

(2001) 01 MAD CK 0078

In the Madras High Court

Case No : Writ Petition No's. 11803 and 11804 of 1992 and 1087, 15947 and W.M.P. No's. 1674 and 24673 of 1993

Baliah David A.

APPELLANT

Vs

Regional Manager, Central Bank of India and Others

RESPONDENT

Date of Decision : 25-01-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 323A

Citation : (2002) 1 LLJ 270

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : A. Amarnath Rao, for A. Sivaji, for the Appellant; T.R. Mani, for I.M. Hariharan, for the Respondent

Judgement

V. Kanagaraj, J.—The writ petitioner, in connection with the disciplinary proceeding instituted against him by the disciplinary authority, at

different points of time, seeking different reliefs has filed all the above four writ petitions along with yet another in 1086 of 1996, of which, the other

W.P. No. 1086 of 1995 filed against the order dated January 2, 1990 suspending the writ petitioner since dismissed as infructuous, as per the

orders of this Court dated September 9, 1996, all the remaining four writ petitions, which are all in some form or other connected to the

disciplinary proceeding instituted against him, have been altogether taken up for a joint hearing as a result of which this common order is passed.

2. For the sake of convenience and easy reference, W.P. Nos. 11803 of 1992, 11804 of 1992, 1087 of 1993 and 15947 of 1993 are hereinafter

referred to as the first, second, third and fourth writ petitions respectively.

3. So far as the first writ petition in W.P. No. 11803 of 1992 is concerned, the

petitioner has filed the same praying to issue a writ of Certiorarified Mandamus calling for the records of the first respondent therein, the Regional Manager, Central Bank of India, connected to RO/STAFF/DAD/92-93/500, dated July 1, 1992 and quash the same, further directing the first respondent to appoint an Officer in the Bank as the Presenting Officer in the place of the fourth respondent viz. Thiru S. Natarajan, Inspector, Central Bureau of Investigation, A.C.B., Madras-6, on averments that by proceedings of the first respondent dated May 14, 1992, the third respondent was appointed Enquiry Officer and by another proceeding on the same day, one R. Sundara Gopalan, Scale-I Officer as Presenting Officer, but subsequently by proceeding dated July 1, 1992 in the place of R. Sundara Gopalan, the fourth respondent, S. Natarajan, Inspector of Police, Central Bureau of Investigation was appointed as the Presenting Officer and therefore canvassing the correctness or otherwise of the appointment of the fourth respondent as Presenting Officer the petitioner has filed the first writ petition above.

4. So far as the second writ petition in W.P. No. 11804 of 1992 is concerned, it has been filed by the petitioner praying to issue a Writ of Certiorarified Mandamus calling for the records of the third respondent, the Enquiry Officer, in E.G. No. 92, dated July 13, 1992 and quash the same and consequently direct him to permit the petitioner to avail the services of a lawyer on grounds that by petition dated July 3, 1992, he requested the Enquiry Officer to permit him to avail the services of a lawyer, for which by communication dated July 13, 1992, the Enquiry Officer intimated him that his request for availing the services of a lawyer was declined; that the refusal order of the Enquiry Officer is not in accordance with law and contrary to the Bipartite settlement, which has statutory force governing the cases and therefore the impugned order refusing to permit him to avail the services of a lawyer becomes liable to be set aside, that it is the usual practice of the Central Bank of India to have the disciplinary enquiry conducted by their own staff including the Presenting Officer and an outsider would not be appointed; that only in this case, an unknown procedure is adopted, which is detrimental to the interest of the petitioner and hence would pray for the relief extracted (supra).

5. The petitioner would file the third writ petition in W.P. No. 1087 of 1993 also,

praying to issue a Writ of Certiorarified Mandamus calling for the records from the second respondent in Ref. 91-92/327, dated September 19, 1991 and quash the same and ultimately direct the respondents therein to pay him the full pay and allowances from January 27, 1991 as subsistence allowance on ground that the petitioner was suspended by order dated January 28, 1990 by the first respondent therein; that at his request, the second respondent declined for payment of full pay and allowances by his order dated January 19, 1991; that the respondents ought not to have placed him under suspension and therefore, the full pay and allowances should have been paid to him after one year of suspension on account of dilatory tactics adopted by the authorities concerned; that he also issued a notice through his counsel on May 29, 1992 claiming full pay and allowances as subsistence allowance with no positive reply or compliance and hence this writ petition for the reliefs extracted (supra).

6. The last and the fourth writ petition filed by the petitioner in W.P. No, 15947 of 1993 is with the prayer to issue a Writ of Certiorari to call for the records relating to the proceedings of the second respondent the Regional Officer in RO/DAD/92-93, dated March 8, 1993 as confirmed by the order of the first respondent, the Zonal Manager, and quash the same. The order sought to be quashed by the petitioner in this writ petition is nothing but the order of the disciplinary authority inflicting the punishment of dismissal of the petitioner from service, as confirmed by the appellate authority, by his order dated July 13, 1993.

7. Tracing the history of the petitioner's case what comes to be known is that the petitioner was appointed the Cashier-cum-Godown Keeper in the Central Bank of India in 1970 and after some time, he was promoted as Head Cashier and while he was working at Tuticorin Branch in the said capacity, he was placed under suspension by the Regional Manager, Central Bank of India, Madurai as per his proceedings dated January 28, 1990 pending departmental enquiry. The charge memo, dated May 14, 1992 as issued by the disciplinary authority specifying the charges framed against the petitioner wherein only nine specific charges are seen to have been framed. It is of vital importance to note at the foot of the charges in the same charge memo, dated May 14, 1992 the appointment of one D. Krishnan, Branch Manager, Kalugumalai has been made to

hold the enquiry against him. There is also a separate notice accompanied by the said charge memo, In the Letter Head of the disciplinary authority

dated May 14, 1992 thereby appointing the said D. Krishnan, Branch Manager, Kalugumalai to act as the Enquiry Officer and further directing

him to hold the enquiry proceeding against the delinquent/ petitioner in respect of the charge-sheet dated May 14, 1992 addressing the same to the

Enquiry Officer further marking a copy of this notice to the petitioner. Then, the disciplinary authority, by his letter dated July 1, 1992 has

appointed one S. Natarajan, Inspector, C.B.I. as the Presenting Officer to present the Bank's case against the delinquent. Then, issuing the

addendum dated August 24, 1992 and correction memo, dated February 2, 1993 thereby adding seven more charges to the original charge

memo, containing charges Nos. 1 to 9, the final charge memo, altogether making out 16 charges therein, has been issued to the

delinquent/petitioner on February 2, 1993 thereby fixing the enquiry on February 5, 1993. The final charge memo issued to the petitioner contains

the charges as extracted hereunder:

Charge No. 1:

While working as a Head Cashier at the St. Marys College Extension Counter, Tuticorin during the period from September 18, 1980 to January

29, 1990 Sri. A. Baliah David had committed fraudulent manipulation and falsification of records and thereby defalcated to the tune of Rs.

6,89,700/-. During his tenure as Head Cashier he himself had prepared documents of several account holders. This includes creation of several

withdrawal slips creating the signatures and withdrawal of money from the accounts with mala fide intention. He had made fictitious credit entries

also without actual deposits by the account holders with a mala fide intention.

As an example:

1. On January 2, 1989 Mr. A. Baliah David had himself created the withdrawal slip in the HSS Account No. 32 of C. Pappy Mary Vimala Bai

and the signature of C. Pappy and withdrew Rs. 5000/- from the account and passed withdrawal slip with mala fide intention.

Charge No. 2:

On September 10, 1988 Mr. A. Baliah David had withdrawn Rs. 4000/- from the HSS Account 64 of Ms. P Rajeswari by signing the signature of

account holder in the withdrawal slip with a mala fide intention.

Charge No. 3:

On July 15, 1988 Mr. A. Baliah David had credited Rs. 5,000/- into the HSS Account 465 of Ms. M. Santhanamala by signing the account

holder's signature to hide his act of withdrawal of Rs. 5000/- from the same account on the same day by signing the signature of Ms. M.

