HIGH COURT OF GUJARAT

MANSUKHLAL K BHALALA
Versus
BANK OF INDIA AND ORS

Date of Decision: 04 August 2006

Citation: 2006 LawSuit(Guj) 676

Hon'ble Judges: Anant S Dave

Eq. Citations: 2007 4 GLR 3237, 2006 3 GLH 234, 2007 1 GCD 289, 2006 13 GHJ 479

Subject: Constitution

Acts Referred:
Constitution Of India Art 16, Art 226, Art 14

Final Decision: Petition dismissed

Advocates: Bipin I Mehta, Nanavati Associates, Prabhav Mehta

Cases Cited in (+): **1**
Cases Referred in (+): **8**

Anant S. Dave, J.

[1] This petition under Article 226 of the Constitution of India is filed with a prayer to quash and set aside the order dated 21st October 1993 passed by the Disciplinary Authority of the respondent-Bank dismissing the petitioner from service and also to set aside the order of the Appellate Authority dated 26/31.3.1994, by which, the order of the Disciplinary Authority came to be confirmed.

[2] At the outset, the question arises that how far an employee can be permitted to exploit his personal difficulties to invoke sympathy of the employer or the Court, even by stretching the principles of natural justice for quashing and setting aside an order passed by the Disciplinary Authority and confirmed by the Appellate Authority in the backdrop of proved misconduct of willful insubordination or disobedience of lawful or reasonable order of employer and unauthorized absentism found in the departmental enquiry;

alternatively

That, persistent defiance, disobedience and indifferences shown by the delinquent to the instructions and directions time and again issued by the Bank to resume duty and to explain the charges - whether required any intervention by this Court in exercise of power under Article 226 of the Constitution of India by reducing the penalty of dismissal on the ground that the same is disproportionate to the alleged misconduct,which shocks the conscience of the Court by invoking the second part of Wednesbury clause.

[3] The facts summarized are as under:

The petitioner was appointed as Agricultural Assistant on 18th July 1974. That, he was instructed to go on deputation at Turkha Branch of the respondent-Bank from 1.2.1992 for a period of one month only by the order dated 24th January 1992 when he was working as Agricultural Assistant at Krishnanagar Branch. It is the case of the petitioner that, earlier, the father of the petitioner was seriously ill during the month of September 1991 and he was hospitalized and, thereafter he was operated for surgical jaundice, who, later on, expired on 4th December 1991. Even the mother of the petitioner was also not keeping well and she was hospitalized on 23rd November 1991 when she had undergone an operation. Thereafter, even the petitioner also fell sick and, therefore, he addressed a letter on 30th January 1992 to the Branch Manager of the respondent-Bank requesting extension of sick leave from 1.2.1992 to 15.3.1992. In response thereto, the Bank had communicated to the petitioner that his leave could not be sanctioned since it was not supported by medical certificate and at the time of death of his father and ailment of his mother, the petitioner was sufficiently accommodated by the Bank. The request of the petitioner to extend sick leave and instructions by the Bank to report at Turkha Branch for a short time continued for some time and, ultimately, the respondent-Bank addressed a letter on 7th May 1992 and instructed the petitioner again to report duty at Turkha Branch. Since the petitioner failed to report duty at Turkha Branch for about ten months, a charge sheet dated 13th November 1992 framing two charges was issued by the respondent-Bank to the petitioner on the ground of gross misconduct of defiance and disobedience as per paras 19.5(3) and 19.7(a) of the first bi-partite settlement dated 19th October 1966 for remaining absent without sanctioned or authorised leave. Both the charges read as under:

Charge No.1:

You were directed by the Manager, Krishnanagar Branch vide memorandum No. KSN:280 dated 24.1.92 to go and report to work on deputation for a period of one month at our Turkha Branch in exigencies of bank's work and for which you were

entitled to travelling expenses and halting allowance, as per the provisions of Bipartite settlements. Accordingly, you were relieved from Krishnanagar Branch on 31-1-1992 with the direction to report to Manager, Turkha Branch on 1.2.92. You did not report at Turkha Branch and this is willful disobedience of lawful and reasonable orders of your superior authority which, if approved, amounts to gross misconduct in terms of para 19.5(e) of Bipartite Settlement, which reads as under:

(e) Willful insubordination or disobedience of any lawful or reasonable order of the management or of a superior.

Charge No.2:

You are remaining unauthorizedly absent from your duties w.e.f 1.2.92 either at Krishnanagar Branch or at Turkha Branch of the Bank where you were to go and work for a temporary period, without any permission from the competent authority. Aforesaid act on your part, if proved, amounts to minor misconduct in terms of para 19.7(a) of the Bipartite Settlement which reads as under:

(a) absence without leave or overstaying sanctioned leave without sufficient grounds.

