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

% *Decided on: 20th March, 2023*

+ W.P.(C) 1271/2014

DEBASIS MOHAPATRA

..... Petitioner

Through: Mrs. Rajdipa Behura,
Mr. Philomon Kani, Mr. Ahray
Behura, Mrs. Neha Dobriyal
and Mr. Swayamtosh Rath,
Advocates (Ph. 9811533814, e-
mail: rajdipabehura@gmail.com)

versus

SYNDICATE BANK (NOW CANARA BANK)
& ORS

..... Respondents

Through: Mr. Jagat Arora, Mr. Rajat
Arora and Mr. Niraj Kumar,
Advocates for R-5 and 6
(Ph. 9810176964, e-
mail: rajat132noida@yahoo.co.in)

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

1. At the outset, attention of this Court has been drawn to the notification dated 04.03.2020 by which the Syndicate Bank has been amalgamated into Canara Bank. Thus, on oral request of learned counsel for the petitioner, Canara Bank is impleaded as respondent, instead of Syndicate Bank.

2. The present writ petition has been filed challenging the order dated 08.02.2013 passed by the Appellate Authority, whereby the

Appellate Authority while setting aside the punishment of dismissal, has imposed penalty of compulsory retirement upon the petitioner herein. The petitioner also seeks quashing of the order of the Reviewing Authority dated 26.11.2013, by which the order of the Appellate Authority was confirmed. There is further prayer for quashing the penalty order dated 27.07.2011 passed by the Disciplinary Authority and for exonerating the petitioner, along with re-instatement in service and releasing all financial and service benefits.

3. At the relevant point of time, the petitioner was posted as Assistant General Manager, Syndicate Bank, and was head of the East Patel Nagar Branch, Delhi. Between 13.02.2009 to 27.11.2009, the petitioner sanctioned/released credit facility in the form of Advance Against Bills for Collection (AABC) amounting to Rs. 130,00,000/- to M/s Malik Gold House Private Limited.

4. The petitioner received a letter of his suspension from service on 27.11.2009, on the ground of violation of bank's guidelines in granting AABCs amounting to Rs. 130,00,000/- to M/s Malik Gold House Private Limited. A charge sheet with regard to the same was also sent to the petitioner on 26.06.2010, wherein it was stated that the petitioner by violating the bank's guidelines, had exposed the bank to financial loss to the tune of Rs.147.30 lakhs.

5. With regard to the aforesaid allegations, an Inquiry Officer was appointed. Regular inquiry was conducted. The Inquiring Authority submitted its report to the Disciplinary Authority on 21.03.2011. Copy of the Inquiry report was served upon the petitioner seeking his

comments. Pursuant thereto, petitioner submitted a detailed representation dated 09.05.2011.

6. The Disciplinary Authority vide order dated 27.07.2011, dismissed the petitioner from service. Against the aforesaid order, the petitioner filed an appeal before the Appellate Authority. The Appellate Authority vide order dated 08.02.2013, set aside the order of dismissal, but directed imposition of major penalty of compulsory retirement on the petitioner. The Review Petition preferred by the petitioner against the order of the Appellate Authority was dismissed vide order dated 26.11.2013. Thus, against the aforesaid order dated 26.11.2013 passed by the Reviewing Authority; order dated 08.02.2013 passed by the Appellate Authority and order dated 27.07.2011 passed by the Disciplinary Authority, the present writ petition has come to be filed.

7. It is the contention on behalf of the petitioner that no violations were committed by him while sanctioning AABCs to M/s Malik Gold House Private Limited. It is submitted that a specifically trained officer in Foreign Exchange business (FX) in the rank of Senior Manager (FX) by the name of Sh. Gurudev Singh, was posted at East Patel Nagar Branch by the Bank, to deal with and process credit proposals connected with international trade transactions. The said official was to guide and advise the Branch Head i.e. the petitioner herein with recommendations in the matter of sanction and disbursement of loans pertaining to International Business including that of finance against Export Bills etc.

