HIGH COURT OF GUJARAT (*D.B.*)

ROHIT S MANKAD
Versus
BANK OF INDIA & 1 ANR

Date of Decision: 25 July 2014

Citation: 2014 LawSuit(Guj) 835

Hon'ble Judges: Akil Kureshi, Sonia Gokani

Case Type: Letters Patent Appeal; Special Civil Application

Case No: 46 of 2005, 47 of 2005; 3693 of 1998, 3694 of 1998

Subject: Constitution

Acts Referred:
Constitution Of India Art 226

Final Decision: Appeal allowed

Advocates: Vidhi J Bhatt, Nanavati Associates

Cases Referred in (+): 16

Sonia Gokani, J.

[1] All facts and law in these two appeals are interlinked, and therefore, they both are being decided by way of a common judgment. The factual background necessary for determining these appeals are as follows:

[2] The petitionerappellant was in service of the respondent bank from the year 1960. He joined the clerical cadre and was promoted to the post of Officer in May, 1969. He was the second officer at Bharuch Branch in 1970. He was transferred as Manager on 1975 to Umalla Branch. While working at Bharuch branch as an officer, an incident of forgery pertaining to the credit note sent from Billimora Branch came to light in the year 1976. On investigation, it was noticed that on March, 18, 1975 one Shri KN Patel opened the Savings Bank Account No.3083 with an initial deposit of Rs.11 (Rupees Eleven only) on 22.3.1975. The credit note No.2726 was received by Bharuch Branch from Billimora Branch of the Bank for the sum of Rs.50,100/in the name of Shri KN

Patel. Such credit note was not found to be in order and yet it was credited in the account of Shri Patel.

[3] On 11.8.1976, order of termination was served upon the appellantpetitioner without holding any inquiry. The appellantpetitioner challenged such action of the Bank before the Chairman of the respondent Bank. And, such Appeal preferred by him came to be dismissed. Therefore, he preferred Special Civil Application No.2083 of 1976 before this Court and initially petitioner/appellant was protected staying the departmental inquiry and later vide its judgment and order dated 28/29.1.1980 such challenge of dismissal from service was sustained and accordingly, the appellant was reinstated in service.

[4] The inquiry was initiated thereafter by the respondent Bank and on its conclusion, findings of the Inquiry Officer in terms of its report was submitted on 23.1.1996. The appellantpetitioner was called upon to submit his explanation against the said report of the Inquiry Officer. Yet, another report in continuation was submitted by the Inquiry Officer on 4.3.1996 amplifying as well as justifying his earlier report with reasons and the appellant was asked to make his representation qua such second report as well. After considering rival versions on both the sides, respondent No.2 chose to levy penalty of compulsory retirement in terms of Regulation 4(f) of the Bank of India Officer Employees (Discipline & Appeal) Regulations,1976 (hereinafter referred to as "the Regulations") by order dated 7.12.1996.

4.1 An Appeal was preferred before the appellate authority against such decision, which came to be dismissed on 29.1.1998. Legality and validity of such order was challenged by the appellantpetitioner claiming full backwages from 11.1.1994 to 7.12.1996, for which the appellant preferred Special Civil Application No.3693 of 1998, seeking the order of compulsory retirement as confirmed by the appellate order to be declared as void and ineffective as also for the reinstatement of the appellant to the original post with all consequential benefits. The Special Civil Application No.3694 of 1998 was also preferred seeking full backwages from 11.1.1994 till 7.12.1996 and reimbursement of medical bills together with interest at the rate of 18% per annum.

[5] Learned Single Judge after bipartite hearing did not find any merit in any of the contentions raised for and on behalf the appellantpetitioner in both the petitions and accordingly, both the petitions have been rejected. The Court did not find any breach of principles of natural justice and the contention of not giving opportunity of personal hearing was found without any force on the ground that the Regulations do not provide for giving personal hearing to an officer or employee in any appeal preferred by him

and moreover, as there was no challenge to the Regulations, such ground was not entertained by the Court.

[6] Therefore, Special Civil Application N0.3693 of 1998 has given rise to Letters Patent Appeal No.46 of 2005 and Special Civil Application No. 3694 of 1998 resulted into preferring Letters Patent Appeal No.47 of 2005.

[7] It is required to be noted that during the pendency of these appeals, the appellantpetitioner passed away and the legal heirs and representatives of the petitioner are brought on record.

[8] We have heard learned advocates on both the sides at length.

[9] Learned counsel Ms.Vidhi Bhatt appearing for the appellant strenuously argued before us that the disciplinary authority, without giving opportunity of personal hearing, has decided the appeal and that has caused serious prejudice.