3.1. The petitioner vide letter dated 24th November 1992 replied to the said charge sheet and stated that he had filed Regular Civil Suit No.247 of 1992 before the learned Civil Judge (J.D.), Bhavnagar, where he challenged the action of the respondent-Bank for deputing him at Turkha Branch without his consent and also filed another Regular Civil Suit No.294 of 1993 before the same Court challenging initiation of departmental enquiry proceedings. He requested the respondent-Bank not to take any action in view of pendency of the proceedings in the civil court. Thereafter, lastly, even on 18th December 1992, the respondent-Bank again requested the petitioner to resume duties but, under the guise of pendency of the civil proceedings, the petitioner did not resume duty. Thus, in the departmental enquiry, the petitioner had not remained present on the ground that number of documents were not supplied to the petitioner along with charge sheet and, therefore, it was not possible for the petitioner to remain present unless those documents were supplied to the petitioner. At the same time, when those documents were supplied and the petitioner was asked to submit final statement of defence on conclusion of enquiry, he again asked for some documents and, ultimately, the Enquiry Officer supplied the documents on the basis of which the enquiry had proceeded. However, the petitioner submitted his reply on 11th August 1993 which was received by the Enquiry Officer on 16th August 1993. It is the case of the petitioner that, without taking into consideration the written arguments, the

show cause notice dated 25th September 1993 was given to the petitioner and thereafter the impugned order of dismissal dated 21st October 1993 came to be passed by the Regional Manager and Disciplinary Authority.

3.2. Thereafter, a writ petition was filed in this Court, which came to be withdrawn with a view to file a departmental appeal and, later on, an appeal was submitted to the Appellate Authority, which came to be dismissed by passing a reasoned order dated 31st March 1994 by the Appellate Authority confirming the order of the Disciplinary Authority, which is, ultimately, challenged by the petitioner in the present proceeding.

[4] The respondent-Bank filed detailed affidavit-in-reply and contended that the grounds about death of the father and ailment of the mother and even the petitioner himself are just excuses for the petitioner for not reporting duty at Turkha Branch. In fact, the respondent-Bank had accommodated the petitioner in the month of December 1991 on the ground of death of the father of the petitioner and even the medical certificate of ailment of the petitioner was not supplied and, instead of reporting duty at Turkha Branch, the petitioner indulged into litigation. In spite of number of reminders to resume duty, the petitioner continued to remain absent without sanction of leave and even the application Exh.5 in Regular Civil Suit No.294 of 1993 also came to be rejected by the trial court by an order dated 16th October 1992 and, therefore, there was no stay against the proceedings of departmental enquiry. It is pointed out that the petitioner had withdrawn both Regular Civil Suit Nos. 247 of 1992 and 194 of 1993 on 10th November 1993. In the above backdrop, it is submitted that the petitioner had deliberately chosen not to attend the departmental enquiry and failed to avail of opportunities offered to him and, therefore, there is no violation of principles of natural justice. Even, as per the respondent-Bank, copies of enquiry proceedings and other documentary evidence produced during the enquiry proceedings were already supplied to the petitioner and even the petitioner was given opportunity to submit written submissions. Even a personal hearing was afforded to the petitioner at the end of the show cause notice dated 25th September 1993 and a copy of enquiry report was also given to the petitioner. Therefore, according to the respondent-Bank, there is no violation of any principles of natural justice or fair-play.

4.1 It is contended by the respondent-Bank that, in view of the petitioner being an awarded staff being a workman within the meaning of Industrial Disputes Act, 1947, he can avail alternative remedy and, on that ground also, the present petition deserves to be rejected. It is further contended by the respondent-Bank that the Appellate Authority has considered the grounds raised in the appeal memo and the appeal of the petitioner also came to be dismissed by passing a reasoned order by dealing with all the contentions raised in the appeal and after affording a

personal hearing to the petitioner. Therefore also, even penalty of dismissal does not require any alteration or reduction in exercise of power under Article 226 of the Constitution of India.

[5] Shri Bipin I. Mehta, learned Counsel for the petitioner, has raised various grounds to challenge the impugned orders. One of the main contentions of the learned Counsel for the petitioner is that the departmental enquiry conducted against the petitioner is de hors the rules of principles of natural justice and the petitioner was not given relevant documents relied upon by the Enquiry Officer and the enquiry has proceeded ex-parte. According to him, the departmental proceedings ought not to have been proceeded further in view of non-supply of the documents and, at the same time, when the proceedings were pending before the Civil Court (S.D.), Bhavnagar, where the petitioner had challenged the order of deputation passed against him without his consent and also challenged the enquiry proceedings not held against the petitioner in accordance with law. The second contention of the learned Counsel for the petitioner is that under no circumstances the petitioner could have been deputed without his consent and, therefore also, non-resuming duties in view of the letters addressed by the petitioner to the respondent-Bank for extension of sick leave could not have been made as the ground for misconduct for proceeding departmentally for passing of the order of dismissal, being one of the major penalties. Along with the above submissions, the learned Counsel for the petitioner has submitted that even the Enquiry Officer has failed to consider the written submissions/arguments canvassed by the petitioner, though in the midst of enquiry, some documents were given to the petitioner and, therefore, the findings of the Enquiry Officer are based on non-consideration of written submissions of the petitioner and, to that extent, the report of the Enquiry Officer stands vitiated which is based on non-appreciation of explanation rendered by the petitioner. The learned Counsel for the petitioner has also contended that the delinquent had no knowledge about appointment of Enquiry Officer who was not appointed in accordance with law and even the family circumstances of the petitioner and ailments of the members of the family and the petitioner himself were not considered by the Authority and even, finally, the Appellate Authority, while confirming the order of dismissal passed by the Disciplinary Authority, has also not acted in a reasonable manner and the orders passed by the Appellate Authority and the Disciplinary Authority, therefore, are unreasonable, arbitrary and violative of Articles 14 and 16 of the Constitution of India.