Santhanamala.

Charge No. 4:

Mr. A. Baliah David had withdrawn Rs. 10,000/- from the HSS A/c. No. 900 of A. Judy Pinhero on August 2, 1988 by signing the account

holder's signature and he himself credited Rs. 10,000/- on October 3, 1988 in the same account.

Charge No. 5:

Mr. A. Baliah David in order to conceal his fraudulent acts, cooked up the balances, totals in the various books maintained at the Extension

Counter. He had altered the dates in the balance book indiscriminately by overwriting in the summary of balance book.

Eg. : Balance dated January 30, 1988 altered as January 30, 1989.

Date of February 24, 1988 altered as February 24, 1989.

Date of April 30, 1988 changed as April 30, 1989. But April 30, 1989 is a Sunday.

The above alteration of dates were done deliberately to convey the impression that balance was done in these months/dates.

Mr. A. Baliah David had deliberately cooked up wrong balances in the balance book to conceal his misdeeds.

Mr. A. Baliah David had manipulated the balances in such a way that the final figures in the balance book tallied with the General Ledger figure.

Mr. A. Baliah David had cooked up balances some months on dates other than the dates fixed for balancing. In some months Mr. A. Baliah David

has failed to note down the balances in spite of office orders to hide misdeeds.

Date fixed for balance as per office order Date of balance by A.B. David

23-8-88 03-9-88

21-9-88 5-10-88

26-10-88 Not noted

31-1-89 Not noted

27-4-89 Not noted

Charge No. 6:

Mr. A. Baliah David had posted the following entries in the ledger on the dates earlier than the actual date of transactions in order to cover up his

mala fide acts.

A/c. No. 998: Susila

Mr. A. B. David had defalcated on March 28, 1988 Rs. 3,000/- from the Account. He had credited Rs. 3,000/- as if it was credited on April 13,

1988 whereas the date of transaction is April 29, 1988.

Charge No. 7: (A/c. No. 465)

Mr. A. Baliah David had defalcated Rs. 5000/- on July 15, 1988 from the abovementioned account. He had credited Rs. 5,000/- on the same day

in that account that is July 15, 1988 whereas the correct date of transaction is August 2, 1988.

Mr. A. Baliah David was maintaining parallel ledger folios, i.e. more than one ledger folio for the same period for the same account maintained

simultaneously. Mr. A. Baliah David was surreptitiously interchanging the parallel folios in the ledger to conceal his mala fide intention.

A/c. 32

Oct. 87 to 27-1-89

27-1-89 to 27-4-89.

21-12-88 to 14-2-89

A/c. 64

17-10-88 to 10-4-89

30-12-88 to 3-2-89

Charge No. 9:

Mr. A. Baliah David while applying for a loan from the Bank to purchase a house for his own accommodation had given an undertaking (vide his

letter dated November 28, 1975) that the house would be occupied by the members of his family. But he had not occupied the house.

He had informed the bank (vide his letter dated November 28, 1975) that he had proposed to remodel the house according to his requirement

which he had not done.

He had undertaken that he would not let out the house for rent to outsiders (vide his letter dated November 21, 1975). Contrary to this, he had let out the house.

He had let out the house constructed by availing the Housing loan from the bank without getting prior permission of the bank. He had neither informed the bank about his letting of the house nor informed about the rent received by him. Thus he had misused the bank loan availed by him at concession rate of interest.

Charge No. 10

On February 13, 1988 Mr. A. Baliah David misappropriated a sum of Rs. 500/- out of the funds entrusted to him by the Bank, for the purpose of disposing to the account holders and to conceal his misappropriation. Mr. A. Baliah David fraudulently prepared a withdrawal slip as if the account was withdrawn from HSS A/c. 203 in the name of the Mr. G. Perumal in the said Bank and fraudulently given a credit entry in the said account for a sum of Rs. 200/- on November 1, 1988.

Mr. A. Baliah David, on April 19, 1988, misappropriated a sum of Rs. 100/- out of the funds entrusted to him by the Bank for the purpose of disposing to the account holders and to conceal his misappropriation, he fraudulently prepared a withdrawal slip as if the account was withdrawn from the HSS A/c. 203 in the name of Mr. G. Perumal in the said Bank.

Mr. A. Baliah David misappropriated Rs. 100/- on April 24, 1988 from the Banks funds using the fabricated withdrawal slip dated April 24, 1989 in the HSS A/c. 203 of Mr. G. Perumal.

Charge No. 11:

On September 2, 1988, Mr. A. Baliah David, misappropriated Bank funds to the tune of Rs. 14,000/- by preparing the withdrawal slip by himself in the HSS A/c. 877 of Ms. Ethel Grace C Ranjani. To hide his act of misappropriation, Mr. A. Baliah David, fraudulently had given a credit entry of Rs. 14,000/- in the said account on October 3, 1988.

Charge No. 12:

Mr. A. Baliah David defalcated an amount of Rs. 600/- on January 7, 1988 from the Bank's funds by preparing a withdrawal slip by himself as if

the amount is withdrawn from the HSS A/c. No. 1197 of S. Selvi.

Mr. A. Baliah David misappropriated Rs. 2,000/- from the Bank's funds entrusted to him and to conceal this act, Mr. A. Baliah David fraudulently

prepared the withdrawal slip for Rs. 2,000/- dated April 8, 1988 in the A/c. No. 1197 of S. Selvi as if the amount was withdrawn.

To cover up his abovementioned act, Mr. Baliah David, had fraudulently given a credit entry of Rs. 3,000/- on November 1, 1988 in the A/c.

1197 of S. Selvi.

Charge No. 13:

Mr. A. Baliah David had misappropriated on February 18, 1988 an amount of Rs. 3,000/- from the Bank's fund by using fraudulent withdrawal

slip prepared by him in the HSS A/c. 1327 of Sanikulan and AnthonyraJ.

Charge No. 14:

Mr. A. Baliah David on October 3, 1988 misappropriated Bank's funds entrusted to him, by fraudulently preparing the withdrawal slip for Rs.

15,000/- dated October 3, 1988 as if the amount is withdrawn from the HSS A/c. 1356 of N. Kulandai Theresa.

Charge No. 15:

On February 7, 1989. Mr. A. Baliah David misappropriated the Bank's funds entrusted to him by preparing a withdrawal slip by himself dated

February 7, 1989 for Rs. 2,000/- as if the amount is withdrawn from the HSS A/c. 1439 of K. Smily Muraix.

Charge No. 16:

With a view to cover up his misappropriation of Rs. 4,000/- on January 9, 1988 from the Bank's funds, using the withdrawal slip prepared by him

dated January 9, 1988 for Rs. 4,000/- in the HSS A/c. 482 of Mary Rajan, Mr. A. Baliah David has fraudulently given a credit entry of Rs.

4,000/- in the said account on January 21, 1988.

8. The Enquiry Officer has commenced his enquiry on February 5, 1993 with a preliminary hearing wherein the charges were explained and the

delinquent Officer has denied the same. Thereafter, the delinquent Officer having pleaded for permitting him to be defended by a lawyer which was

not conceded by the Enquiry Officer on ground that the Presenting Officer was neither a specialist nor a legally trained person and after an

adjournment of the Enquiry proceeding from February 5, 1993 to February 12, 1993 when the delinquent appeared before the Enquiry Officer

and handing over letter stating that a writ petition had been filed in the High Court and hence the Enquiry had become subjudice and in spite of the

advice tendered to participate in the enquiry and to make his submissions the delinquent left the enquiry hall informing that any communication in

this regard might be sent to him by Registered Post as a result of which the enquiry was proceeded in his absence on day to day basis up to

February 20, 1993.