[10] She further urged that if the service rule does not provide for any personal hearing in departmental appeal, it cannot be said that the appellant could not complain of violation of principles of natural justice. Providing of such opportunity in the rules is unassailable considering the principles of natural justice. She has relied on the decision of the Apex Court in the case of Ram Kishan vs. Union of India, 1995 6 SCC 157. She further urged relying on the ratio rendered in case of Punjab National Bank & Ors. vs. Kunj Behari Misra, 1998 7 SCC 84 that principles analogous to article 311 of the Constitution of India would be applicable. Based on the said judgment, she further urged that the enquiry officer held some of the charges as not proved. The Disciplinary Authority held all charges were proved. This was done without putting the delinquent to notice and recording tentative reasons by the Disciplinary Authority. This was in breach of natural justice. She urged that as much time has lapsed and the appellantpetitioner has passed away in the interregnum period and his legal heirs and legal representatives are already impleaded as party appellants, the Court may not remand the matter back to the concerned authority as otherwise that would amount to travesty of justice. According to her, denying the appellant a chance to further crossexamine Shri CG Bhatt was highly prejudicial and such material aspect cannot be ignored. It is emphasized that conducting disciplinary proceedings after a lapse of 18 years from the date of alleged incident also caused serious prejudice as it was open for the Bank to challenge the order of staying the departmental proceedings all these years. Again, a lapse of 18 years from the date of the incident ought to have weighed with the authority in the decision making process and the result ought to be otherwise than what it resulted into. She further urged that to deny reimbursement of the medical expenditure for the period of 1980 to 1986 on the ground of delay also caused

serious prejudice inasmuch as the appellant could not have so requested at an earlier stage nor was there any service rule to deprive the appellant of reimbursement of the medical expenses solely because there was a delay of 22 long years. He incurred sum of Rs.1,22,000/towards the medical expenses. He had borrowed such an amount from the relatives and made a specific claim, therefore, the bank ought to have reimbursed the same.

[11] Per contra, arguing for and on behalf of the respondent bank, learned counsel Mr. Chaudghar appearing for M/s. Nanavti Associates forcefully defended the decision rendered in the Special Civil Application. He urged that all relevant and vital aspects contended by the appellants before the learned Single Judge have been appropriately dealt with, no interference is desirable in these appeals. He further urged that not only the opportunity of hearing had been granted to the appellantpetitioner, but, when personal hearing has not been contemplated, the very the contention is wrongly taken by the appellants.

He also urged that all principles of natural justice have been duly complied with while conducting the disciplinary inquiry. Moreover, even before imposing penalty of compulsory retirement due opportunity had been made available. He further urged that disciplinary authority if has chosen to opine differently than what the inquiry officer has concluded, it has given fairly goods reasons substantiated by material evidence. He, therefore, urged the Court to uphold the decision impugned.

[12] On thus hearing both the sides and on close examination of the entire evidence on record before dealing with the facts on hands, at this stage, law on the subject deserves to be discussed.

[13] The law as laid down in the judicial pronouncements and relied upon by the learned counsels for the parties, is as follows:

13.1 In the case of Managing Director, ECIL vs. B.Karunakar, 1993 4 SCC 727 after the 42nd Amendment of the Constitution of India the question arose whether the charged employee was entitled to a copy of the inquiry report, when the decision was taken by the Disciplinary Authority on the question of guilt of the delinquent.

13.2 The Apex Court observed that when the inquiry officer is other than disciplinary authority, disciplinary proceedings breaks into two stages. First stage ends when the disciplinary authority arrives at its conclusion on the basis of the evidence, the Inquiry Officer's report and the delinquent employee's reply to it. And, the second stage begins when the disciplinary authority decides to impose penalty on the basis of such conclusion. By 42nd Amendment, the second right exercisable at the second stage is taken away where the charged officer had an

opportunity to represent against the proposed penalty, but, the right of charged officer to receive the report of inquiry officer and to make representation against such report was essentially part of the first stage.

13.3 In the case of Punjab National Bank & Ors. vs. Kunj Behari Misra in a departmental inquiry, Inquiry Report was favourable to the charged employee. The question before the Apex Court was whether any opportunity of representation to the charged employee was necessary by the Disciplinary Authority before differing with those findings. It was held that principles of natural justice as enunciated in the case of Managing Director, ECIL vs. B.Karunakar that such opportunity must be given when the disciplinary authority differs from the view of the Inquiry Officer.

13.4 Apt here would be to reproduce the relevant observations of the Apex Court in the case of Punjab National Bank & Ors. vs. Kunj Behari Misra

"17. These observations are clearly in tune with the observations in Bimal Kumar Pandit's case quoted earlier and would be applicable at the first stage itself. the aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per Karunakar's case the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the findings of the disciplinary authority.