8. It is submitted that in his capacity as the head of FX business

section in the branch, the said Sh. Gurudev Singh processed and recommended for sanction of AABCs to M/s Malik Gold House Private Limited. The respondent bank found serious lapses on the part of Sh. Gurudev Singh in recommending the proposal and he was issued with a charge sheet. Sh. Gurudev Singh was found guilty of the charges, which were held as proved by the Disciplinary Authority. He was imposed with a minor penalty of reduction of one stage in his basic pay, for one year without cumulative effect and without affecting his pension.

9. It is the case on behalf of the petitioner that the respondent bank held that Sh. Gurudev Singh recommended for sanction of the AABCs in violation of all guidelines. However, he was proceeded against for minor misconduct, whereas the petitioner who sanctioned the AABCs based on Sh. Gurudev's recommendation, was proceeded for major misconduct. Sh. Gurudev Singh was given a minor penalty, whereas the petitioner was given a major penalty of compulsory retirement from service.

10. It is contended on behalf of the petitioner that a comparison of all the allegations/charge sheet against the petitioner and Sh. Gurudev Singh, would reveal that the charges against both of them were identical. A bare perusal of the allegation as reflected in the charge against the petitioner and Sh. Gurudev Singh, would indicate that both of them were involved in the same transaction and the charge was same or identical. Thus, it is contended that there is no justification for inflicting a major penalty on the petitioner while imposing only a minor penalty upon Sh. Gurudev Singh.

11. It is further submitted that in view of the identical charges, the departmental authorities cannot impose a different punishment on the petitioner in violation of Article 14 of the Constitution of India. Sh. Gurudev Singh, Senior Manager, FX, being a specially trained officer heading the FX business section of the branch, had specific and higher responsibility so far as FX transactions, guidelines and recommendation of international credit proposals are concerned. Whereas, the petitioner being an AGM and head of the branch had overall administrative responsibility including sanction of such proposals basing on the advice and recommendation of the Section head. Learned counsel for the petitioner has taken this Court through the evidence in furtherance of her submission that Gurudev Singh had a greater role, who has been let off with minor penalty, whereas petitioner who depended upon the expertise of Gurudev Singh has been visited with major penalty of compulsory retirement.

12. It is the case on behalf of petitioner that the finding of the Enquiry Officer and the Disciplinary Authority that the petitioner caused the opening of the current account in the name of M/s Malik Gold House Private Limited is based on the illegal presumption that the petitioner was the only officer available to open the bank account. MW-1 in his cross examination before the Enquiry proceedings, has clearly stated that the account opening form also has the signature of the supervisor in testimony of having checked and verified the account opening formalities.

13. It has been strenuously argued on behalf of the petitioner that Mr. Gurudev Singh was imposed with a minor penalty by order dated

04.02.2011, much before commencement of regular inquiry dated 01.03.2011, in the case of the petitioner. The proceedings against the petitioner have been conducted in a discriminatory manner right from the beginning.

14. It is further submitted on behalf of the petitioner that a preliminary investigation/inquiry was conducted, without affording a reasonable opportunity of hearing to the petitioner. The entire disciplinary proceedings were based on the preliminary inquiry conducted by Mr. Y.H.R.M. Prasad, who was MW-1. However, copy of the preliminary inquiry report was never given to the petitioner to defend his case, which is against the principles of natural justice. Hence, the preliminary inquiry report could not have been used against the petitioner. Further, Mr. Y.H.R.M. Prasad was junior to the petitioner and hence could not have been made the preliminary Inquiry Officer.

