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**(2000) 11 AHC CK 0006**

**In the Allahabad High Court**

**Case No :** Writ Petition No. 10213 of 1989 & Writ Petition No. 10213 of 1989 (S/B)

A.K. Gaur

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

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**Date of Decision :** 30-11-2000

**Acts Referred:**

**Citation :** (2001) 2 AWC 1088

**Hon'ble Judges :** Ikram-ul-Bari, J;I.M. Quddusi, J

**Bench :** Division Bench

**Advocate :** S.S. Chauhan and M.B. Singh, for the Appellant; N.K. Seth, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

I.M. Quddusi, J.—Heard learned Counsel for the Petitioner, Sri S.S. Chauhan and learned Counsel Sri N.K. Seth appearing for Central Government of India.

2. This writ petition has been filed against the order of punishment of dismissal from services of the Petitioner passed by the disciplinary authority vide order dated 2.11.1989 as contained in Annexure No. 10 to the writ petition.

3. Sri S.S. Chauhan, learned Counsel for the Petitioner has raised several contentions touching the merits of the case also but we have considered the first question as to whether the Petitioner has got reasonable opportunity to defend himself during the disciplinary proceedings. The inquiry officer vide his report dated 31.5.1989 held that charge of removal of cash of Rs. 70,000 as well as opening cash on 11.7.1986 are not proved on the basis of the evidence but the disciplinary authority held that the charges levelled against the Petitioner in the charge-sheet are found to be proved. The disciplinary authority has neither given reasons for disagreement with the inquiry officer nor the Petitioner has been given an opportunity to show cause before passing final order of punishment intimated to him.

4. Learned Counsel for the Respondents has placed reliance on the following cases:

1. Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , in which it has been held that "while the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the forty-second amendment.

2. Bank of India and Another Vs. Degala Suryanarayana, , in which it has been held that "the law is well-settled. The disciplinary authority on receiving the report of the inquiry officer may or may not agree with the findings recorded by the latter. In case of disagreement, the disciplinary authority has to record the reasons for disagreement and then top record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the inquiry officer for further inquiry and report.

5. Learned Counsel for the Petitioner has also placed reliance on the following cases:

1. Yoginath D. Bagde Vs. State of Maharashtra and Another, , in which it has been held that "the contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the learned Counsel is that as final decision with regard to the charges levelled against the Appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the Appellant to show cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of Punjab National Bank in which it had been categorically provided, following earlier decisions that if the disciplinary authority does not agree with the findings of the inquiry officer that the charges are not proved, it has to provide, at that stage, an opportunity. of hearing to the delinquent so that there may still be some room left for convincing the disciplinary authority that the findings already recorded by the inquiry officer were just and proper. Post decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case.

2. Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , in which it has been held that "these observations are clearly in tune with the observations in Bimal Kumar Pandit 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 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 inquiry 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 conclusion's, 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.

3. State Bank of India and Ors. v. T.J. Paul (1994) 4 SCC 759, in this case it was submitted by the learned senior counsel for the Appellants, Sri T.R. Andhyarujina tried to submit that if the appellate authority decided not to dismiss the Respondent, it still had inherent power to award a punishment of "removal" which was lesser in severity. Learned senior counsel contended that the discretion of the authorities to award such an appropriate punishment could not be interfered with in view of the decision of this Court in Union of India v. G. Ganyutham (1997) 7 SCC 1806. In this case Hon"ble Apex Court has held that "in our view, this decision is not applicable to the facts of the case. Here the Court is not interfering with the punishment awarded by the employer on the ground that in the opinion of the Court the punishment awarded is disproportionate to the gravity of the misconduct. Here, the gradation of the punishments has been fixed by the rules themselves, namely, the rules of Bank of Cochin and the Court is merely insisting that the authority is confined to the limits of its discretion restricted by the rules. Inasmuch as the rules of Bank of Cochin have enumerated and listed out the punishment for "major misconduct", we are of the view that the punishment of "removal" could not have been imposed by the appellate authority and all that was permissible for the bank was to the confine itself to one or the other punishment for major misconduct enumerated in para 22(v) of the rules, other than dismissal without notice. The conclusion of ours also requires the setting aside of the punishment of "removal"

that was awarded by the appellate authority. Now the other punishments enumerated under para 22(v) are "warning or censure or adverse remark being entered, or fine, or stoppage of increments/reduction of basic pay or to condone the misconduct and merely discharge from service. The setting aside of the removal by the High Court and the relief of consequential benefits is thus sustained. The matter has, therefore, to go back to the appellate authority for considering imposition of one or the other punishment in para 22(v) other than dismissal without notice.

6. In view of the facts and circumstances of the case, we are of the view that before proceeding further after disagreeing with the findings of the inquiry officer, the disciplinary authority should have granted an opportunity to the Petitioner before recording of his own findings. The disciplinary authority should also have recorded its tentative reasons of disagreement after giving an opportunity to the Petitioner to represent his case before him.

7. In view of the above facts and circumstances, we are of the opinion that the impugned order of dismissal from service passed against the Petitioner is not sustainable in the eye of law.

8. In the result, the writ petition succeeds and is allowed. The impugned order of dismissal of the Petitioner from services is quashed. It will be open for the competent authority to pass a fresh order in accordance with law after proceeding from the stage of the report of the inquiry officer which was already submitted. Consequently, it is directed that the disciplinary authority shall take a decision in respect of reinstatement of the Petitioner and payment of the arrears of salary to him within a period of one month from the date of production of a certified copy of this order. It is also made clear that we have not considered the merits of the case one way or the other before the order of dismissal was passed. Consequently the Petitioner shall come at the stage in which he was enjoying.

9. No order as to costs.