9. During enquiry, the Presenting Officer produced three witnesses for oral evidence and further marked 91 documents for documentary evidence;

that having supplied with the copies of the list of evidence and the copy of the proceedings held every day, by Registered Post with further

opportunities and since there was no response from the delinquent Officer for participating in the enquiry, the same was proceeded in his absence

till February 15, 1993. Ultimately the Enquiry Officer gave his findings charge-wise based on the evidence on materials made available on record

holding that out of all the 16 charges, 15 charges have been proved against the delinquent barring one, as per the Enquiry Officer's report dated

February 22, 1993 based on which the disciplinary authority having issued a Memo in RO:DAD:92-93:142 dated March 4, 1993 proposing to

award the consolidated punishment of dismissal without notice, sought for the explanation from the delinquent and fixing March 8, 1993 for making

his submissions if any during Office hours at the Regional Office, Madurai, issued the Memo for which the delinquent submitted his explanation

stating that out of 101 documents produced by the Management during the enquiry proceedings, he was provided with only a portion of the same

and the rest of the documents were provided with only on February 15, 1993; that the correction Memorandum was issued to him on February 4,

1993 and the enquiry was fixed on February 5, 1993 when he appeared before the Enquiry Officer and represented to the effect that he was not

conversant with English and sought for the assistance of a lawyer to defend him with further adjournment of the case to some other date; that his

plea for engaging a lawyer and for adjournments have been rejected and hence he did not participate in the enquiry subsequently.

10. However, the Enquiry Officer carried on with the enquiry proceeding and found the delinquent guilty of all the charges framed and would submit his report and based on the findings of the Enquiry Officer, the disciplinary authority, remarking that the charges levelled against the delinquent except the one for defalcation of a withdrawal dated April 24, 1989 for Rs. 100/- in the account of G. Perumal, have been proved and further remarking that the charges proved are very grave in nature and the punishment of dismissal is the appropriate one and would ultimately inflict the consolidated punishment of dismissal without notice under Para 19.6(a) of the Bipartite Settlement, as per the order of the disciplinary authority dated March 8, 1993.

11. Against this punishment of dismissal without notice, as inflicted by the disciplinary authority, the delinquent would prefer an appeal as per the memorandum of appeal dated April 2, 1993, before the appellate authority and the Assistant General Manager on grounds that (1) the charges levelled against him are only bald allegations and not proved facts; (ii) that the Management only relied on six account holders and two Officers but none of the six prime witnesses have been examined, but mainly relying on the depositions of the official witnesses and that of the handwriting expert, the disciplinary authority held the charges levelled against him proved, which is wrong; (iii) that the appellant was not given any opportunity to reply the charges and it is nothing short of denial of opportunity, in violation of natural justice and (iv) that it is a predetermined conclusion by the Enquiry Officer being the paid employee of the Bank and as such the findings of the Enquiry Officer are perverse and contrary to law.

12. The appellate authority having dealt with the above grounds of appeal one by one and for reasons assigned would ultimately arrive at the conclusion that on basis of evidence placed, the disciplinary authority had imposed the punishment of dismissal without notice on the appellant/delinquent which is quite commensurate with the gravity of the misconduct committed by him and there is no reason to interfere or set aside the order of disciplinary authority and would ultimately confirm the order of the disciplinary authority namely, dismissal without notice dated March 8, 1993 and would dispose of the appeal accordingly, as per his order dated June 1, 1993 and the said order of the appellate authority was

communicated to the delinquent by the Regional Manager of the Central Bank of India his proceeding in RO:STFF:93-94:1053, dated July 13,

1993. It is only challenging both the orders of dismissal passed by the disciplinary authority dated March 8, 1993 and the confirmation order by

the appellate authority dated June 1, 1993 the petitioner has filed the fourth writ petition above in W.P. No. 15947 of 1993 praying to quash the

same by issuing a Writ of Certiorari or any other appropriate writ.

13. From out of all the above four writ petitions, the first writ petition in W.P. No. 11803 of 1992 is regarding the appointment of a C.B.I.

Inspector as the Presenting Officer by order dated July 1, 1992 and on a representation made on the part of the petitioner, the said appointment of

the C.B.I. Inspector as the Presenting Officer had been cancelled and another person namely R. Sundaragopala got appointed as Presenting

Officer and hence this writ petition, on account of the request of the petitioner having been complied with, has become infructuous, even during the

pendency of enquiry.

14. So far as the second writ petition filed by the writ petitioner in W.P. No. 11804 of 1992 is concerned, this writ petition has been filed by the

petitioner challenging the denial of assistance of a lawyer as per the order passed by the Enquiry Officer dated July 13, 1992. Now, since the

enquiry itself is over with the finality of the decision arrived at in the very enquiry held and an appeal had also been gone through, the relief sought

for in this writ petition no more persists since such questions could be answered before the commencement of or even during the enquiry. Now,

since the very enquiry is over and the decision has been rendered, nothing surviving so far as the relief sought for in this writ petition is also

concerned and therefore this writ petition has also become liable to be dismissed as infructuous.

15. The other two writ petitions viz. the third and fourth writ petitions in W.P. Nos. 1087 of 1993 and 15947 of 1993 are only relevant for

consideration as things stand today and therefore parties are heard on these two writ petitions, taking up both jointly in order to pass a common

order since the issues involved in both these writ petitions are interconnected and interrelated.

16. In the counter-affidavit filed by the first respondent, he would generally deny

the allegations of the petition and would specifically allege that the petitioner confessed that he defalcated the amounts to the tune of Rs. 6,89,700/- by making forged withdrawal slips and other documents and creating bogus records to escape the attention of the checking-officials when the fraud was detected on January 27, 1990; that he was placed under suspension as per the order dated January 28, 1990 of the Regional Manager, Madurai pending departmental enquiry; that a complaint had also been lodged with the C.B.I. for further investigation and the petitioner was remanded to judicial custody for 15 days and the cases were registered as C.C. Nos. 160 and 161 of 1992 on the file of the Special Court, C.B.I. Cases, Madurai.

17. The further contentions of the counter affidavit are that simultaneous departmental enquiry had also been instituted serving the chargesheet dated May 14, 1992 and with sufficient opportunity for the petitioner to participate in the enquiry proceeding but he did not choose to avail the opportunity: that however, the departmental proceedings continued resulting in a finding given by the Enquiry Officer to the effect of the charges proved leading to the dismissal of the petitioner on March 8, 1993 by the disciplinary authority and that the appeal preferred by the delinquent before the appellate authority also came to be dismissed on June 1, 1993. The counter affidavit would then narrate the events that took place during the departmental enquiry including the claims and objections made on the part of the petitioner on various aspects and procedures adopted by the Enquiry Officer.

18. Dealing with the subsistence allowance claimed by the petitioner in one of the writ petitions in W.P. No. 1087 of 1993 above, the counter affidavit would draw the attention of the Court to para 19.12 (d) of the Bipartite Settlement in terms of which the petitioner was placed under suspension pending enquiry: that since no valid reason has been assigned challenging the order of suspension dated January 28, 1990, there is no substance in claiming full pay and allowances during the period of suspension. At this juncture, the counter affidavit would cite Para 557 of the Sastry Award and Para 17. 14 of the Desai Award relating to payment of subsistence allowance to the effect that when the enquiry is by an outside agency for the first six months 1/3rd of the pay and allowances which the

workmen would have got but for suspension, and thereafter half of the pay and allowances for the succeeding months until the enquiry is over, that in partial modification of para 557 of the Sastry Award and Para 17.14 of the Desai Award, the provisions which will apply in terms of the subsequent Bipartite Settlement in the matter of payment of subsistence allowance to workmen under suspension are:

a) where the investigation is not entrusted to or taken up by an outside agency (i.e. Police/CBI) subsistence allowances will be payable at the

following rates:

i) For the first three months 1/3 of the pay and allowances which the workman would have got but for the suspension.

ii) Thereafter 1/2 of the pay and allowances.

iii) After one year, full pay and allowances, if the enquiry is not delayed for reasons attributable to the concerned workman or any of his representatives.