15. In support of her submissions, learned counsel for the petitioner relied upon the following judgments:-

(i) Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others, (2013) 10 SCC 324

(ii) Eastern Power Distribution Company, of A.P. Visakhapatnam by its Chief General Manager/HRD and Another Vs. G. Satyanarayana, 2022 SCC OnLine AP 1546

(iii) Jeetubha Khansangji Jadega Vs. Kutchh District Panchayat, 2022 SCC OnLine SC 1284

(iv) Raj Narain Vs. Union of India & Ors. , (2019) 5 SCC 809

(v) T. Baba Prasad Vs. Andhra Bank, Hyderabad &

Others., 2011 SCC OnLine AP 276

(vi) A.M. Sugunasundaram Vs. Syndicate Bank, Manipal, Dakshina Kannada District, 2002 (1) L.L.N. 995

(vii) Nirmala J. Jhala Vs. State of Gujarat & Another, (2013) 4 SCC 301

(viii) Rajendra Yadav Vs. State of Madhya Pradesh & Others, (2013) 3 SCC 73

(ix) Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School & Others, (1993) 4 SCC 10

16. Per contra on behalf of the respondents, it is submitted that the contention raised on behalf of the petitioner with regard to discrimination against him, is totally misplaced. The petitioner was working as Assistant General Manager (Scale-V) whereas Sh. Gurudev Singh was working as a Senior Manager (Scale-III). The petitioner was, thus, senior officer and higher in rank and designation. Therefore, the petitioner had to share more responsibility than Sh. Gurudev Singh, who was his junior officer.

17. It is further submitted on behalf of the respondents that the charges against the petitioner were entirely distinct and different and were 9 in number, as is evident from the charge sheet dated 26.06.2010. Whereas charges against Sh. Gurudev Singh were only 3 in number. Further, the charge sheet issued to the petitioner was much earlier than the one which was issued to Sh. Gurudev Singh.

18. It is further submitted that from the perusal of the charge sheet issued to both the delinquent officers, it is apparent that the lapses and their gravity are not similar. The gravity of the lapses for which Sh.

Gurudev Singh was proceeded with, were much less as compared to that of the petitioner, leading to imposition of a minor penalty in the case of Sh. Gurudev Singh. Role and responsibility of each officer differs, so also the gravity of the charges. It is thus, submitted that the punishments awarded to both the delinquent officers were commensurate with the established charges.

19. It is further submitted on behalf of the respondent that respondent bank relied upon 85 documents, which were duly provided to the petitioner. The bank did not rely upon the preliminary investigation, so no prejudice was caused to the petitioner.

20. In support of his submissions, learned counsel for the respondent has relied upon the following judgments:-

(i) The Chief General Manager, S.B.I. Vs. R. Sambamurthy, MANU/AP/1287/2001

(ii) A Sadanand Vs. Syndicate Bank & Ors., MANU/AP/0955/2010

21. I have heard learned counsels for the parties and have perused the record.

22. The facts on record show that the petitioner was issued with a charge sheet dated 26.06.2010, wherein it was alleged against him that while functioning as Assistant General Manager at the East Patel Nagar Branch, New Delhi, for the period from 13.02.2009 to 27.11.2009, he had abused his official position and sanctioned/released credit facilities in the form of Advance Against Bills for Collection (AABC) amounting to Rs. 130,00,000/- to M/s Gold Malik Gold House Private limited in blatant violation of the bank guidelines. Thus, the petitioner unduly accommodated the parties

concerned thereby exposing the bank funds to the tune of Rs.147.30 lakhs to the risk of loss. The petitioner was also charged of committing other irregularities.

23. Pursuant to detailed inquiry, vide order dated 27.07.2011 passed by the Disciplinary Authority, the petitioner was imposed with punishment of dismissal from service, which order was modified by the Appellate Authority to that of compulsory retirement and the same was maintained by the Reviewing Authority.

24. The main ground urged by the petitioner is with regard to discrimination against him in as much as a major penalty has been imposed upon him, while Sh. Gurudev Singh has been let off with minor penalty.