[6] Shri Bipin I. Mehta, learned Counsel for the petitioner, has, alternatively, contended that the penalty imposed against the petitioner is disproportionate to the alleged misconduct of insubordination and, for remaining absent on the ground of sickness, the petitioner could not have been visited with extreme penalty of economic

death. He has submitted that even the application of the petitioner for voluntary retirement under the VRS Scheme also came to be rejected during pendency of the petition and considering the length of service of the petitioner of about 18 years, at least, the Appellate Authority ought to have reduced penalty by imposing a lesser penalty other than dismissal from service and could have continued the petitioner in service, making him eligible at least for voluntary retirement in accordance with the VRS Scheme of the respondent-Bank.

[7] Shri Bipin I. Mehta, learned Counsel for the petitioner, has relied upon the judgment of the Supreme Court in the case of State of M.P. v. Chintaman, 1961 AIR(SC) 1623, and submitted that, in the matter of denial of opportunity to a public servant by not supplying documents to which such employee is entitled, the High Court can exercise power under Article 226 of the Constitution of India for adjudging proprietary and validity of the decision of the Enquiry Officer. He has also relied upon the judgment of the Supreme Court in the case of Union of India v. Giriraj Sharma , and submitted that, if there is no willful intention to flout the order, harsh and ultimate punishment of dismissal could not have been imposed. He has also relied upon the judgment of the Supreme Court in the case of Kashinath Dikshita v. Union of India , and submitted that non-supply of copies of statements of witnesses and copies of documents relied upon by the Disciplinary Authority rendered the order of dismissal violative of Article 311(2) of the Constitution of India. Similar was the case, according to him, in the reported decision of this Court in the case of Sardarsingh Devisingh v. Dist. Supdt. of Police, Sabarkantha and Ors., 1985 GLH 940 where an employee was absent for a number of days together and the Court had found penalty of dismissal very harsh. Therefore, according to Shri Bipin I. Mehta, learned Counsel for the petitioner, a case is made out to allow this petition by quashing and setting aside the impugned orders passed by the Disciplinary Authority and the Appellate Authority in exercise of powers under Article 226 of the Constitution of India.

[8] Per-contra, Shri Prabhav Mehta, learned Counsel for the respondent-Bank, has submitted that, initially, the petitioner was sufficiently accommodated by the respondent-Bank on the sad demise of his father and ailment of his mother. It is, according to him, only when the petitioner was asked to report for duty at Turkha Branch on deputation with effect from 1st February 1992 by the order dated 24th January 1992, to avoid reporting, the petitioner submitted his report for sick leave without any medical certificate as required by bi-partite settlement,which provides that, if an employee, after proceeding on leave, was desirous of an extension thereof on the ground of sickness, such an employee has to produce medical certificate. Therefore, sending of applications and telegrams for extension of leave on the ground of sickness, ipso-facto, does not establish any ground or reason for accepting or

sanctioning such application by the concerned authority. In the present case, the petitioner remained unauthorizedly absent from duty till he was removed from service on 21st October 1993. He has, further, submitted that, by asking the petitioner to report at Turkha Branch, the respondent-Bank has acted purely on account of administrative reasons and exigencies of service and such employee of the Bank does get reimbursement including halting allowance and other expenses incurred by such employee while performing duty on deputation. He has relied upon para 5.4.4 of Shastri Award which provides for such provision. He has also submitted that it is the duty of the employee to carry out the order passed by the employer for deputation.

8.1. According to Shri Prabhav Mehta,learned Counsel for the respondent-Bank, the attitude and conduct of the petitioner was of unbecoming of a bank employee in as much as he continued to disregard and disobey the request of the Bank to resume duties time and again and initiated litigation against the Bank by filing suits which ultimately came to be withdrawn, where, initially, no stay was granted against initiation of enquiry proceedings in accordance with law by the respondent-Bank. Thus, the petitioner remained absent from duties, without sanction of leave, for a number of days and exhibited gross misconduct by showing disregard to the order passed by the respondent-Bank and, therefore, the charges came to be framed as per the bi-partite settlement in terms of para 19.5(e) and para 19.7(a) pertaining to willful insubordination or disobedience of any lawful or reasonable order of the management or of a superior and absence without leave or over-stay of the sanctioned leave without sufficient ground. Even in the departmental enquiry also, though reminders were given, opportunities were not availed of and, on the contrary, the request was made to postpone the departmental enquiry on the ground of pendency of judicial proceedings in the Civil Court, Bhavnagar, when no stay was granted by the concerned Court. He has also submitted that even the petitioner was given opportunity to represent his case under one pretext or other, he tried to delay the enquiry proceedings, even though, the Enquiry Officer with a view to give final chances, forwarded letter dated 4th August 1993, by which, copies of enquiry proceedings, documentary evidence produced during enquiry proceedings, and even written arguments given by the Presenting Officer have been supplied to the petitioner which was replied to by the petitioner which indicates that the principles of natural justice were followed by the respondent-Bank in the conduct of the departmental enquiry.