18. Under Regulation 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded

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

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings .

The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

20. The aforesaid conclusion, which we have arrived at, is also in consonance with the underlying principle enunciated by this Court in the case of Institute of Chartered Accountants. While agreeing with the decision in Ram Kishan's case, we are of the opinion that the contrary view expressed in S.S. Koshal and M.C. Saxena's cases do not lay down the correct law.

21. Both the respondents superannuated on 31121983. During the pendency of these appeals, Misra died on 611995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority and while dismissing these appeals, we affirm the decisions of the High Court which had set aside the

orders imposing penalty and had directed the appellants to release the retirement benefits to the respondent. There will, however, be no order as to costs."

[14] XXX XXX XXX

[15] In case of Yoginath D. Bagde vs. State of Maharashtra and another, 1999 7 SCC 739 the Apex Court reiterated the law laid down in the case of Punjab National Bank and others vs. Kunj Behari Misra of giving opportunity of hearing to the charged employees before reversing the findings of Inquiry Officer. The Apex Court held and observed that the requirement of affording opportunity of hearing was in consonance with article 311(2) and when there being no specific provision to that effect, the same requires to be read into rules for right of hearing being the constitutional right. The Court also held that Disciplinary Authority before forming its final opinion has to form its own opinion for disagreeing with the findings of the inquiry officer.

[16] In the matter before the Apex Court the appellant was a judicial officer who was dismissed from service on the charges of indulging in corrupt practices. A show cause notice was issued in the said case to the appellant with regard to the proposed punishment. The Court in such findings had held that this did not meet requirement of law because the final decision to disagree with the Inquiry Officer had already been taken before the issuance of show cause notice.

Therefore, the postdecisional hearing though available in certain cases was held of no avail. The Court held and observed that the right to be heard remains with the employee upto the final stage and mere submission to the report of inquiry officer to the disciplinary authority would not suffice nor does that bring an end to the inquiry proceedings. The proceedings comes to an end only when the disciplinary authority on consideration of report either exonerates the charged employees or imposes punishment on him. If the findings of disciplinary authority differ and he disagrees with the Inquiry Officer, an opportunity must be made available to the delinquent with the reasons, on the basis of which he disagrees with the report of Inquiry Officer in consonance with the Article 311(2) of the Constitution of India:

"30. Recently, a threeJudge Bench of this Court in Punjab National Bank & Ors. vs. Kunj Behari Mishra, 1998 7 SCC 84, relying upon the earlier decisions of this Court in State of Assam vs. Bimal Kumar Pandit, Institute of Chartered Accountants of India vs. L.K. Ratna & Ors, 1986 4 SCC 537 as also the Constitution Bench decision in Managing Director, ECIL, Hyderabad & Ors. vs. B. Karunakar & Ors, 1993 4 SCC 727 and the decision in Ram Kishan vs. Union of India, 1995 6 SCC 157, has held that :

"It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority."

The Court further observed as under :

"When the enquiry is conducted by the enquiry officer,his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him.

When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and inequitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed."

The Court further held that the contrary view expressed by this Court in State Bank of India vs. S.S. Koshal, 1994 Supp2 SCC 468 and State of Rajasthan vs. M.C. Saxena, 1998 3 SCC 385 was not correct.

31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by

the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final.

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

[17] With regard to the amount of interference permissible by the High Court in the case of disciplinary inquiry, the Apex Court has reiterated the principle that ordinarily the High Court does not sit in appeal over the findings recorded by the Disciplinary Authority or Inquiry Officer in departmental inquiry and yet that would not mean that the Court in all circumstances cannot interfere in the following words :

" It was lastly contended by Mr. Harish N. Salve that this Court cannot reappraise the evidence which has already been scrutinized by the Enquiry Officer as also by the Disciplinary Committee. It is contended that the High Court or this Court cannot, in exercise of its jurisdiction under Article 226 or 32 of the Constitution, act as the Appellate Authority in the domestic enquiry or trial and it is not open to this Court to reappraise the evidence. The proposition as put forward by Mr. Salve is in very broad terms and cannot be accepted. The law is wellsettled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter. In

Kuldeep Singh vs. The Commissioner of Police & Ors., 1998 8 JT 603, this Court, relying upon the earlier decisions in Nand Kishore vs. State of Bihar, 1978 AIR(SC) 1277; State of Andhra Pradesh vs. Sree Rama Rao, 1963 AIR(SC) 1723; Central Bank of India vs. Prakash Chand Jain, 1969 AIR(SC) 983; Bharat Iron Works v. Bhagubhai Balubhai Patel & Ors, 1976 AIR(SC) 98 as also Rajinder Kumar Kindra vs. Delhi Administration through Secretary (Labour) & Ors, 1984 AIR(SC) 1805, laid down that although the court cannot sit in appeal over the findings recorded by the Disciplinary Authority or the Enquiry Officer in a departmental enquiry, it does not mean that in no circumstance can the court interfere. It was observed that the power of judicial review available to a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the Courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse."