19. The counter affidavit would further narrate para 19.4 of the Bipartite settlement dealing with payment of full wages and allowances to an

employee, who was suspended pending investigation by an outside agency, like police or C.B.I. as follows:

If after steps have been taken to prosecute an employee or to get him prosecuted for offence he is not put on trial within a year of the commission

of the offence, the management may then deal with the matter as if he had committed an act of "gross misconduct" or "minor misconduct", as

defined below:

Provided that if the authority which was to start prosecution proceedings refuses to do so or come to the conclusion that there is no case for

prosecution, it shall be open to the management to proceed against the employee under the provisions set out below in Clauses 19.11 and 19.12

infra relating to discharge, but he shall be deemed to have been on duty during the period of suspension if any and shall be entitled to the full wages

and allowances and all other privileges for such period.

20. Citing the above passage from the Bipartite Settlement, the counter affidavit would further go to reveal that since the petitioner got suspended

for commission of the offence of fraud, the C.B.I. instituted the criminal

prosecution and therefore he is not entitled to full wages during the period of suspension in terms of Para 19.4 of the Bipartite Settlement and this position has been clearly held to be correct by the High Court of Judicature at Madras in its order made in W.P. No. 11647 of 1989, dated January 8, 1992 and would further submit that the case in hand does not fall under the modified portion of the Bipartite Settlement now in force regarding payment of subsistence allowance, which is applicable only for those cases wherein investigation is not entrusted or taken up by an outside agency: that the present case also cannot fall under Para 557 of the Sastry Award and Pars 17.4 of the Desai Award and therefore the letter issued by the Bank on September 19, 1991 regarding the payment of subsistence allowance is perfectly in order and there is no reason for the petitioner in claiming full pay and allowances during the period of suspension: that a suitable reply dated June 1, 1992 had been issued to the legal notice sent by the petitioner dated May 29, 1992: that it is further incorrect to say that the first respondent has no power, to place the petitioner under suspension since the order of suspension was passed by the Regional Manager, who is the competent authority and according to the Bipartite provisions, even a show-cause memo, prior to passing the order of suspension is not necessary. On such and other rebuttals of the allegations of the writ petitions, this respondent would pray to dismiss the writ petitions with costs.

21. During arguments, the learned counsel appearing on behalf of the petitioner, tracing the history of the case right from the time of the petitioners appointment in the Central Bank of India in the year 1970 as Assistant Cashier-cum-Godown Keeper, would submit that while the petitioner was working at St. Mary's College Extension Counter as Head Cashier, the suspension order was served on him on January 28, 1990 without any basis, pending departmental enquiry, serving the said order, mechanically, on a Sunday and commencing the enquiry after two years of such suspension, serving the charge memo. On May 14, 1992 and appointing the Enquiry Officer straightway without even a show-cause notice to the petitioner nor any explanation called for pertaining to the charges. The learned counsel would also submit that simultaneous criminal proceedings was also instituted handing over the case to C.B.I. and that in the said case, the

petitioner got convicted and sentenced to undergo Rigorous

Imprisonment for a period of one year. At this juncture, the learned counsel for the petitioner would cite two judgments, the first one delivered by

the Full Bench of Allahabad High Court in State of U.P. v. Jai Singh reported in 1977 LIC 73 wherein it is held that ""the suspension could be

ordered only pending enquiry."" The other Judgment cited by the learned counsel for the petitioner is one delivered by the Apex Court in P.R.

Nayak Vs. Union of India (UOI), : wherein it is held that for the suspension of the member of the service, initiation of disciplinary proceeding is

condition precedent.

22. Citing the above judgments, the learned counsel would point out that there was no complaint against the petitioner nor any enquiry instituted

nor pending; that regarding suspension, the Management is not even able to quote the correct provision of law since subsequently they came

forward to say that the provision quoted was not applicable to the petitioner. The learned counsel would cite another judgment delivered by the

Calcutta High Court in Satkari Chatterji Vs. Commissioner of Police, : wherein it is held that ""the suspension is bad, if it is not followed by the

Charge-sheet within a reasonable time."" Citing this judgment, the learned counsel for the petitioner would submit that in this case, the charge memo,

was issued only on May 14, 1992 i.e. after a lapse of two years and four months from the date of suspension. The learned counsel would lay

emphasis on the procedural irregularity and lack of opportunity in not serving the show-cause notice seeking explanation on the charge memo,

dated May 14, 1992 and straightway appointing the Enquiry Officer. For this irregularity, the learned counsel would cite a judgment of the Orissa

High Court delivered in Bhagirathi Sahu v. Orissa University of Agriculture and Technology reported in 1989 L I C (NOC) 15 wherein it has been

held that ""in disciplinary proceedings, the Enquiry Officer cannot be appointed at the time of framing and service of charges on delinquent without

an opportunity to show cause, which would only show the pre-conceived mind and ill-intention of the Management.

23. The learned counsel would then focus his attention on the vagueness of charges stating that the charge memo is not clear; that it is not only the

charges but also the amounts alleged to have been is appropriated, which are

net clearly given; that at one place, they may come forward to say that the defalcation of money was to the extent of Re. 6,89,700/- covering the period from September 18, 1980 to September 20, 1990 but at another place, it is specified with Rs. 24,000/- and that he has given credit to Rs. 1,25,000/-. The learned counsel would attribute these anomalies in defalcation to non-application of mind as to how the money was accounted for. He would also point out that the period was 1988 and 1989: that there had been internal auditing of the Bank fortnightly, periodically and half yearly and annually, that not a single complaint had been lodged against the petitioner in those auditings at all: that on July 3, 1989, the successor of the petitioner took over the position. The learned counsel would point out that the criminal complaint was lodged on February 1, 1990 for defalcation of Rs. 79,500/- during the period in between 1988 and 1989, that the enquiry was over in the year 1993 itself without fair opportunity for him, but conducting the same in an ex parte manner which is unbecoming on the authorities conducting the disciplinary proceeding and the petitioner was victimised ultimately. The learned counsel would point out that the statute provides the assistance of a lawyer and would point out Rule 11-19.8. He would also cite two judgments, the first one is delivered by a Division Bench of the Karnataka High Court in G.V. Aswathanarayana Vs. Central Bank of India and others, wherein it is held at p. 1138 of LLJ:

When the charges run into 25 pages and the documents to be considered are more than 300, it is not possible to agree with the disciplinary authority that in that circumstance of the case, there is no necessity to permit the delinquent officer employee to engage a legal practitioner. It is not possible for the delinquent who is not trained in law to put forth his defence effectively without the assistance of the lawyer. Though the Presenting Officer is not trained in law, the delinquent official is entitled to have the assistance of the legal practitioner in the facts and circumstances of the case. Hence, the disciplinary authority has not exercised its discretion properly and judiciously.

The second judgment cited by the learned counsel for the petitioner is one delivered by the Apex Court in M/s Cipla Ltd. and Others Vs. Ripu Daman Bhanot and Another, : wherein a Medical Representative of the appellant

company challenged the termination of his services, by raising an industrial dispute, which was referred to the Labour Court for adjudication and the Labour Court held that he was not a workman and dismissed the reference. But the High Court remanding the matter back to the Labour Court, held on the second occasion that the domestic enquiry was not fair and proper as the respondent was not allowed the assistance of an advocate and on appeal, the Supreme Court observed, after referring to the appellant Company's Service Rules, Rule 16 in particular, that "a delinquent employee could avail of the assistance of a co-representative of his choice in departmental proceedings. But, a delinquent employee had no right to be represented by an advocate in such proceedings.

24. Citing the above proposition of law, the learned counsel would point out that the statute under Rule 11-19.8 provides the assistance of a lawyer and since the permission was not granted for such assistance by the Enquiry Officer, the whole proceeding vitiated. Along with this, coupled with the delay in the enquiry and without opportunity to participate in the enquiry since the dismissal order was passed by the disciplinary authority, the finding of the authority is perverse and biased; that no customer was examined whose money is alleged to have been taken away by the delinquent officer and the important witnesses were not examined thereby failing to project the best of evidence and finally saying that no loss occurred to the Bank, even according to P. W. 25 and therefore it is a case that is to be allowed and would pray to allow the above writ petitions with costs.

