not disclosed to him, has not been countenanced by this Court. Procedural fairness is as much essence of right and liberty as the substantive law itself.

5.....The learned Counsel urged that the Bank was very fair to the respondent and the Disciplinary Authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasised that if the exercise would have been mechanical the Disciplinary Authority would not have disagreed with CVC recommendations on punishment. Learned Counsel submitted that, in any case, the Disciplinary Authority having passed detailed order discussing every material on record and the respondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of Rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as, 'The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order



passed by the Appointing Authority deals with the recommendation to the CVC which is considered sufficient'. Taking action against as employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the Disciplinary Authority. May be that the Disciplinary Authority has recorded its own findings and it may be coincidental that the reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. No supply of the Vigilance report was one of the ground taken in appeal. But that was so because the respondent prior to service of the order passed by the Disciplinary Authority did not have any occasion to know that CVC had submitted some report against him. The submission of the learned Addl. Solicitor General that CVC recommendations are confidential copy, of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different that CVC recommendation which was the basis of the order passed by the Disciplinary Authority.

6. Even the submission of non-prejudice is not well founded. The respondent was a very senior officer of the bank. He was promoted to the top executive grade in August 1980. We have refrained from entering into merits but once the Disciplinary Authority found that the action of the respondent did not cause any harm to the bank nor the respondent gained out of it the High Court cannot be said to have misdirected itself in quashing the order for procedural error.”

65. In the written submissions filed by the Respondents, countering the submission of the Petitioner, the Respondents have taken the following stand:



“The judgment of State Bank of India vs. D.C. Aggarwal is not applicable to the facts of the present case. It is nowhere the contention of the respondent that DA acted upon the two stage advice of CVC. The petitioner has himself admitted receipt in para 2 of his written arguments that CVO had exonerated him (Page 47-48) in first stage. In the instant case, the Bank had only referred the matter to the Chief Vigilance Officer for 2nd stage advice after sending of disagreement note to CSE and the Vigilance Officer, as noticed above, had not directed that a particular punishment should be imposed. Therefore, on the ground urged by the petitioner, the order of the disciplinary authority cannot be faulted”

66. In view of the above-said, I find force in the arguments of the Respondents that non-supply of the advice of the Chief Vigilance Commissioner to the Petitioner cannot lead to the disciplinary proceedings being vitiated as the Disciplinary Authority had already submitted a disagreement note giving its tentative conclusions to the Petitioner and hence, the ratio of D.C. Aggarwal (*supra*) cannot be attracted to the present case. Therefore, the argument of the Respondent Bank that the Disciplinary Authority acted independently and not merely on the advice of the Chief Vigilance Commissioner cannot be rejected. Moreover, no prejudice can be said to have been caused to the Petitioner as during the disciplinary proceedings, the Petitioner never made an application before the Disciplinary Authority to seek a copy of the advice of the Chief Vigilance Commission as well. Hence, this issue is decided in favour of the Respondent Bank and against the Petitioner.

**ISSUE V-**

67. The Petitioner was issued a show cause notice by the Respondent Bank on 15th March 1996 seeking his explanation qua the charges to be formulated against him. On 25th March 1996, the Petitioner sent his comments on the charges to be levelled against him and upon receipt of the explanation from the Petitioner, the Chief Vigilance Officer of the Respondent Bank on 22nd June 1996 addressed a letter to the then DGM, RBI Mumbai, saying that-

“We have examined the reply given by Sh. Malhan and are of the view that on the basis of the evidence furnished, we have no reason to disbelieve the statement of Sh. Malhan.”

68. Further, the Petitioner alleges that on 23rd June 1997, the Disciplinary Authority picked up a part of one of the aforesaid charges and even without conducting any inquiry imposed punishment of stopping two increments of the Petitioner for four years. Be that as it may, as the aforesaid allegation is not a subject matter of the present writ petition, I am not entering into the merits of the same.

69. On 14th July 1998, the Disciplinary Authority issued another memo to the Petitioner containing seven charges altogether. The Petitioner then submitted his reply to above-said memo and on 23rd October 1999, a charge-sheet was issued to the Petitioner containing seven charges and a regular inquiry was set up against him. The relevant portion of the submission of the Petitioner in the writ petition is being reproduced below:

“It is submitted that though as per the Punishment and Appeal Rules, the said Inquiry was to be completed within 6 months period, but the same could be finished only after



three years, because of deliberate dilly dallying tactics of the presenting officer appointed by the respondent bank. The mandatory provision fixing the time limit of such inquiry as contained in the Vigilance Manual of the Bank is being reproduced below for convenience of reading:

12.3.1 APPOINTMENT OF INQUIRING AUTHORITY/OFFICER

(i) ...The inquiring Authority should also be directed to ensure submission of the report mandatorily within a period of six months of his appointment. This time limit should be invariably adhered at all costs."