25. The petitioner, who was posted as Assistant General Manager and Sh. Gurudev Singh, who was posted as Senior Manager (Scale-III) were working at the relevant time at East Patel Nagar branch of the bank. Perusal of the charge sheet dated 30.12.2010 as issued to Sh. Gurudev Singh, makes it evident that the charges against the petitioner and Sh. Gurudev Singh were distinct and different. There were 3 charges against Sh. Gurudev Singh, in contrast to the 9 charges against the petitioner.

26. Documents on record clearly point out that the gravity of the lapses against Sh. Gurudev Singh were much less as compared to the one as levelled against the petitioner. The petitioner was the Sanctioning Authority in respect of the loan transactions, where as Sh. Gurudev Singh was the Junior Officer. As pointed out from the record, though the adverse features in the loan transaction were

pointed out by Sh. Gurudev Singh to the petitioner, however, ignoring those objections, the petitioner had permitted further release of the advance against bills credit to the party concerned. Sanction was granted by the petitioner by directing the Junior Officer Sh. Gurudev Singh to release advance against bills for disbursal to the party concerned. The petitioner was the Sanctioning Authority, while Sh. Gurudev Singh complied with the written instructions of the petitioner.

27. The charges against the petitioner were proved during the course of inquiry proceedings. Considering the findings of the Enquiry Officer, the Disciplinary Authority imposed penalty upon the petitioner, which was modified by the Appellate Authority from that of dismissal to compulsory retirement. The findings as recorded by Enquiry Officer are lawful and based upon the evidence before him. The petitioner cannot abdicate his responsibility by blaming the Junior Officer. The petitioner being a Senior Executive had to share the higher degree of responsibility than his Junior Officer. As established, Sh. Gurudev Singh was only following the instructions as given to him by his senior officer i.e. the petitioner.

28. Sh. Gurudev Singh was proceeded against departmentally for minor penalty in view of the lapses imputed against him. Since the charges levelled against the petitioner were grave and serious in nature, he was proceeded against departmentally for major penalty proceedings. Thus, it cannot be said that there has been prejudice caused to the petitioner on this count. It is matter of record that Sh. Gurudev Singh was also imposed punishment on the basis of the

charges levelled and proved against him.

29. The orders passed by the Appellate Authority and the Reviewing Authority of the respondent bank are just and have been passed after due application of mind. It is well established that Disciplinary Authority is the best judge to impose the penalty upon the delinquent officer. The inquiry report submitted by the Inquiry Officer is based upon the documentary as well as oral deposition before him.

30. This Court while exercising its powers under Article 226 of the Constitution would not sit in appeal over the findings of the Departmental Authority and substitute its own view. The findings of the Inquiry Officer as well as orders of the Appellate Authority are reasonable and just and are based upon cogent evidence. This Court would not re-appreciate the evidence which has come before the Departmental Authority.

31. The punishment of compulsory retirement imposed upon the petitioner is just and is commensurate with the gravity of the charges levelled and proved against the petitioner. Once the Court does not find any irregularity in conducting the departmental inquiry and no procedural lapses have been found, then there is no justification for this Court to interfere with the order of punishment imposed by the Disciplinary Authority.

32. The law is well established that ascertaining whether a misconduct has been committed, is within the realm of the Disciplinary Authority. The standard of proof for establishing a misconduct during disciplinary proceedings is preponderance of

probabilities and not proof beyond reasonable doubt, as in criminal trial. Thus, when an inquiry is found to have been held as per the prescribed procedure and there is no violation of principles of natural justice in conduct of the proceedings, then, the punishment as imposed by the Disciplinary Authority does not warrant interference.

33. Supreme Court has held in a catena of judgments that Courts will not sit in appeal over the decision of the authorities holding a departmental inquiry. Thus, in the case of ***Director General of Police, Railway Protection Force and Others Vs Rajendra Kumar Dubey***, 2020 SCC OnLine SC 954, Supreme Court has held as follows:

“33. In State of Andhra Pradesh v. S. Sree Rama Rao, a three judge bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. The High Court may, however interfere where the departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed themselves to be influenced by irrelevant considerations, or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. If however the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be

based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition.