[18] The Supreme Court in the case State Bank of India and others vs. K.P. Narayanan Kutty, 2003 AIR(SC) 1100 was dealing with the case of charged employee where in the departmental proceedings after conducting the inquiry, the Inquiry Officer held some of the charges to have been proved whereas the other were held not proved. The Disciplinary Authority while accepting the findings of the inquiry officer to the extent that some charges were proved, did not agree as regards the findings that charges were partly not proved and the disciplinary authority recommended the dismissal of respondent from service accepting such recommendations. The competent authority passed an order of dismissal from service. After unsuccessfully challenging such order of dismissal, when the writ petition came to be filed before the High Court, the writ petition was allowed holding that no opportunity was rendered by the Disciplinary Authority with regard to the charges where it did not agree with the findings of the Inquiry Officer relying on the decision of Punjab National Bank & Ors. vs. Kunj Behari Misra and when the decision was challenged before the Apex Court, Their Lordships held and observed as under :

" 5 In paragraph 20 thereof, this Court agreeing with the case of Institute of Chartered Accountants of India vs. L.K. Ratna, 1986 4 SCC 537 and Ram Kishan vs. Union of India, 1995 6 SCC 157, specifically stated that the view taken in State Bank of India vs. S.S Koshal, 1994 Supp2 SCC 468 and State of Rajasthan vs. M.C. Saxena, 1998 3 SCC 385, did not lay down the correct law. In our view, the controversy that is to be resolved in the present case arose for consideration in the said Punjab National Bank case directly. The said judgment in all force applies to the facts of the present case. The distinction sought to be made on behalf of the appellants taking support from the Constitution Bench judgment of this Court in

Mohapatra's case does not help them for two reasons: firstly, that was not a case where the controversy that has arisen in this case dealing with specific regulation was directly dealt with. As already stated above, in the case of Punjab National Bank a three Judge Bench of this Court has directly considered the effect of said Regulation, particularly and directly in regard to providing of an opportunity to be read into the Regulation. Secondly, on the facts of the case before the Constitution Bench, this Court found that the direction given by the High Court to reconsider as to the punishment imposed in that case was not correct. The argument that in the case arising prior to Ramzan Khan's case not giving an opportunity by the disciplinary authority, would not vitiate the order of dismissal, also does not support the case of the appellants in the light of the fact that in the case of Punjab National Bank also the proceedings related to the period prior to Ramzan Khan case. It was also contended on behalf of the appellants that the High Court committed an error in setting aside the order of dismissal when it was not shown that any prejudice was caused to the respondent by not giving an opportunity to him by the disciplinary authority. In this regard the learned counsel cited a decision of this Court in Union Bank of India vs. Vishwa Mohan, 1998 4 SCC 310. As already noticed above, before the High Court both the parties concentrated only on one point, namely, the effect of not providing an opportunity by the disciplinary authority when the disciplinary authority disagreed with some findings of the enquiry officer.

6. It was also not shown by the appellants before the High Court that no prejudice was caused to the respondent in the absence of providing any opportunity by the disciplinary authority. The aforementioned case of Vishwa Mohan is of no help to the appellants. The learned counsel invited our attention to para 9 of the said judgment. As is evident from the said paragraph this Court having regard to the facts of that case, taking note of the various acts of serious misconduct, found that no prejudice was caused to the delinquent officer. In para 19 of the judgment in Punjab National Bank case, extracted above, when it is clearly stated that the principles of natural justice have to be read into Regulation 7(2) (Rule 50(3)(ii) of State Bank of India (Supervising Staff) Service Rules, is identical in terms applicable to the present case) and the delinquent officer will have to be given an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Enquiry Officer, we find it difficult to accept the contention advanced on behalf of the appellants that unless it is shown that some prejudice was caused to the respondent, the order of dismissal could not be set aside by the High Court.

7. Therefore, we are in respectful agreement with the decision of this Court in Punjab National Bank's case, being directly on the point. Moreover, in this case the High Court has given liberty to the appellants to proceed the case in accordance with law. Under these circumstances and in view of liberty given, as stated above, we do not find any good reason to upset the impugned order. Consequently, the same is affirmed and the appeal is dismissed with no order as to costs.