70. The inquiry officer submitted his report exonerating the Petitioner on 27th June 2002. The Petitioner has taken a stance that the report of the inquiry officer was submitted after more than 30 months and hence, well beyond the time-limit of six months as is specified in the vigilance manual. It is in the above background that the inquiry so set up against him and the charge-sheet so issued is sought by the Petitioner to be quashed being vitiated by the vice of delay and consequently, the Petitioner being prejudiced in his defence.

71. In ***State of Madhya Pradesh & Anr. vs. Akhilesh Jha & Anr., Civil Appeal No. 5153 of 2021*** decided on 6th September 2021, their lordships of the Supreme Court while considering the effect of delay in the conclusion of a disciplinary proceeding has held that:

"13.....Every delay in conducting a disciplinary enquiry does not, ipso facto, lead to the enquiry being vitiated. Whether prejudice is caused to the officer who is being enquired into is a matter which has to be decided on the basis of the circumstances of each case. Prejudice must be demonstrated to have been caused and cannot be a matter of surmise. Apart from submitting that the first respondent was



unable to proceed on deputation or to seek promotion, there is no basis on which it could be concluded that his right to defend himself stands prejudicially affected by a delay of two years in concluding the enquiry. The High Court, therefore, in our view, has clearly failed to properly exercise the jurisdiction vested in it by simply affirming the judgment of the Tribunal. The judgment of the Tribunal suffered from basic errors which go to the root of the matter and which have been ignored both by the Tribunal as well as by the High Court.”

72. In ***State of Andhra Pradesh v. N. Radhakishan***, (1998) 4 SCC 154, their lordships of the Supreme Court while considering delay in the conclusion of the disciplinary proceedings have held as under:

“19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. the essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its



employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.”

73. In ***Government of Andhra Pradesh & Ors. v. V Appala Swamy***, (2007) 14 SCC 49, the Hon’ble Supreme Court held as under:

“12. So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard and fast rule can be laid down therefore. Each case must be determined on its facts. The principles upon which a proceeding can be directed to be quashed on the ground of delay are:

(1) Where by reason of the delay, the employer condoned the lapses on the part of the employee;

(2) where the delay caused prejudice to the employee.

Such a case of prejudice, however, is to be made out by the employee before the Inquiry officer.”

74. In ***Anant R. Kulkarni v. Y.P. Education Society***, (2013) 6 SCC 515, the Hon’ble Supreme Court held as under:

“14. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings; as such a power is de hors the limitation of judicial review. In the event that the court/tribunal exercises such power, it exceeds



*its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is **applicable in relation to there being a delay in conclusion of disciplinary proceedings.** The facts and circumstances of the case in question, must be carefully examined, taking into consideration the gravity/magnitude of charges involved therein. The Court has to consider the seriousness and magnitude of the charges and while doing so the Court must weigh all the facts, both for and against the delinquent officers and come to the conclusion, which is just and proper considering the circumstances involved. The essence of the matter is that the court must take into consideration all relevant facts, and balance and weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration, that the said proceedings are allowed to be terminated, only on the ground of a delay in their conclusion.”*

75. Therefore, what necessarily follows from the above-mentioned judicial dicta is that there cannot be exact measurement of the length of delay by reference to years to fall into the category of ‘inordinate delay’ and what would amount to the same has to be decided depending on the facts of a given case. If the delay is found to be too long and unexplained, that would definitely have a bearing on the seriousness of the disciplinary authority to pursue the proceedings against the delinquent employee.

76. In the instant case, the Petitioner has not shown as to how the delay in conclusion of the disciplinary proceedings has prejudiced the Petitioner in his defence before the Disciplinary Authority as well as the Appellate Authority. The isolated submission of the Petitioner has been that the time duration of six months as has been mentioned in the Vigilance Manual has not been adhered and hence the disciplinary proceedings gets



vitiated. No ground whatsoever as to the prejudice caused to the Petitioner has been demonstrated by the Petitioner even in his written submission before the Disciplinary Authority. It is pertinent to reproduce the relevant portion of the written statements filed by the Petitioner before the Disciplinary Authority:

“Thus in light of the above facts and also the mandatory provisions of article 12.3.1 (i) of the CVC manual read with article 18 of the manual, the present Inquiry has been rendered void for the deliberate and unwarranted delays at all stages including at the stage of change of IA because the relevant rule envisages that the time limit of six months for submission of the report by the IA. The mandate reads that the time limit of six months should invariably be adhered to at all costs. If need arises, the CO reserves his right to challenge the Inquiry on this ground before the appropriate authority including the court of competent jurisdiction”

77. Therefore, this Court reaches an irresistible conclusion that no prejudice has been caused to the Petitioner because of the delay in the conclusion of the disciplinary proceedings and as such this issue is also decided against the Petitioner.