8.2. Thus, according to the learned Counsel for the respondent-Bank, the charges against the petitioner of subordination and disregard of instructions of the management/superior officers and on remaining absent without sufficient ground unauthorizedly, stood proved beyond any doubt and, therefore, there is no violation

of any procedural requirement in the conduct of the departmental enquiry contrary to the principles of natural justice and, as submitted earlier, there is no question of consent of the employee, when he was asked to perform his duty at the nearby Turkha Branch for a period of one month only as required under the bi-partite settlement. Lastly, he has submitted that, when there are concurrent findings and conclusions by the Disciplinary Authority as well as the Appellate Authority by reasoned orders about proved misconduct of the petitioner, extraordinary jurisdiction under Article 226 of the Constitution of India cannot be exercised since penalty imposed is proportionate to the misconduct and proved against the petitioner throughout, upto the Appellate Authority. He has also submitted that personal hearing was given by the Disciplinary Authority and, in the appellate proceeding where also time was sought, again, the date of hearing was changed so as to hear the petitioner. According to Shri Prabhav Mehta, learned Counsel for the respondent-Bank, the petitioner has failed to show as to what prejudice has caused to him and, therefore also, interference in the matter of disciplinary action taken by the management in accordance with law is not warranted by this Court in exercise of power under Article 226 of the Constitution of India for reducing and/or modification of penalty imposed by the Disciplinary Authority and confirmed by the Appellate Authority.In support of his arguments, Shri Prabhav Mehta, learned Counsel for the respondent-Bank, has relied upon the following decisions;

(i) Major U.R. Bhatt v. Union of India;

(ii) of T.N. and Ors. v. M. Natarajan and Anr.

(iii) Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution v. Educational Appellate Tribunal and Anr.

(iv) Tara Chand Vyas v. Chairman & Disciplinary Authority and Ors;

(v) Additional District Magistrate (City) Agra v. Prabhakar Chaturvedi and Anr. and submitted that the enquiry conducted by the respondent-Bank is absolutely in accordance with the provisions of law and when delinquent himself has chosen not to resume duties in spite of repeated reminders sent by the respondent-Bank and unauthorizedly remained absent, since leave was not sanctioned and also avoided proceeding of enquiry under the guise of pendency of civil proceedings before the concerned Civil Court, Bhavnagar, the action taken by the respondent-Bank cannot be said to be unreasonable or arbitrary or in violation of Articles 14 and 16 of the Constitution of India and, therefore, the petition deserves to be rejected.

[9] Before adverting to appreciate the rival contentions of the learned Counsel appearing for both the parties, it would be appropriate to discuss the judicial

precedents on service jurisprudence on the issue of principles of audi-alterem-partem and exercise of powers under Article 226 of the Constitution of India by the Court in a given case to interfere with the matter of disciplinary action where the alleged breach of principle of natural justice is pleaded. The Division Bench of this Court, while deciding Letters Patent Appeal No. 1437 of 1997, by judgment and order dated 24.8.2005, has scanned the scope of interference of the High Court under Article 226 of the Constitution of India in the cases of non-observance of principles of audi-alterm-partem in the matter of disciplinary action by the Departmental Authority.

[10] Judicial interdiction in disciplinary matters in early 60's, 70's and 80's on the ground of violation of the rules of natural justice simpliciter has perhaps encouraged white collared employees to indulge in more indiscipline necessitating a re-thinking by the courts. Till one and half decade ago, the courts had insisted on rigorous compliance of the rules of natural justice and the theory of empty/useless formality was largely rejected. However, the judicial precedents of last fifteen years give a clear indication of the shift and now it must be treated as settled law that the court will not invalidate an action taken by the disciplinary authority acting in public domain only on the ground of violation of the rules of natural justice or violation of the procedure laid down by the rules unless it is shown that such violation has prejudiced the defence/cause of the employee. This question was considered in Janki Nath Sarangi v. State of Orissa ; R.C. Sharma v. Union of India ; Sunil Kumar Banerjee v. State of West Bengal ; K.N. Tripathi v. State Bank of India ; Mumtaz Hussein Ansari v. State of U.P.; ; Chandrama Tiwari v. Union of India, 1987 Supp1 SCC 518; Managing Director, ECIL v. B. Karunakar ; Krishanlal v. State of Jammu and Kashmir , State Bank of Patiala v. S.K. Sharma , S.K. Singh v. Central Bank of India ; State of Uttar Pradesh v. Shatrughanlal ; Food Corporation of India v. Padamkumar Bhuvan, 1999 SCC(L&S) 620; State of Uttar Pradesh v. Harendra Arora ; Oriental Insurance Company v. S. Balakrishnan; State of Uttar Pradesh v. Rameshchand Manglik, 2002 3 SCC 443; Canara Bank v. Debasis Das ; Indra Bhanu Gaur v. Committee, Management of M.M Degree College and Divisional Manager, Plantation Division A and N Islands v. Munnu Barrick . In some of the earlier judgments, the Supreme Court expressed the view that burden to prove that the employees' cause had not been prejudiced on account of violation of the statutory rules or the rules of natural justice was on the employer but this issue should be treated as finally concluded the other way by virtue of the Constitution Bench judgment in Managing Director, ECIL v. B. Karunakar and subsequent decision and the contrary view can no longer be treated as good law.

10.1. In B. Karunakar's case , the Constitution Bench of the Supreme Court considered the apparent conflict of views expressed by two Benches in Union of India v. Mohd. Ramzan Khan and K.C. Asthana v. State of Uttar Pradesh on the

interpretation of Article 311(2) of the Constitution (as amended by 42nd amendment). The Constitution Bench framed the following questions:

(i) whether the report of the enquiry officer is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him?