25. In reply, the learned senior counsel appearing on behalf of the respondents would submit that the petitioner, the Bank employee, got convicted by the Criminal Court on several counts for defalcation of a total amount of Rs. 1,86,000/- and Rs. 3, 93,500/- by different types of manipulations, misappropriation, falsification of accounts, breach of trust and corrupt practices and hence two sets of cases were registered by the C.B.I. respectively in C.C. Nos. 50/95 and 51/95 on the file of the Special Court for Prosecution of C.B.I. Cases, Madurai and got convicted on several counts and sentenced to undergo imprisonment for different terms besides being fined to the tune of Rs. 3,55,500/- as per the conviction and sentence passed by the said Court in its Judgment dated July 31, 1997; that

these writ petitions have been filed in the years 1992 and 1993 but the prosecution had already started by then; that absolutely there is no reference regarding the prosecution in the writ petitions, which ultimately ended in conviction; that from out of the five writ petitions filed on the part of the petitioners from time to time. W.P. No. 1086 of 1993 has been filed against the suspension order dated January 8, 1990 and the same had been disposed of as infructuous as early as on September 9, 1996 itself; that from out of the other four writ petitions, W.P. Nos. 11803 and 11804 of 1992, which have been filed respectively against the order of appointment of the C.B.I. Inspector as the Presenting Officer by order dated July 1, 1992 and against the denial of the assistance of a lawyer by order dated July 13, 1992 have become infructuous since the enquiry is now over and a final order dismissing the petitioner from out of the service has been passed on March 8, 1993 and the same was also confirmed even on appeal by the appellate authority by his order dated June 1, 1993 and therefore the only two writ petitions with which we are now concerned are against the order of refusal to pay the full pay and allowances dated September 19, 1991 in W.P. No. 1087 of 1998 and against the dismissal order dated March 8, 1993, which came to be confirmed on appeal by order dated June 1, 1993 i.e. W.P. No. 15947 of 1993.

26. Tracing the manner in which the petitioner resorted to file the writ petitions in general, the learned senior counsel would point out that for an order dated July 1, 1992 and July 13, 1992 respectively against the appointment of the C.B.I. Inspector as the Presenting Officer and against the denial of the assistance of a lawyer, he has filed the writ petitions in the year 1992 itself but whereas against the suspension order dated January 28, 1990 and for refusal to pay full pay and allowances by order dated September 19, 1991, the petitioner has filed the writ petition only in the year 1993; that even though no limitation is prescribed, Courts have decided fixing the normal time to challenge in three months or at the most in six months period by means of a writ petition. The learned senior counsel would point out that challenging the suspension order dated January 28, 1990, the petitioner has filed W. P. No. 1087 of 1993 on January 19, 1993 knowing that the other two writ petitions have become infructuous, which have been filed in the year 1992 and only with the view to delay and

prolong the matter, he has come forward to file this writ petition

challenging the suspension artificially, which has become stale and worn out; that in this writ petition, he has absolutely no grievance at all in law.

27. Regarding the claim of full pay and allowances, the learned counsel would cite an already decided case by a single Judge of this Court in W.P.

No. 11647 of 1989 wherein the position has been fully discussed and decided in the context of paragraph 19.4 of the Bipartite Settlement and the

learned single Judge has ultimately dismissed a similar plea of the petitioner therein.

28. Dealing with the other writ petition concerned with the dismissal of the petitioner, the learned counsel would point out that the petitioner comes

forward saying that he was not given an opportunity but in fact, he did not participate in the enquiry in spite of adequate opportunities being

afforded to; that peculiarly, the delinquent has sent a lawyer's Notice to the Enquiry Officer, the Presiding Officer which is unbecoming on the part

of the delinquent.

29. The learned senior counsel pointing out the brief reply submitted on the part of the respondents would submit that under paragraph 19.4 of the

Bipartite Settlement, Bank had to wait for one year for launching the enquiry and after one year, Bank took up the matter with C.B.I. and after

obtaining sanction on January 29, 1992 from C.B.I., proceeded departmentally against the petitioner with respect to accounts not covered under

C.B.I. enquiry and the charge memo, has been issued on May 14, 1992 with specific charges and hence there is no delay in launching enquiry after

suspension as argued by the learned counsel for the petitioner. The learned senior counsel would further submit that the argument of the other side

that charges are not specific is utterly false as seen from the charge memo, and that the Bipartite Settlement does not contemplate any show cause

notice against framing of charges.

30. Regarding the plea of the petitioner that no opportunity was given to the petitioner to defend himself, the learned senior counsel for the

respondents would submit that even though the petitioner obtained only limited stay for three weeks by order dated June 12, 1992 in W.M.P. No.

16778 of 1992 the Bank did not proceed with the enquiry so long as the stay petition remained undisposed of; that on January 28, 1993, the stay

petition came to be dismissed by a single Judge of this Court and thereafter enquiry was commenced on February 5, 1993; that the petitioner appeared and wanted time; that seven days time was granted by the Enquiry Officer; that on February 12, 1993, the petitioner represented that he has filed further writ proceedings and that the enquiry should not be held and he declined to participate and left, but no orders of Court were produced; that in fact no order was obtained by the petitioner and the Writ Appeal filed by him against the order in W.M.P. No. 16778 of 1992 in W.P.No. 11803 of 1992 also came to be dismissed; that though the petitioner declined to participate in the proceedings, the petitioner was put on notice of the proceedings by supplying copies of daily proceedings held through registered post and certificate of posting and he has also been advised by separate letters dated February 16, 1993 and February 19, 1993 and that the petitioner has declined to avail of the opportunities afforded to him.

31. Regarding the plea of the petitioner that there is no complaint against the petitioner even though auditings were over, the learned senior counsel for the respondents would submit that the petitioner was in charge of St. Mary's College Extension Counter, Tuticorin from 1980 till July 3, 1989, when Mr. G. Srinivasan was posted; that the petitioner had defalcated huge amounts to the tune of nearly even lakhs by making forged withdrawal slips and other documents, created bogus receipts and cooked up accounts to escape attention and after the next officer took charge, the fraud committed by the petitioner came to light.

32. For the argument of the learned counsel for the petitioner that the charges were not proved, the learned senior counsel for the respondents would reply that the Officer, who succeeded the petitioner has been examined as M.W. 1 and he is the most competent person to speak about the offence committed by the petitioner as he discovered the same and the forged signatures were sent to handwriting experts for verification with specimen signatures and he has been examined as M.W. 3.

33. Regarding the claim of the petitioner that he was not paid full pay after one year from January 28, 1990, the learned senior counsel for the respondents would submit that the point is covered by Para 19.4 of Bipartite Settlement and the question of payment of full wages will arise only if

the authority which was to start prosecution proceedings refuses to do so or comes to the conclusion that there is no case for prosecution and in

this case, the petitioner has been prosecuted and has also been convicted and the matter is covered by the decision of this Court dated January 8,

1992 made in W.P. No. 11647 of 1989.