[19] It can be thus deduced from these judicial pronouncements that the law on the subject is made amply clear from the case of Punjab National Bank and others vs. Kunj Behari Misra . The disciplinary Authority is required to tentatively note its reasons of disagreement whenever it chose to disagree with the findings of the Inquiry Officer on any of the charges and having regard to such tentative reasons, due opportunity must be afforded to the charged employee to represent his case. The report of the Inquiry Officer also requires to be furnished to the delinquent so as to avail him the due opportunity to convince the disciplinary authority to accept the view of the Inquiry Officer. In other words, before the disciplinary authority takes the final decision and imposes any punishment to the charged employee, the opportunity to make representation before the disciplinary authority is to be availed and it will have to record its findings on the charges framed against such charged employee.

[20] In light of the judicial pronouncements discussed hereinabove, reverting back to the facts of the instant case is necessary at this stage.

[21] Article of charges dated 8.5.1980 indicates that the appellant had opened an account on the basis of request of Mr. K.M Patel on 18.3.1975 without mentioning the exact nature of his business. It is also stated that he did not ascertain as to why he was opening the account with the Bharuch Branch, when he was the resident of Surat. Credit Note No.2726 dated 20.3.1975 for Rs.50,100/was received from Billimora Branch for the credit of the amount to the account of Shri K.M Patel and the appellant responded to the credit note and credited the said amount without verifying the signature appearing on the credit note. This was done without obtaining confirmation from Billimora Branch and such exercise was in absence of due care in respect of the adverse features emanating from such remittance. It is further stated that he permitted withdrawal of the said amount to Mr. Patel and that amounted to an act of misconduct in terms of clause 24 of the Bank of India Officer Employees (Conduct) Regulations, 1976 as he committed a breach of clause 3(1) of the said Regulations, which says that.. "Every Officer employee, shall, on all times take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of Bank officer".

[22] The inquiry officer who conducted departmental inquiry was Mr. C.N Bhatt, who gave his findings where some of the charges are held to have been proved whereas others have been concluded as not proved. According to the Inquiry Officer, the introduction was required only for the cheque books operated from Savings Bank Account. He held that no material was provided nor was any opportunity given to the delinquent employee to defend himself and, therefore, such charge was held not proved whereas, the allegation of permitting opening of the account without identification has been held as proved and the receipt of fraudulent credit note from Billimora Branch of the sum of Rs. 50,100/is held to have been proved.

[23] With regard to absence of any instructions, Inquiry Officer held that no specific instructions are appearing to hold that the person concerned ought to have exercised the caution.

[24] On the charge of opening of account without identification also, the entire tenor of inquiry officer's report is that the appellant ought to have taken due care to protect the bank's interest, which was absent, whereas, the Disciplinary authority has concluded mala fides against the charged officer. On this issue as well.

> 24. The disciplinary authority sent a letter to the charged officer on 4.3.1996, which was responded to on 2.4.1996 and the written representation against the final report of the inquiry officer was furnished where, at many stages, he urged that requisite papers were not furnished and they were necessary to be furnished to him to have a valid defence. On 7.12.1996, penalty order came to be passed awarding penalty of compulsory retirement with immediate effect in terms of Regulation 4(f) of the Regulations.

[25] Before passing such order of penalty, the Disciplinary Authority concluded on some of the charges against the findings of Inquiry officer where admittedly the procedure laid down in the case of Punjab National Bank & Ors. vs. Kunj Behari Misra is apparently missing.

[26] The Disciplinary Authority did not form its tentative reasons nor had it supplied the copy of such tentative reasons to avail the appellant an opportunity nor sought his representation along with the report of Inquiry Officer. Of course, in the instant case, the report of Inquiry Officer was sent to the delinquent officer, but, no opportunity is availed on the findings arrived at by the disciplinary authority different than those rendered by the Inquiry Officer. Following contentions by the appellant are raised mainly to challenge the act of the disciplinary authority and the Bank : (a) Non supply of vital documents; (b) Non grant of opportunity of hearing as contemplated by the

law; and (c) The order of compulsory retirement being excessive and disproportionate to the charges held as proved.

[27] It has been argued before us by the Bank however that the fullest opportunity was made available to the appellant and his representation is very exhaustive, which covers all the issues and at his behest Inquiry Officer was required to prepare a reasoned order second time, no further opportunity than already given is contemplated under the law and hence, learned Single Judge was right in not upholding such contention of the appellant. On the first point of non supply of documents necessary for effectively defending himself in the departmental inquiry, admittedly; (i) Bank's circular in connection with introduction; (ii) Opening Card of Branch; (iii) Supplementary of Savings bank account and that of head officer etc., were requested for. True, that at an earlier point of time, such challenge could have been made. But, that by itself may not be the ground, particularly when these documents are important and have a vital bearing on the next contention of non availment of opportunity as discussed hereinafter.