APPROACH IN CASE OF A BANK EMPLOYEES ACCUSED OF SERIOUS CHARGES:

78. In respect of delinquent bank employees a distinct jurisprudence has developed. In *Chairman and Managing Director, United Commercial Bank & Ors. v. P.C. Kakkar*, (2003) 4 SCC 364, the Hon’ble Supreme Court has held that:

“14. A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the



Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik (1996 (9) SCC 69), it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a Bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct....."

79. In **Regional Manager, U.P. SRTC, Etawah & Ors. v. Hoti Lal and Anr., (2003) 3 SCC 605**, the Hon'ble Supreme Court held as under:

"10.If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, highest degree of integrity and trustworthiness is a must and unexceptionable....."

80. In **State Bank of India & Ors. v. Ramesh Dinkar Punde, (2006) 7 SCC 212**, it was held by the Hon'ble Supreme Court that:

"21. Confronted with the facts and the position of law, learned counsel for the respondent submitted that leniency may be shown to the respondent having regard to long years of service rendered by the respondent to the Bank. We are unable to countenance with such submission. As already said, the respondent being a bank officer holds a position of trust where honesty and integrity are inbuilt requirements of



functioning and it would not be proper to deal with the matter leniently. The respondent was a Manager of the Bank and it needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer so that the confidence of the public/depositors is not impaired. It is for this reason that when a bank officer commits misconduct, as in the present case, for his personal ends and against the interest of the bank and the depositors, he must be dealt with iron hands and he does not deserve to be dealt with leniently.”

81. Therefore, the approach of the Court towards a bank employee against whom charges of serious financial misconduct has been proved by the Disciplinary Authority as well as the Appellate Authority, after a reasoned order based on material evidence, should not be lenient and must be dealt in a strict manner. Unless violation of principles of natural justice, inter alia, is said to have been proved by the Petitioner causing prejudice to the Petitioner in his defence, the Court should not interfere in the concurrent findings by the authorities below.

SCOPE UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA TO INTERFERE IN THE FINDINGS OF A DISCIPLINARY PROCEEDINGS:

82. It is very much essential to look at the powers of this Court under Article 226 of the Constitution of India to interfere in the findings of a Disciplinary Authority which on appeal have been upheld by the Appellate Authority. Recently, the Hon'ble Supreme Court in ***State Bank of India & Anr. v. K.S. Vishwanath, (2022) SCC OnLine SC 667***, had



an opportunity to re-iterate the literature on the subject and it was held as follows:

“27. Recently in the case of Nand Kishore Prasad (Supra) after considering other decisions of this Court on judicial review and the power of the High Court in a departmental enquiry and interference with the findings recorded in the departmental enquiry, it is observed and held that the High Court is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is further observed and held that the High Court is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. It is further observed that if there is some evidence, that the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition under Article 226 of the Constitution of India to review/reappreciate the evidence and to arrive at an independent finding on the evidence.....”

83. In ***State of A.P. v. S Sree Rama Rao***, AIR 1963 SC 1723, a three judge bench of the Hon’ble Supreme Court observed as follows:

“7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant : it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a



petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence”

84. In ***B.C. Chaturvedi v. Union of India***, (1995) 6 SCC 749, again a three judge bench of the Hon’ble Supreme Court held as under:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of the Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support there from, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.



13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has co-extensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India v. HC Goel this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.”

85. In ***High Court of Bombay v. Shashikant S. Patil***, (2000) 1 SCC 416, the Hon’ble Supreme Court again held that:

“16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the enquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter



for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.”

86. In ***State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya***, (2011) 4 SCC 584, the Hon’ble Supreme Court held as under:

“7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations....”

87. In ***Union of India v. P Gunasekaran***, (2015) 2 SCC 610, the Hon’ble Supreme Court delineated the parameters as to when the High Court shall not interfere in the disciplinary proceedings:

“13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;



(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.”

88. Therefore, this Court cannot act as an appellate authority over the findings as recorded by the Disciplinary Authority and as confirmed by the Appellate Authority. This Court cannot re-appreciate the evidence on the basis of which the authorities below have come to a conclusion and interfere in the findings so recorded by the authorities below unless they are perverse or suffers from gross illegality.

CONCLUSION

89. In view of the above said discussion on facts as well as law, I do not find any perversity or gross illegality in the orders passed by the Disciplinary Authority as well as the Appellate Authority. Both the authorities below have acted on the basis of material evidence on record and have come to a reasoned reasonable conclusion after giving the Petitioner a detailed opportunity of hearing in accordance with the principles of natural justice. No infraction of principles of natural justice can be said to have been proved by the Petitioner to call for the interference by this Court.



90. Accordingly, the instant writ petition being devoid of merits is dismissed.
91. Pending applications, if any, also stand dismissed of.
92. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

OCTOBER 13, 2022
Dy/mg