34. The learned senior counsel would further bring to the notice of the Court that from the year 1980 to the year 1989, it was the petitioner, who

was in charge of the St. Mary's College Extension Counter of the Bank and only on July 3, 1989, when he got transferred from that Branch and

another Officer took over the charge, the defalcation committed all through by the petitioner came to be detected wherein defalcation to the tune of

nearly seven lakh rupees has been found out and that excepting one of the charges from out of 16, all other charges came to be proved according

to the Enquiry Officer. The learned senior counsel would also cite some decided cases by the Apex Court for certain legal propositions held

therein, the first one being Union Bank of India Vs. Vishwa Mohan, : wherein it is observed at pp. 1220 & 1221 of LLJ:

A bare look at these charges would unmistakably indicate that they relate to misconduct of a serious nature. The High Court also committed an

error when it assumed that when the respondent was promoted as a bank officer, he must be having a good report otherwise he would not have

been promoted. This finding is totally unsustainable because the various acts of misconduct came to the knowledge of the Bank in the year 1989

and thereafter the first charge sheet was issued on February 17, 1989. The respondent was promoted as a bank officer sometime in the year

1988. At that time, no such adverse material relating to the misconduct of the respondent was noticed by the Bank on which his promotion could

have been withheld. We are again unable to accept the reasoning of the High Court that in the facts and circumstances of the case ""it is difficult to

apply the principle of severability as the charges are so inextricably mixed up. If one reads the four charge-sheets, they all relate to the serious

misconduct which include taking bribe, failure to protect the interest of Bank, failure to perform duties with utmost devotion, diligence, integrity and

honesty, acting in a manner unbecoming of a bank officer etc. In our considered view, on the facts of this case, this principle has no application but

assuming that it applies yet the High Court has erred in holding that the principle of severability cannot be applied in the present case. The finding in

this behalf is unsustainable. As stated earlier, the appellant had in his possession the enquiry report/findings when he filed the statutory appeal as

well as the writ petition in the High Court. The High Court was required to apply its judicial mind to all the circumstances and then form its opinion

whether non-furnishing of the report would have made any difference to the result in the case and thereupon pass an appropriate order.....

After hearing the rival contentions, we are of the firm view that all the four charge-sheets which were enquired into relate to serious misconduct.

The respondent was unable to demonstrate before us how prejudice was caused to him due to non-supply of the enquiry authority's

report/findings in the present case. It needs to be emphasised that in the banking business absolute devotion, diligence, integrity and honesty needs

to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would

be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the

respondent on the ground of prejudice on account of non-furnishing of the enquiry report/findings to him.

35. The second Judgment cited by the learned senior counsel for the respondents one delivered by the Apex Court in *Tara Chand Vyas Vs.*

Chairman and Disciplinary Authority and Others, : wherein it is held:

Shri B. D. Sharma, learned counsel for the petitioner, contends that for proof of the charges none of the witnesses was examined nor any

opportunity was given to cross examine them and the petitioner has disputed his liability. As a consequence, the entire enquiry was vitiated by

manifest error apparent on the face of the record. We find no force in the contention. The thrust of the imputation of charges was that he had not

discharged his duty as a responsible officer to safeguard the interest of the Bank by securing adequate security before the grant of the loans to the

dealers, and had not ensured supply of goods to the loanees. It is based upon the documentary evidence which has already been part of the record

and copies thereof had been supplied to the petitioner. Under those circumstances, we do not think that there is any manifest error apparent on the

face of the record warranting interference. It is then contended that no reasons have been given in support of the conclusions to substantiate the charges. The enquiry officer had elaborately discussed each charge and given reasons which were considered by the disciplinary authority and reached the conclusion that the charges were proved. So had the appellate authority. They are not like a civil Court.

36. The third judgment cited by the learned counsel for the respondent is one delivered in State of Tamil Nadu and another Vs. S. Subramaniam, :

wherein it has been held:

The Tribunal is not a Court of appeal. The power of judicial review of the High Court under Article 226 of the Constitution of India was taken

away by the power under Article 323A and invested in the Tribunal by the Administrative Tribunals Act, 1985. It is settled law that the Tribunal

has only power of Judicial review of the administrative action of the appellant on complaints relating to service conditions of employees. It is the

exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge has been proved or

not. It is equally settled law that technical rules of evidence have no application to the disciplinary proceedings and the authority is to consider the

material on record. In judicial review, it is settled law that the Court or the Tribunal has no power to trench on jurisdiction to appreciate the

evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is

made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily

correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, the Tribunal is devoid of power

to reappreciate the evidence and come to its own conclusion on the proof of the charge. The only consideration the Court/ Tribunal has in its

Judicial review is whether the conclusion is based on evidence on record and support the finding or whether the conclusion is based on no

evidence.

37. The fourth Judgment cited by the learned counsel for the respondents is one delivered in N. Rajarathinam Vs. State of T.N. and Another, :

wherein it has been held at p. 225 of LLJ:

Taking all the facts and, the circumstances of the case, the Government had accepted the finding of the Tribunal that preponderance of probabilities did establish that the petitioner had demanded and accepted illegal gratification from P.W. 1 and thereby he committed misconduct rightly leading to dismissal from service. This finding having been based upon the evidence of P.W. 1, it cannot be said that the finding is based upon no evidence. It is for the disciplinary authority to take into consideration all the relevant facts and circumstances. If all the relevant facts and circumstances and the evidence on record are taken into consideration and it is found that the evidence establishes misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in the service. Though this Court is empowered to go into the question as to the nature of the punishment imposed, it has to be considered in the peculiar facts and circumstances of each case. No doubt, there is no allegation of misconduct against the officer during his earlier career. But it does not mean that proved allegation is not sufficient to impose the penalty of dismissal from service. Considered from this perspective, we think that there is no illegality in the order passed by the Tribunal warranting an interference.

38. The next judgment cited by the learned counsel for the respondents is one delivered by the Apex Court in *State of Haryana and Another Vs.*

Rattan Singh, : wherein it has been held at p. 47 of LLJ:

In a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible, though departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Evidence Act. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations, and observance of rules of natural

justice. Fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment, vitiate the conclusion reached, such a finding, even of a domestic Tribunal, cannot be held to be good. The simple point in all these cases is, was there some evidence or was there no evidence - not in the sense of the technical rules governing Court proceedings but in a fair common sense way as men of understanding and worldly wisdom will accept. Sufficiency of evidence in proof of the finding by a domestic Tribunal is beyond scrutiny by Court, while absence of any evidence in support of the finding is an error of law apparent on the record and the Court can interfere with the finding.

39. The last judgment cited in support of the case of the respondents is one delivered in High Court of High Court of Judicature at Bombay

through its Registrar Vs. Udaysingh Nimbalkar and Others, : wherein the Apex Court extracted the Judgment of a Bench of three Judges of the

Apex Court delivered in B.C. Chaturvedi Vs. Union of India and others, :

Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of Judicial review is meant to

ensure that the Individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye

of the Court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether

the inquiry was held by a competent office or whether rules of natural justice are complied with. Whether the findings or conclusions are based on

some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion.

But that finding must be based on some evidence, Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein,

apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is

entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate

authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the

authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural Justice or in violation of statutory rules

prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion

or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and

mould the relief so as to make it appropriate to the facts of each case.

In *Union of India and Others Vs. S.L. Abbas*, : when the order of transfer was interfered with by the Tribunal, this Court held that the Tribunal was

not an appellate authority which could substitute its own Judgment to that bona fide order of transfer. The Tribunal could not, in such

circumstances, interfere with orders of transfer of a Government servant. In *The Administrator of Dadra and Nagar Haveli, Silvassa Vs. H.P.*

Vora, : it was held that the Administrative Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the

efficiency bar of a public servant. Recently in *State Bank of India and Others Vs. Samarendra Kishore Endow and Another*, : a Bench of this

Court of which two of us (B.P. JEEVAN REDDY and B. L. HANSAARIA, JJ.) were members, considered the order of the Tribunal, which

quashed the charges as based on no evidence, went in detail into the question as to whether the Tribunal had power to appreciate the evidence

while exercising power of judicial review and held that Tribunal could not appreciate the evidence and substitute its own conclusion to that of the

disciplinary authority.

With this, the learned senior counsel would end up his arguments praying to dismiss the above writ petitions with costs.