(ii) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?

(iii) Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?

(iv) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?

(v) Whether the law laid down in Mohd. Ramzan Khan's case will apply to all establishments - Government and non-Government, public and private sector undertakings?

(vi) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?

(vii) From what date the law requiring furnishing of the report, should come into operation?

(viii) Since the decision in Ramzan Khan's case has made the law laid down there prospective in operation, i.e. applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz. What was the law prevailing prior to 20th November, 1990?

10.2. After answering the first question in the affirmative, their Lordships considered the ancillary questions and answered question No.(vi) in the following words:

The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed

from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor-rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice.

The Constitution Bench then held:

Hence, in all cases where the Inquiry Officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it because coming to the Court/Tribunal, and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, [and not any internal appellate or revisional authority', there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment.

10.2. In Harendra Arora's case , the Supreme Court referred to the earlier judgment of the Constitution Bench in Managing Director, ECIL v. B. Karunakar and laid down the following propositions:

i) From the case of ECIL it is plain that in cases covered by the Constitutional mandate i.e. Article 311(2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. There-fore, requirement in the statutory rules of furnishing copy of the enquiry report cannot be made to stand on a higher footing by laying down that question of prejudice is not material therein.

ii) Every infraction of the statutory provision could not make the constant action void and/or invalid. The statute may contain certain substantive provisions, e.g. which is the competent authority to impose a particular punishment on a particular employee. Such provision must be directly complied with as in such cases the theory of substantial compliance may not be available. 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. Even amongst procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose cases the theory of substantial compliance may not be available, but the question of prejudice may be material. In respect of procedural provisions other than that of fundamental nature, the theory of substantial compliance would be available and in such cases objections on this score have to be judged on the touch stone of prejudice.

iii) Even in the CPC there are various provisions viz. Section 99A and 115 besides Order 21, Rule 19 where merely because there is defect, error or irregularity in the order, the same would not be liable to be set aside unless it has prejudicially affected the decision. Likewise, in the Cr.P.C also Section 465 lays down that no finding, sentence or order passed by competent Court shall be upset merely on account of any error, omission or irregularity unless in the opinion of the Court a failure of justice has, in fact, been occasioned thereby. There is no reason why the principle underlying the aforesaid provisions would not apply in case of the statutory provisions of Rule 55-A of the CCS (CCA) Rules in relation to the disciplinary proceedings. Rule 55-A embodies in it nothing but the principles of reasonable opportunity and natural justice.

10.3. In Canara Bank v. Debasis Das , the Supreme Court held as under:

Natural justice has been variously defined. It is another name for common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of

justice which has to determine its form. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

The expressions 'natural justice' and 'legal justice' do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is 'nemo judex in causa sua' or "nemo debet esse judex in propria causa sua" that is, "no man shall be a judge in his own cause". The second rule is "audi alteram partem", that is, "hear the other side". A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely "qui aliquid statuerit, parte inaudita altera acquum licet dixerit, haud

acquum fecerit" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done.

10.4. In Indra Bhanu Gaur v. Committee, Management of M.M. Degree College , the Supreme Court considered the question whether non-payment of subsistence allowance could be a ground for quashing the order of punishment. While remanding the case to the High Court for fresh adjudication, the Supreme Court observed as under:

It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso-facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employees handicap because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as an absolute proposition of law that non-payment of subsistence allowance amounts to denial of opportunity of hearing and vitiates the departmental proceedings.

10.5. In Divisional Manager, Plantation Division A and N Islands v. Munnu Barrick , the Supreme Court referred to the judgments of the Constitution Bench in B. Karunakar's case and also of Canara Bank v. Debasis Das and observed that, "the principles of natural justice cannot be put in a straight jacket formula. It must be viewed with flexibility. In a given case where a deviation takes place as regards compliance with the principles of natural justice, the Court may insist upon proof of prejudice before setting aside the order impugned before it. The employee must show sufferance of prejudice by non-supply of a copy of the enquiry report. A court will refrain from interfering with an order having regard to "useless formality theory, in a given case".

10.6. Later on, the Apex Court, in the case of Canara Bank v. V.K. Awasthy, reiterated the proposition of law laid down in the earlier case of Canara Bank v. Debasis Das and held that, in view of the fact that no prejudice was shown, 'useful formality theory' was not gone into in detail. The Apex Court considered concept of 'useful formality theory', which received consideration in the case of M.C. Mehta v. Union of India, , and quoted the observations contained in paragraphs 22 and 23 of the said judgment. Thus, having explored the law on the principles of natural justice from the days of 'Magna Carta' and after referring to various decisions, the Apex Court, in paragraph 18 of the judgment, observed as under:

18. As was observed by this Court we need not to go into 'useless formality theory' in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned Counsel for the appellant, unless failure of justice is occasioned or that it would not be in public interest to do so in a particular case, this Court may refuse to grant relief to the employee concerned. (See Godde Venkateswara Rao v. Govt. of A.P. . It is to be noted that legal formulations cannot be divorced from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post-decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing. (See Chanran Lal Sahu v. Union of India .