34. These principles were further reiterated in the State of Andhra Pradesh v. Chitra Venkata Rao. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal.”

34. Likewise, this Court will not go into the adequacy of the evidence or re-appreciate the evidence or interfere with the conclusions in the inquiry, in case the same has been conducted in accordance with law. Thus, Supreme Court in the case of ***Union of India & Others vs. P. Gunasekaran***, (2015) 2 SCC 610 has held as follows:-

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the

Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

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.

14. *In one of the earliest decisions in State of A.P. v. S. Sree Rama Rao [AIR 1963 SC 1723] , many of the above principles have been discussed and it has been concluded thus: (AIR pp. 1726-27, para 7)*

“7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution as 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. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that

evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.”

35. In ***State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya***, (2011) 4 SCC 584, Supreme Court has held as follows:-

“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. (Vide B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] , Union of India v. G. Ganayutham [(1997) 7 SCC 463 : 1997 SCC (L&S) 1806] , Bank of India v. Degala Suryanarayana [(1999) 5 SCC 762 : 1999 SCC (L&S) 1036] and High Court of Judicature at Bombay v. Shashikant S. Patil [(2000) 1 SCC 416 : 2000 SCC (L&S) 144] .)

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11. *We are, therefore, of the view that the High Court was not justified in quashing the punishment and directing reinstatement with back wages and consequential benefits. In fact, the order of the High Court directing back wages*

amounts to rewarding a person who has been found guilty of a misconduct. However, having regard to the fact that the proven charge did not involve either misappropriation or fraudulent conduct and the other circumstances of the case, we are of the view that the punishment of dismissal should be substituted by compulsory retirement, which does not involve reinstatement.”

36. As brought forth, the inquiry proceedings are not based on the investigation report/preliminary inquiry. The purpose of the investigation report is only to collect the documents and to know about the veracity of the allegations against the delinquent employee. As manifest during the course of hearing, there were approximately 85 documents that were exhibited by the department during the inquiry. All the documents were duly supplied to the petitioner along with the charge sheet. Thus, no prejudice has been caused to the petitioner by non-supply of the investigation report. A regular departmental inquiry was carried out by the respondent, in which the petitioner duly participated, therefore, the action of the respondent bank cannot be faulted with.

37. Concluding that there was no requirement for supply of preliminary inquiry report and non-supply of the same caused no prejudice, in the case of ***A Sadanand Vs. Syndicate Bank & Ors., MANU/AP/0955/2010***, it was held as follows:-

“21. As held by the Supreme Court in Vijay Kumar Nigam v. State of M.P. (supra), the preliminary report is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent officer and it does not form any foundation for passing the order of dismissal against the employee. It was further explained

in Narayan Dattatraya Ramateerthakhar v. State of Maharashtra (supra) that the preliminary enquiry had nothing to do with the enquiry conducted after the issue of the charge sheet and that the preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the defendant. It was also added that after full-fledged enquiry was held, the preliminary enquiry had lost its importance.

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27. *However, this is not a case where the charges were leveled by merely referring to the preliminary enquiry report. As noticed above, basing on the investigation/verification of records made by M.Ws. 3 and 4, the charges were framed mentioning the irregularities noticed and furnishing all the details. Thereafter a regular enquiry was conducted by the enquiry officer in which all the persons concerned were examined, the relevant records/documents were marked and an opportunity was given to the Petitioner to produce his evidence. Hence the mere non-supply of the report given by M. Ws. 3 and 4 has not caused any prejudice to the Petitioner's case and therefore in my considered opinion the enquiry is not vitiated in any manner whatsoever on the said ground."*

38. Similarly, in the case of ***The Chief General Manager, S.B.I. Vs. R Sambamurthy***, MANU/AP/1287/2001, it was held as follows:

"9. It is not in dispute that the said investigation report was used only for the purpose of framing of charges. It is also not in dispute that the charges were framed by the disciplinary authority on his prima facie satisfaction that a case has been made out for initiation of disciplinary proceedings.