40. In consideration of pleadings by parties, having regard to the materials placed on record and upon hearing the learned counsel for both what

this Court has to now consider are the two writ petitions filed by the petitioner in W.P. No. 1087 of 1993 praying to quash the order of the Bank

dated September 19, 1991 fixing the subsistence allowance as half of the pay till the enquiry was over and refusing to pay the full pay and

allowances to the petitioner from January 27, 1991 as subsistence allowance and the other writ petition filed in W.P. No. 15947 of 1993 praying

to quash the order of the disciplinary authority inflicting the punishment of dismissal from service on the petitioner as per the order dated March 8,

1993 and later confirmed by the appellate authority as per his order dated July

13, 1993.

41. So far as W.P. No. 1087 of 1993 is concerned, it is regarding the payment of subsistence allowance. The claim of the petitioner is that the

petitioner was suspended by the order dated January 28, 1990 by the first respondent, that at his request, the second respondent declined the

payment of full pay and allowances that is due from January 27, 1991 i.e. one year immediately after the date of suspension, as per the order dated

January 19, 1991 passed by the second respondent. The further claim of the petitioner is that the suspension order ought not have been resorted to

in the circumstances of the case and therefore full pay and allowances should have been paid to him from immediately after one year of his

suspension; that in spite of a notice issued dated January 29, 1992 through his counsel claiming full pay and allowances as subsistence allowance,

since his request was not considered, the petitioner is compelled to move this Court seeking direction for the payment of full pay and allowances as

subsistence allowance.

42. On the contrary, on the part of the respondents, it would be argued that only in terms of Para 19.12(b) of the Bipartite Settlement, the

petitioner was placed under suspension on January 28, 1990, pending enquiry, and that in terms of Para 556 of the Sastry Award and Para 17.14

of the Desai Award when the enquiry is by an outside agency, for the first six months, 1/3rd of the pay and allowances..... and thereafter half of

the pay and allowances for the succeeding months to be paid as subsistence allowance until the enquiry is over; that in partial modification of these

awards and in terms of the subsequent Bipartite Settlement ""where the investigation is not entrusted to an outside agency such as Police/C.B.I. the

subsistence allowance payable will be (I) for the first three months at the rate of 1/3rd of the pay and allowances, (ii) thereafter half of the pay and

allowance, and (iii) after one year, full pay and allowances, if the enquiry is not delayed for reasons attributable of the workman and further that ""if

the authority, which was to start prosecution proceedings refuses to do so or come to the conclusion that there was no case for prosecution he

shall be deemed to have been on duty during the period of suspension and shall be entitled to the full wages and allowances and all other privileges

for certain period.

43. Citing these governing Rules, it would be argued on the part of the respondents that the question of payment of full wages would arise only if the authority, which was to start prosecution proceeding refuses to do so or comes to the conclusion that there is no case for prosecution and since in the case in hand, the petitioner has been prosecuted for grave charges, which ended in conviction also, the matter is covered by the decision of this Court dated January 8, 1992 made in W.P. No. 11647 of 1989 wherein a single Judge of this Court dealing with similar situation, quoting paragraph No. 19.4 of the Bipartite Settlement, remarked that ""payment of full wages will arise only on two contingencies being satisfied: (1) the authority which was to start prosecution proceedings refuses to do so; and (2) the authority which was to start prosecution proceedings comes to the conclusion that there is no case for prosecution"" and further opining that neither of the contingencies has been satisfied and undoubtedly, the prosecution is pending on the basis of a charge sheet and therefore, it cannot be said that the outside agency has either refused to prosecute the petitioner or had come to the conclusion that there was no case for prosecution and this is sufficient to reject the claim of the petitioner and ultimately remarking that ""the petitioner had not made out any case for payment of full wages during the pendency of suspension"" would dismiss the writ petition. The conclusions arrived at in the above referred case, since passed exactly on similar facts, the same analogy squarely applies to the case in hand and therefore there is no question of granting full pay and allowances as claimed by the petitioner in W. P. No. 1087 of 1993 and it should be mentioned that there is no merit in the above writ petition and the same becomes liable to be dismissed.

44. Coming to the other writ petition filed by the petitioner in W. P. No. 15947 of 1993, it has been filed praying to call for the records of the proceeding of the second respondent in his RO : DAD 92-93, dated March 8, 1993 as confirmed by the order of the first respondent Zonal Manager in RO STAFF 93-94:1053, dated July 13, 1993 and quash the same. The orders ought to be quashed by the petitioner in this writ petition are respectively the order of the disciplinary authority inflicting the punishment of dismissal from service on the petitioner and confirmation of the same by the appellate authority on appeal as per his order dated July 13, 1993. Since these orders are the culmination of the entire

disciplinary proceeding, they are of vital importance and a little tracing of the history of the case regarding the service of the writ petitioner in the respondent management, the enquiry proceeding initiated on charges framed, the opportunity afforded by the writ petitioner, the very conduct of the enquiry, the finding rendered by the Enquiry Officer, the further opportunity afforded for the petitioner on the preliminary conclusions arrived at by the disciplinary authority to inflict the punishment of dismissal from service, the explanation offered, the disciplinary authority inflicting the punishment of dismissal on the petitioner from service, the appeal preferred and orders passed by the appellate authority confirming the order of the disciplinary authority which are sought to be quashed by the petitioner in this writ petition, would all help to arrive at a valid decision in the above writ proceeding.

45. The writ petitioner has joined the service of the respondent/Management in the year 1970 as Cashier-cum-Godown Keeper and on promotion as Head Cashier, had been posted in that capacity at St. Mary's College Extension Counter, Tuticorin on September 18, 1980 where he continued in the same capacity till January 28, 1990 when he was served with the order of suspension pending enquiry for alleged delinquencies and having indulged in fraudulent manipulations and falsification of records thereby defalcating to the tune of Rs. 6,89,700/- which includes creation of several withdrawal slips and withdrawing money, forging the signatures of the account holders and having made fictitious entries without actual deposits by the account holders with mala fide intention of misappropriating various sums to the tune of Rs. 6,89,700/-.

46. The disciplinary authority would then frame the charges as per the chargesheet dated May 14, 1992 followed by an addendum dated August 24, 1992 again followed by a correction memo, dated February 2, 1993 and also would appoint one D. Krishnan. Branch Manager, Kalugumalai Branch as the Enquiry Officer to hold the enquiry against the delinquent petitioner as per its order dated May 14, 1992 i.e. on the very date of framing of the first chargesheet and thereafter would issue the addendum and the correction memo respectively dated August 24, 1992 and February 2, 1993, making out 16 specific charges against the petitioner.

47. The Disciplinary Authority would then frame the charges as per the

chargesheet dated May 14, 1992 whereunder not only nine specific charges have been brought forth but also in the very charge-sheet itself, the Disciplinary Authority would appoint Shri D. Krishnan, Branch Manager, Kalugumalai as the Enquiry Officer to hold the enquiry against the delinquent/petitioner as per the charge memo, dated May 14, 1992.

Thereafter, the addendum dated August 24, 1992 to the charge memo, had been issued followed by yet another correction memo dated February 2, 1993 and it is only in the correction memo dated February 2, 1993, 16 specific charges have been brought forth by the Disciplinary Authority against the petitioner. Based on this correction memo wherein ultimately 16 charges have been brought forth the Enquiry Officer would fix the date of enquiry to be on February 5, 1993" i.e. on the third day of finalising the chargesheet. It is relevant for consideration and noteworthy of two aspects consciously raised on the part of the writ petitioner not only before the Appellate Authority in the grounds of appeal but also highlighting the same in the very writ petition to the effect (i) that the appellant was not given an opportunity to reply the charges and that it is nothing short of denial of opportunity in violation of the principles of natural justice; (ii) that even while the final charge memo, is arrived at by the Management by its correction memo dated February 2, 1993, the Enquiry Officer would fix the date of enquiry to be on February 5, 1993, i.e. on the third day of finalising the charges thus again denying sufficient and reasonable opportunity for the writ petitioner to analyse the charges, collect the relevant materials, to have his own consultations and to take the defence and collect the materials and to get ready to face enquiry in all respects.