[11] The ambit and scope of the court's power to interfere with the punishment imposed by the employer has become subject matter of consideration in various decisions. The principle of proportionality which was invoked by the Supreme Court in Ranjit Thakur v. Union of India and some other cases by relying on the decision in Council for Civil Services Union v. Minister of Civil Services,1983 1 AC 76 was extensively considered in Union of India v. G. Ganayutham and Om Kumar v. Union of India, 2001 2 SCC 386. In Ganayutham's case , M. Jagannadha Rao, J. referred to Wednesbury's principle and the doctrine of 'Proportionality' and laid down the following propositions:

(1)To judge the validity of any administrative order or statutory discretion, normally the Wednesbury test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the Wednesbury test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational - in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU principles.

(3)(a) As per Bugdaycay, Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary

judgment to find out if the decision-maker could have, on the material before him, arrived at the primary judgment in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render primary judgment on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on Wednesbury and CCSU principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is left open, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles 19, 21 etc. are involved and not for Article 14.

In Om Kumar's case , the Supreme Court considered the applicability of the doctrine of 'Proportionality' in the context of Article 14 of the Constitution, referred to the judgments in Ranjit Thakur v. Union of India , B.C. Chaturvedi v. Union of India and then observed:

In this context, we shall only refer to these cases. In Ranjit Thakur v. Union of India this Court referred to "proportionality" in the quantum of punishment but the Court observed that the punishment was "shockingly" disproportionate to the misconduct proved. In B.C. Chaturvedi v. Union of India this Court stated that the court will not interfere unless the punishment awarded was one which shocked the conscience of the court. Even then, the court would remit the matter back to the authority and would nor normally substitute one punishment for the other. However, in rare situations, the court could award an alternative penalty. It was also so stated in Ganayutham.

Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is questioned as "arbitrary" under Article 14, the court is confined to Wednesbury principles as a

secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that Wednesbury principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of punishment.

[12] In State Bank of India v. Samrendra Kishore Endow ; State of Uttar Pradesh v. Ashok Kumar Singh (; State of Uttar Pradesh v. Nandkishore Shukla; State of Punjab v. Baxi Singh ;Uttar Pradesh State Road Transport Corporation v. A.K. Parul ; Union of India v. J.R. Gheman ;Secretary A.P. SWRE I Society v. J. Prathap , the Supreme Court has consistently held that in exercise of jurisdiction under Article 226 of the Constitution of India, the High Court will not interfere with the punishment imposed by the competent authority merely because it feels that the same is harsh or that a different view could have been taken of the mis-conduct committed by the employee. The Court can direct the competent authority to reconsider the punishment only if it comes to a definite conclusion that the same is shockingly disproportionate or is totally arbitrary or there has been nonconsideration of the relevant factors or where irrelevant considerations have weighed with the competent authority for imposing the particular punishment.

[13] In the above context, the facts and submissions, briefly narrated in paragraphs 3 to 8 of this judgment, reveal that the case of the petitioner, of not following principle of audi-alterem-partem, by the respondent-Bank is meritless. This is not a case of not providing opportunities of hearing to explain the case, but, a case of not availing of the same. Not once or twice, but, more than that, the respondent-Bank repeatedly asked the petitioner to resume duty and it was clearly intimated that his request to extend leave was not acceded to and the same was treated as unauthorized leave. It was also intimated to the petitioner that his application for extension of leave was not supported by the medical certificates, as required under law, and he was, time and again, requested to resume duties at Turkha Branch. Reminders were also sent on 13th February 1992 and 26th February 1992. On the contrary, in reply to that, the petitioner objected to the stand taken by the respondent-Bank and continued to press for sanction of medical leave applied for by the petitioner by his earlier letters. It is also borne out from the record that, by a letter dated 7th May 1992, the petitioner herein was informed in detail about not carrying out instructions and orders passed by the respondent-Bank and the reasons for treating the absence of the petitioner as

unauthorized. The petitioner was clearly apprised to resume duty, in his own interest and to obey the reasonable and lawful orders passed by the respondent-Bank, failing which, it would amount to gross misconduct of insubordination in terms of paragraph 19.5(e) of the First Bipartite Settlement dated 19th October 1966. The petitioner was also informed that his act of remaining away from duty without proper sanction from 1.2.1992 is unauthorized and amounts to misconduct in terms of paragraph 19.7(a) of the above Settlement being remaining absent without leave or overstaying sanctioned leave without sufficient ground. In spite of the above clear communication to the petitioner to resume duties once again within seven days, the petitioner continued to disobey the above orders as per the enquiry report of the Enquiry Officer, based on the admitted communication of letters written by the respondent-Bank and the petitioner and statement of Shri Gujarati, an employee of the Bank, which are found from the record of the proceedings. It is also established that the petitioner has continued to remain absent unauthorizedly, without there being any sanction and without sufficient grounds, particularly when the respondent-Bank had pointed out that leave was not sanctioned leave in accordance with the Rules pertaining to the leave. Thus, the charges levelled against the petitioner of insubordination or disobedience of lawful or reasonable orders of the employer and unauthorized absentism stood proved and no infirmity can be found in the finding of the Enquiry Officer.