> We are in total disagreement with the respondent Bank inasmuch as what had been laid down in the decision rendered in the case of Punjab National Bank & Ors. vs. Kunj Behari Misra is the fulfillment of specific requirement laid down by the Apex Court. Disciplinary Authority when disagrees with the Inquiry Officer on finding of any Article of charge, before it records such findings, with tentative reasons furnished to the charged employee, effective hearing must be made available. It needs to be done with the object of affording an opportunity to the delinquent officer to persuade the Disciplinary Authority to accept the favourable conclusion of the Inquiry Officer. The Apex Court has not contemplated post decisional hearing but predecisional hearing.
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> The principles of natural justice would for sure require such opportunity and thus in other words, before the disciplinary authority takes a final decision and imposes penalty, an opportunity must be given to the charged officer to file a representation before the disciplinary authority which records its findings contrary to what has been held by Inquiry Officer on the charges levelled against the employee. In absence of any recording of tentative reasons and availing an opportunity of hearing to the delinquent officer in the event of disagreement of disciplinary authority, we hold that there is a complete breach of the principles laid down by the Appellate Court in the decision rendered in case of Punjab National Bank & Ors. vs. Kunj Behari Misra and which had been later on followed in various decisions.

[28] In light of the discussion held hereinabove, we deem it fit to examine the findings on the merits as well although being conscious of the fact that in the writ jurisdiction

when the party approaches this Court challenging the departmental proceedings/ inquiry, ordinarily, merit is not to be looked into unless there are serious questions of breach of principles of natural justice. Having realized that the incident which gave rise to departmental inquiry is of the year 1975 and the charged employee died during this protracted legal battle in the year 2004 [ie., 26/12/2004] and whose legal representatives are before us on the 18th April 2006, and hence, no useful purpose is to be served by remanding the matter back to the disciplinary authority for hearing the parties once again on the issues where it decided against the charged employee in contravention of the settled legal position as discussed hereinabove at length.

> We, therefore, deem it appropriate to delve into the merit of the matter considering this as the rare and fit case for doing so. And thereby, interfere with the findings of the disciplinary authority and interfere with the question of punishment as discussed hereinafter.

[29] As noted above, the contention of the respondent that this Court cannot reappreciate the evidence already scrutinized by the inquiry officer or by the disciplinary authority in exercise of the jurisdiction under article 226 is not acceptable inasmuch as the law on that count is well settled. The findings, if are found perverse and not supported by the evidence on record or are such findings which are in violation of law on the subject, the Apex Court and the High Courts would surely be expected to interfere to meet the ends of justice.

[30] In the case of Kuldeep Singh vs. Commissioner of Police, 1999 2 SCC 10, this Court has held thus:

> "6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority."

[31] The Apex Court while so holding, relied on the earlier decisions in the case of Nand Kishore Prasad vs. State of Bihar, 1978 3 SCC 366 and also on in the case of State of Andra Pradesh vs. Rama Rao, 1963 AIR(SC) 1723 has held that authority or

inquiry officer in a departmental inquiry that would not mean that under no circumstances the Court cannot interfere.

[32] In wake of the discussion above, it is to be noted that in the Article of charges, it is alleged that one Shri K.M Patel approached the appellant for opening the account with the Bank whose account was opened without introduction/identification on 18.3.1975 without exactly mentioning the nature of his business. It is alleged that although he stated that he was a resident of Surat, it was not ascertained as to why he wanted to open the account at Bharuch Branch. A fraudulent credit note received on 22.3.1975 was dated 20.3.1975 from Bilimora Branch in the account of Shri Patel and such amount was credited without verifying the signature appearing on the credit note as also in absence of any verification of the signature appearing on the credit note.

> This act thus was held bereft of any due care while discharging the duties. Such amount was permitted to be withdrawn by Shri K.M Patel and whole thrust, therefore, was on permitting not only the opening of the account, but also operating the account without due care and caution expected of a Bank officer.

[33] In this backdrop, the request was made by the appellant to furnish the Bank's Circular requiring introduction as also opening card of the Savings Bank of the Bharuch Branch or any other branch of the Bank to depict that often it was not mandatory to fill in occupation column. It is not disputed that said circular and specimen signature cards of relevant period and opening card were not provided by the management, and therefore, obviously he would not be able to prove the practice prevailing at the relevant time for introduction as also in filling the column of occupation. Corollary to the same is explanation on the part of the appellant that in respect of the disputed credit note, he consulted Mr. C.G Bhatt, superior officer of the branch and it was okayed by him, putting his signature on the credit note. He requested for providing documents of supplementary of savings bank account and head office supplementary from which release of the vouchers with one signature on the disputed credit note could have been noticed. It is also rightly emphasized all along that the procedure that has been followed could have been explained as to whether from supplementaries Shri CG Bhatt had noticed the requirement of second signature. This might also result in clearly negating the charges that it was incumbent to have a second signature and deliberately the charged officer took no signature on the voucher and the disputed credit note was released with one signature only. Assuming that the second signature necessary was missing and his superior was not to check from such supplementaries of Head Office and that of the Branch, nothing prevented the Bank to furnish these documents.