10. It is one thing to say that certain documents had been made use of for the purpose of holding a preliminary enquiry so as to arrive at a prima facie finding as to whether a regular disciplinary proceedings are required to be initiated or not, but, it is another thing to say that the

essential document which had been made use of by the disciplinary authority for forming an opinion that the delinquent Officer is guilty of the charges, has not been furnished.

.....

13. It is not a document whereupon the charges are based although the same might have been used by the disciplinary authority for arriving at a satisfaction that a prima facie case has been made out. The claim of privilege might have been rightly or wrongly made, but, if there has been substantial compliance to the principles of natural justice, it would be for the delinquent Officer to show that he has been prejudiced by reason of non supply of a particular document. Before initiation of a disciplinary proceeding, an employer must be prima facie satisfied that the employee committed some misconduct. There are cases where rules provide for holding such preliminary enquiry, but, in this case, it has not been shown that holding of such preliminary enquiry was mandatory.

14. The purpose of holding such preliminary enquiry has been stated in CHIMANLAL SHAH V. UNION OF INDIA, in the following terms:

"It is well known that Government does not terminate the services of a public servant, even a temporary servant, without reason; nor is it usual for Government to reduce a public servant in rank without reason even though he may be holding the higher rank only temporarily. One reason for terminating the services of a temporary servant may be that the post that he is holding comes to an end. In that case, there is nothing further to be said and his services terminate when the post comes to an end. Similarly, a Government servant temporarily officiating in a higher rank may have to be reverted to his substantive post where the incumbent of the higher post comes back to duty or where the higher post created for a temporary period comes back to duty or where the higher post created for a temporary period comes to an end. But besides the above, the Government may find it necessary to terminate the

services of a temporary servant if it is not satisfied with his product or his suitability for the job and / or his work. The same may apply to the reversion of a public servant from a higher post to a lower post where the post is held as a temporary measure. This dissatisfaction with the work and / or conduct of a temporary servant may arise on complaint against him. In such cases, two courses are open to Government. It may decide to dispense with the services of the servant or revert him to his substantive post without any action being taken to punish him for his bad work and/ or conduct. Or the Government may decide to punish such a servant for his bad work or misconduct, in which case even though the servant may be temporary he will have the protection of Art.311 (2). But even where it is intended to take action by way of punishment what usually happens is that something in the nature of what may be called a preliminary enquiry is first held in connection with the alleged misconduct or unsatisfactory work. In this preliminary enquiry the explanation of the Government servant may be taken and documentary and even oral evidence may be considered. It is usual when such a preliminary enquiry makes out a prima facie case against the servant concerned that charges are then framed against him and he is asked to show cause why disciplinary action is to be not taken against him. An enquiry Officer (who may be himself in the case where the appointing authority is other than the Government) is appointed who holds enquiry into the charges communicated to the servant concerned after taking his explanation and this enquiry is held in accordance with the principles of natural justice. This is what is known as a formal departmental enquiry into the conduct of a public servant".

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19. In VIJAY KUMAR NIGAM (DEAD) THROUGH LRS. V. STATE OF M.P., it was held:

The main ground was that the report of the preliminary enquiry conducted against him before initiating

departmental enquiry, was not supplied to him and, therefore, it is violative of the principle of natural justice. The High Court has rejected the contention and, in our view, quite rightly. The preliminary report is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent Officer and it does not form any foundation for passing the order of dismissal against the employee.”

39. In view of the aforesaid detailed discussion, it is held that charges against the petitioner were duly proved during the course of enquiry proceedings. The punishment imposed upon the petitioner is commensurate with the charges established against the petitioner. In view thereof, no merit is found in the present petition. The same is accordingly dismissed.

MINI PUSHKARNA, J

MARCH 20th, 2023
c