[14] Now, if opportunities given to the petitioner in the departmental enquiry are seen and examined, the following facts emerge:

[15] Even after issuance of charge sheet dated 13.11.1992, the petitioner, under the guise of pendency of the judicial proceedings in the Court of the learned Judicial Magistrate, Junior Division, Bhavnagar, where the petitioner has challenged the action of the respondent-Bank to depute him at Turkha Branch without his consent, as well initiation of departmental proceedings, asserted his stand that, till the outcome of the above suit proceedings, departmental enquiry cannot be held. The above stand of the petitioner also exhibits recalcitrant attitude of an employee who is hell bent to defy any proceedings undertaken by the respondent-Bank in accordance with law. In the departmental enquiry also, the petitioner was intimated by letter dated 11th May 1993 to remain present in the enquiry proceedings of 24th May 1993, but, he did not remain present and intimated that the judicial proceedings were pending against the action of the respondent-Bank. The petitioner also requested to fix another date of enquiry after 15.6.1993 in view of the religious engagement of the petitioner and he was out of Bhavnagar from 15.5.1993 to 15.6.1993. This request was made in spite of advance intimation sent by the respondent-Bank vide letter dated 11.5.1993 about the hearing to take place on 24.5.1993. Once again, the Enquiry Officer adjourned the date of hearing and fixed the same on 12.7.1993, which was, in advance, intimated to the

petitioner. However, on that day also, the petitioner failed to remain present and the enquiry proceedings were adjourned to 13.7.1993, with advance intimation. The petitioner remained consistent in his practice of not attending the enquiry proceedings even on that day also and sent a telegram that, in the absence of statements of certain witnesses, he was unable to attend the enquiry proceedings. The Enquiry Officer proceeded with the enquiry on 13.7.1993. However, with a view to give a chance to the petitioner before submitting his report, as a last opportunity keeping in mind the principles of natural justice, by letter dated 4.8.1993, copies of enquiry proceedings, documentary evidence and written arguments given by the Presenting officer, were given to the petitioner, which was duly replied and, ultimately, the Enquiry Officer submitted his finding on 20th September 1993.

[16] After considering the report of the Enquiry Officer, the disciplinary authority, respondent No.1 herein, issued show cause notice dated 25.9.1993 to the petitioner to submit explanation against the proposed penalty. The petitioner was given a copy of the report of the Enquiry Officer along with the show cause notice and the personal hearing was also fixed by the disciplinary authority on 14th October 1993. Even before the disciplinary authority, the petitioner did not remain present and the order of dismissal dated 21st October 1993 came to be passed by the disciplinary authority. Considering the finding of the Enquiry Officer, the explanation rendered by the petitioner, the responsibility of the financial institution like Bank and the duties cast upon the Bank of a public nature, the willful insubordination and indifferent and adamant behaviour of the petitioner was found to be detrimental to the smooth functioning of the Bank, and also for remaining unauthorizedly absent, the petitioner came to be dismissed from service, which requires no interference in view of the fact that full opportunities were given to the petitioner for attending the enquiry proceedings and even relevant documents and other evidence were also supplied by the authority and even personal hearing was also given, but, of course, not availed of, which cannot be said to be, in any manner, violative of principles of natural justice or unreasonable or arbitrary, in any manner violative of Articles 14 and 16 of the Constitution of India, which requires interference by this Court under Article 226 of the Constitution of India.

[17] It is also evident that, when the leave was not sanctioned or extended by the respondent-Bank and it was treated as unauthorized and the petitioner was intimated accordingly, taking shelter under the pendency of judicial proceedings in the Court of the learned Civil Judge (JD), Bhavnagar, is also of no help, in view of the fact that even Exh.5 application preferred by the petitioner came to be rejected by the Civil Court by order dated 16th October 1993 and initiation of departmental proceedings against the petitioner was not stayed with the observation that the petitioner had failed to prove

even prima-facie case and number of opportunities were given to the petitioner but, under one or other pretext, the same was avoided. The above reasonings of the learned Civil Judge (J.D.), remained final and conclusive as no appeal or revision was preferred by the petitioner against the above order. Later on, even those two civil suits were also withdrawn and, subsequently, the Special Civil Application challenging the order of the disciplinary authority dated 21.10.1993 came to be withdrawn with a view to file an appeal and even the Appellate Authority had granted personal hearing on 31.1.1994 which was not attended by the petitioner and, therefore, another opportunity of personal hearing was given on 18.2.1994 and, after hearing the petitioner, considering the record of the Enquiry Officer, the submissions of the petitioner in the memo of the appeal, the grounds raised therein and the reasonings of the disciplinary authority, the appellate authority has also confirmed the order of dismissal dated 21st October 1993 by passing a reasoned order, which also does not suffer from any vice of illegality which requires interference by this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

[18] It is, therefore, held that the contention that non-supply of the documents in the departmental proceedings resulted into violation of principle of natural justice as submitted by the learned Counsel for the petitioner, does not stand to the scrutiny of the record. On the contrary, all the relevant documents were given in the midst of the enquiry by a letter dated 4.8.1993 and before drawing final conclusion in the report by the Enquiry Officer. In that view of the case, the decisions rendered in the cases of Harendra Arora , and Canara Bank v. Debasis Das are squarely applicable in the present case, in as much as, there is substantial compliance of the principles of natural justice by the respondent-Bank. Not only that, before passing the final order of penalty, a show cause notice with proposed penalty along with the report of the Enquiry Officer was also given with an opportunity of personal hearing, of course not availed of by the petitioner and, therefore, once again, the contention of the petitioner about non-compliance of rule of audi-alterem-partem does not hold good, which requires any interference by this Court.