In the inquiry proceedings his request and insistence to produce the head office and branch (saving bank account) supplementaries had not been acceded to. Inquiry Officer in his report has held and observed that the charge in relation to the introduction has not been proved. It is held that the introduction was required only for the cheque book operated from Savings Bank Account. He also mentioned that despite the fact that the officer, who is under suspension for more than 15 years insisted for providing copy of Bank's circular requiring introduction, has not been provided for his defence as also specimen signature cards for relevant period where the introduction was not obtained, and therefore, the Inquiry Officer held such charge not to have been proved. Inquiry Officer right is not concluding such charge as proved for want of proper opportunity. If the Disciplinary authority heeded to record the findings other than those of Inquiry Officer with its reasonings, it could have availed a chance of the charged officer.

Whereas, the disciplinary authority, without affording any such opportunity, as mentioned hereinabove, at a predecisional stage, concluded that the appellant had acted mala fide. In absence of providing any document, let alone the opportunity to put forth his case qua the reasonings of Disciplinary authority, holding such a charge as proved is in clear violation of principle of natural justice so also in violation of ratio laid down in the judicial pronouncements discussed hereinabove.

Of course, on the issue of proper identification of Shri K.M Patel both I.O and Disciplinary Authority concurred that the appellant had not recorded the full address and details of Shri Patel while opening his Savings Bank Account.

This assumes significance since these details were taken from other accounts, authorized by the appellantpetitioner.

It is also held that the said account was opened without obtaining any introduction and other details, resultantly, both held the said charge to have been proved.

[34] With regard to the alleged fraudulent credit note of Rs.50,100/of Bank's Billimora Branch, it is held and observed by the disciplinary authority that the credit note was having adverse features and the signatures thereon were not tallying with the signature in the specimen signatures book and such facts got proved during the inquiry proceedings. It is also held that this credit note was never brought to the notice of Shri CG Bhatt nor was it disclosed by the appellant to him and the credit entry was prepared at the instance of the appellant which also was not signed by him. Such findings are based on the record and some of the documents were never made available to the appellant.

These findings, as noted above, partly were held in favour of the appellant by the inquiry officer. Inquiry officer noted lack of due care and caution expected of a bank officer. However, subsequently, the same have been fully held against the appellant and that too, concluding mala fides.

The decision of this Court in case of U.G.Dalsania vs. Gujarat Electricity Board, 2004 2 GLH 535 also needs consideration at this stage.

[35] The Court has held in the said decision that nonsupply of the document, which led the delinquent not effectually crossexamining the witness, in the departmental proceedings would amount to causing prejudice and such action would be in violation of the principles of natural justice. Of course, as could be noted from the record, the appellant did crossexamine the witnesses. But, he was not allowed to reexamine. After his suspension, conducting an inquiry after nearly 18 years of period coupled with nonsupply of these documents would surely amount to his not having been given due opportunity in letter and spirit. Again, as held in case of SBI v. K.P Narayan Kutty, it is also not the requirement that unless some prejudice is shown to have been caused to the delinquent, the order of dismissal cannot be set aside following Punjab National Bank v. Kunj Bihari Mishra.

[36] It is matter of record that the chargesheet was filed in the case of the present appellant on 2.11.1980 and the appellant had challenged the suspension order by way of Special Civil Application No.3615 of 1980 where this Court restrained the bank from proceeding with the departmental inquiry during the pendency of the criminal prosecution. By virtue of interim relief granted in favour of the appellant on 20.3.1981 and 17.4.1981 the domestic inquiry did not proceed in view of the pendency of criminal proceedings. It is true that the delay cannot be attributed to either side because directions were issued by the court protecting the appellant where appellant was agitating all legal issues and once the Bank moved an appeal, stay came to be vacated. Thus, delay caused is by virtue of inherent limitation of the system itself.

[37] At this stage, the third contention of the appellant needs to be examined in respect of the order of compulsory retirement being excessive to the proved charges, not only from the discussion made hereinabove particularly emphasizing that requisite documents have not been provided, but, also on the ground that sufficient opportunity as contemplated under the law has not been availed to the appellant.

[38] Having regard to the circumstances of the case, since we have held that the view that disciplinary authority was in complete error in disagreeing with the findings recorded by the inquiry officer and imputing mala fides without affording the opportunity required under the law to the appellant, we are of the opinion that

cumulatively this would vitiate the findings of disciplinary authority recorded contrary to the findings of Inquiry Officer.