[19] So far as the decision relied upon by the learned Counsel for the petitioner in the case of State of M.P. v. Chintaman, 1961 AIR(SC) 1623, to interfere with the decision of the Enquiry Officer, when reasonable opportunity to defend at the stage of enquiry is not given, is concerned, at the cost of repetition, it is to be noted that the petitioner was given reasonable opportunities for resuming duties at Turkha Branch and also attending the enquiry proceedings before the Enquiry Officer and while imposing punishment of dismissal and confirming the same in appeal by the Appellate Authority, personal hearing was also given to the petitioner. Therefore, the above case-law is not applicable.

[20] In the judgment relied upon by the learned Counsel for the petitioners, namely, Kashinath Dikshita v. Union of India, , about non-supply of copies of statements of witnesses and the documents relied upon by the disciplinary authority, the Apex Court found that the Government failed to show that no prejudice is occasioned to the employee who was a civil servant and, therefore, the order of dismissal was set aside. In the present case, even after number of opportunities were given to explain the case, the petitioner, who is a bank employee and not a civil servant, had failed to show any prejudice caused to him by not supplying copies of some documents at the initial stage. The petitioner was duly given all the relevant documents and materials and other evidence produced during the course of enquiry by the Enquiry Officer and the same was also replied by the petitioner in the midst of inquiry, even found from the pleadings in the petition and, therefore, the above-cited authority is of no help to the petitioner. Even considering the nature of charges, communication of letters addressed by the respondent-Bank and the petitioner, which formed part of the record of enquiry proceedings, and some statements of the bank employee whether the petitioner, in fact, reported on duty or not, copies of which were later on given to the petitioner, before issuance of show cause notice for punishment along with report of the enquiry officer, it cannot be said that the petitioner is deprived of voluminous record to represent his case in the departmental proceedings. The fact remained that the petitioner had not resumed duties in spite of repeated requests of the respondent-Bank and communication to the above effect was the basis of the finding of the report of the Enquiry officer, copies of which were supplied to the petitioner and, therefore, more than reasonable opportunities were given to the petitioner to defend his case and, thus, no prejudice is caused and, considering the ratio laid down by the Apex Court in the case of Khem Chand v. Union of India, about reasonable opportunities, it cannot be said that the respondent-Bank has acted in violation of principles of natural justice or, in any way, in violation of Articles 14 and 16 of the Constitution of India.

[21] So far as the submission with regard to deputation of the petitioner at Turkha Branch without consent is concerned, no rule or regulation of respondent-Bank prohibiting such exercise of power by the management of deputing any employee of the Bank without consent, is relied upon by the learned Counsel for the petitioner. On the contrary, the respondent-Bank has come out with clear explanation about specific provision for providing special allowance and special remuneration and other benefits for an employee who is asked to perform certain special duties in view of administrative exigency in accordance with the settlement arrived at between the bank management and the Union since 4th bi-partite settlement dated 17.9.1984 clearly provides that an employee other than member of the sub-ordinate staff while traveling from one station to another on transfer on duty or on leave, will be entitled to certain benefits. It is also to be noted that the petitioner being an Agricultural Assistant was

required to manage agricultural portfolio of the respondent-Bank and, therefore, if the petitioner was asked to serve at a nearby place for a period of one month by the respondent-Bank in administrative exigency, the same could not have been refused on the ground that consent of the petitioner was not obtained and, therefore, any challenge to the impugned order on the ground of deputation of the petitioner without his consent cannot be said to be germane, legal, which warrants exercise of extraordinary jurisdiction by this Court under Article 226 of the Constitution of India.

[22] So far as the last submission of the learned Counsel for the petitioner that the penalty of dismissal of the petitioner from service is disproportionate to the misconduct alleged, is concerned, as discussed in the judgment about the law laid down by the Apex Court in various cases, the impugned order dismissing the petitioner from service cannot be said to be disproportionate against the backdrop of the proved misconduct of insubordination and disobedience of lawful and reasonable order passed by the management and also unauthorized absenteesm found in the departmental enquiry. The punishment inflicted by the respondent-Bank cannot be said to be disproportionate or even unreasonable or arbitrary which shocks the conscience of the Court. Keeping in mind the ratio laid down by the Apex Court in various judgments referred to hereinabove, I do not find any reason to reduce, modify or alter the penalty or even to direct the respondent-Bank to exercise powers in this regard, particularly when the Appellate Authority has confirmed the order passed by the Disciplinary Authority and even the request of the petitioner of availing of voluntary retirement scheme is also rejected by letter dated 27th November 2000.

[23] Other decisions cited by the learned Counsel for the petitioner, namely, Sardarsingh Devisingh v. Dist. Supdt. of Police, Sabarkantha and Ors., 1985 GLH 940 and Varsinh Bhagwan v. State of Gujarat, 1992 2 GLH 311, are decided on the facts of those cases and, therefore, the same are not applicable to the facts of the present case.

[24] As a result of foregoing discussion, there is no merit in any of the contentions raised by the learned Counsel for the petitioner. This petition fails and is rejected. Rule is discharged with no order as to costs.