[39] The Apex Court in the case of Yoginath Bagde vs. State of Maharashtra , as discussed hereinabove, also had held from the scrutiny of the record that the final decision cannot be without giving opportunity of hearing to the appellant at the stage when it proposed to differ with the finding of the inquiry officer. Before the Apex Court, there was absolute nonconsideration of the statements of defence witnesses which eventually led the Court to hold that cumulatively all this was sufficient to vitiate the findings recorded by the disciplinary committee contrary to the findings of the inquiry officer, and therefore, while setting aside the judgment passed by the High Court, which had dismissed the writ petition and quashed the order of dismissal, the Apex Court gave the direction that the appellant be reinstated in service forthwith with all consequential benefits including the arrears of pay.

[40] In the instant case, considering the nature of allegations and also keeping in mind the findings of the inquiry officer with regard to the charges levelled against the Appellant and as the final decision could not have been without giving opportunity, from the overall consideration would lead us to conclude that the order of compulsory retirement requires to be quashed. Essentially, therefore, the charge that remains against the delinquent is one of not taking sufficient care. Accordingly, the punishment shall be substituted by withholding of two increments of the delinquent with future effect from 7th December 1996 ie., the date of imposition of penalty by the Disciplinary Authority.

[41] It would be necessary at this stage to deal with prayers made in LPA No.47 of 2005 arising out of Special Civil Application No. 3694 of 1998 where the appellantpetitioner has claimed backwages and the payment of medical bills which had been rejected by the respondent bank.

As far as medical expenses incurred by the appellant is concerned, a Circular dated 21.6.1983 deserves consideration.

[42] In the affidavitinreply to the Special Civil Application No.3694 of 1998, the respondent had contended that the expenses incurred by the employees of the respondent bank are admissible, who are placed under suspension. However, till the order of compulsory retirement was passed on 7.12.1996 the appellant had not claimed expenses incurred by him for himself and for his family for the period from 1.4.1980 to 31.3.1998. On the ground of unreasonable and negligent delay, the medical claim which was not explained, was denied in toto.

After his order of termination of service on 7.12.1996 the claim was made by the appellantpetitioner for treatment of his ailment of heart that he had undergone on the ground that the order dated 7.12.1996 had put an end to the relationship of employer and employee, and therefore, the amount claimed to the tune of Rs.1.25 lakhs (rounded off) was denied. In other words, the medical claims of the appellant which could be divided into two parts (i) claim made by the appellant for medical treatment of his and that of his family for the period from 1.4.1980 to 31.3.1995 had been denied in toto for being delayed claim (ii) the one preferred in respect of the treatment received by the appellantpetitioner after 7.12.1996 was refused due to end of relationship of employer and employee since the order of compulsory retirement was by then already passed.

[43] Considering the fact that no doubt is raised with regard to genuineness of the treatment and the bills produced for the period between 1980 to 1995, when the circular of head office permits such expenses to other employees who had been placed under suspension, the same could not have been denied.

[44] With regard to medical treatment received after the order of compulsory retirement was passed against the appellant, rejection was on the ground of tie of relationship of employer and employee having ceased to exist.

[45] As discussed hereinabove, as this Court has interfered with such conclusion and decision of the disciplinary authority has been quashed of compulsory retirement benefits with such relief cannot be denied.

[46] The appellantpetitioner also has claimed backwages. As can be seen from the order of the learned Single Judge, discussion with regard to the Circular dated 21.6.1983 and Regulations 14 and 15 of the Bank of India officers Employees' (Discipline and Appeal) Regulation, 1964, the Court denied the claim of backwages of the appellant.

[47] Regulation 14 does not permit rent free house, free use of bank car or receipt of conveyance or entertainment allowance. Employee is also not entitled to receive payment of subsistence allowance unless he produces a certificate that he is not engaged elsewhere. He, of course, is entitled to receive by way of subsistence allowance the basic pay and for the first three months of suspension 1/3rd of the basic pay which the employee would be receiving on the date prior to the date of suspension and for subsequent period after three months, 1/2 of the basic pay, the employee would have been drawing prior to the date of suspension. The Bank had paid subsistence allowances at the rate prevalent in the year 1980 ie., after thirty months of the initial order of the High Court and withheld the amount of the applicant, if a

mandate contained in Regulation 14 is in any manner not complied with, the same shall be granted to the charged employee in wake of the discussion above.

[48] Having reduced the penalty from compulsory retirement to withholding of two increments with future effect, all other retiral benefits are also found admissible and shall be accordingly calculated and paid to the legal heirs/representatives of the deceased appellant within three months of this judgment.

[49] Letters Patent Appeals are accordingly partly allowed with no order as to costs.