48. However, the Enquiry Officer would commence the enquiry on February 5, 1993 with the preliminary hearing wherein the charges were explained to the delinquent which he denied further requesting to permit him to be defended by a lawyer and the said request has been rejected by the Enquiry Officer on ground that the Presenting Officer was neither a specialist nor a legally trained person and therefore the petitioner seeking the assistance of a lawyer is not required in the circumstances of the case. Thereafter with a short adjournment of the enquiry proceeding as requested by the petitioner, the enquiry has been posted on February 12, 1993 when the delinquent did appear before the Enquiry Officer and

made a written representation to the effect that he had filed writ petition in the High Court and hence the enquiry had become subjudice, thus

pleading not to proceed with the enquiry. The Enquiry Officer refusing to adjourn the enquiry proceeding on such ground, had insisted the writ

petitioner to face the enquiry and make his submissions, but the delinquent is reported to have left the enquiry hall informing the Enquiry Officer that

any communication could be sent by registered post as a result of which the Enquiry Officer continued the enquiry proceeding in the absence of the

petitioner on day to day basis.

49. While so, on February 20, 1993 the Presenting Officer appears to have produced three witnesses for oral evidence and marked 91 documents

for documentary evidence and in spite of having transmitted copies of the proceedings of every day by registered post with further opportunities for

the petitioner to be heard, since there was no response from the delinquent, the Enquiry Officer continued with the enquiry proceedings and gave

his finding to the effect that all but one charge have been proved, based on which the disciplinary authority having issued a memo dated March 4,

1993 as per his proceeding in RO: DAD 92-93:142, dated March 4, 1993 proposing to award the consolidated punishment of dismissal without

notice, has sought for explanation from the delinquent further informing that if any submissions were to be made, he would do it on March 8, 1993

at the Regional Office, Madurai during office hours.

50. It further comes to be known that the delinquent also submitted his explanation stating that out of 101 documents produced by the management

during enquiry, he was provided with only a portion of the same in time and the rest were provided only on February 15, 1993; that the correction

memo was issued to him only on February 4, 1993 but the enquiry was fixed on February 6, 1993 as a result of which he sought for not only a

reasonable opportunity to consider the charge-sheet and the documents connected but also sought for the copies of the documents to be served in

Tamil alleging that he was not conversant with English language further seeking permission for the assistance of a lawyer to defend him. Rejecting

all his pleas, the disciplinary authority gave his verdict inflicting the proposed punishment of dismissal from service without notice. Aggrieved, the

delinquent preferred an appeal before the appellate authority, the first

respondent-Divisional Manager.

51. On the part of the delinquent/ petitioner, his grievances are four fold. They are, (i) the charges levelled against him are only bald allegations and not proved facts (ii) that the management only relied on six account holders and two officers but none of the six prime witnesses have been examined, but mainly relying on the depositions of the official witnesses and that of the handwriting expert, the disciplinary authority held the charges levelled against him proved, which is wrong; (iii) that the appellant was not given any opportunity to reply the charges and it is nothing short of denial of opportunity, in violation of natural justice and, (iv) that it is a predetermined conclusion by the Enquiry Officer and the same is perverse and contrary to law.

52. On the contrary on the part of the Managements they would come forward to allege that in spite of the best opportunity afforded to him, the petitioner did not avail those opportunities and stayed away from the enquiry proceeding thereby exhibiting a hostile attitude towards the whole enquiry proceeding and therefore it cannot be attributed either for lack of opportunity or for adoption of irregular procedures by the Enquiry Officer nor the conclusions arrived at by the Enquiry Officer could be termed as predetermined nor could any mala fide intention or motive be attributed to the punishment inflicted by the disciplinary authority.

53. The appellate authority, the first respondent herein and the Assistant General Manager, Zonal Office, Madras, would examine the case in detail as putforth in the memorandum of appeal and found by the Enquiry Officer and the punishment inflicted by the disciplinary authority and would find all the charges except one related to defalcation of Rs. 100/- in HSS A/c. No. 203 which was not presented by the Presenting Officer, were held substantially proved. The appellate authority further found that the Management had afforded all reasonable opportunities to the appellant to establish his innocence, which the appellant failed to avail. The appellate authority would also find that there was no transgression of the principles of natural justice as alleged on the part of the appellant. It would also find that the Enquiry Officer had arrived at his logical conclusion based on the documentary proof, deposition of witnesses and there was no miscarriage of justice whatsoever. He would also note that the authority had given

due weightage to all the aspects and on the basis of evidences made available had imposed the punishment of dismissal without notice on the appellant, which he found quite commensurate with the gravity of the misconduct committed by the delinquent and therefore he did not see any reason to interfere with or to set aside the order of the disciplinary authority and would ultimately confirm the same viz. dismissal without notice thus dismissing the appeal preferred by the petitioner. It is only to quash these orders of the disciplinary authority dated March 8, 1993 and the appellate authority dated July 13, 1993 as well the writ petitioner has filed this fourth writ petition W.P. No. 15947 of 1993.

54. Since sufficient discussions have been held on W.P. No. 1087 of 1993 seeking the relief of payment of full pay and allowances as subsistence allowance and conclusions have been arrived at while dealing with the said writ petition, no more discussion on that aspect need be necessary and therefore it is the last writ petition in W.P. No. 15947 of 1993, which has been filed challenging the infliction of punishment of dismissal without notice which needs discussion and decision.

55. On the part of the petitioner, the learned counsel appearing on his behalf would cite number of decided cases, the first among them is one reported in 1977 LIC 73 (supra) wherein it is held that ""the suspension could be ordered only pending enquiry"". The second judgment cited is one reported in P.R. Nayak Vs. Union of India (UOI), wherein it is held that ""for the suspension of the member of the service, initiation of disciplinary proceeding is a condition precedent."" The third judgment cited is also one concerned with the suspension reported in Satkari Chatterji Vs.

Commissioner of Police, wherein it is held that ""the suspension is bad, if it is not followed by the charge-sheet within a reasonable time."" All these three Judgments pertain to the stage of suspension, during pendency of the enquiry or at any rate prior to a decision reached in the enquiry proceeding itself. Since on conclusion of the enquiry proceeding the very decision is arrived as based on the finding of the enquiry officer as a whole, any such decision arrived at either finding the delinquent guilty of the charges followed by the punishment or finding him not guilty of the charges in which event the delinquent would be absolved of the charges wherein the question of suspension goes. Since in the case in hand, a

decision was arrived at in the disciplinary proceeding holding the delinquent guilty of the charges followed by the infliction of punishment of

dismissal from out of service, the very writ petition filed by the delinquent based on the suspension order passed having become infructuous, these

decisions cited on the writ of the petitioner become irrelevant for consideration.

56. The next judgment cited in support of the case of the appellant is one reported in 1989 Labour and Industrial Cases NOC 15 (supra) wherein

it has been held ""in disciplinary proceedings, the Enquiry Officer cannot be appointed at the time of framing and service of charges on the

delinquent without an opportunity to show cause, which would only show the preconceived mind and ill-intention of the Management."" For this

show cause notice to be served on the delinquent by the disciplinary authority at the time of serving the charges seeking explanation to the charges

preliminary, on the part of the respondents, it would be argued that there is no provision made available in the Bipartite settlement to issue such a

show cause notice on the delinquent with opportunity to explain the charges so as to raise the other plea that prior to such an opportunity the

Enquiry Officer cannot be appointed much less along with the service of charge memo.

57. The next judgment cited by the learned counsel for the petitioner is one reported in G.V. Aswathanarayana Vs. Central Bank of India and

others, wherein it is held in the facts and circumstances of that particular case that ""though the Presenting Officer is not trained in law, it is not

possible for the delinquent to putforth his defence effectively without the assistance of the lawyer and therefore he is entitled to have the assistance

of a legal practitioner"". Another judgment reported in M/s Cipla Ltd. and Others Vs. Ripu Daman Bhanot and Another, would also be cited by the

learned counsel for the petitioner wherein, in the case of a Medical Representative, who was terminated from his services, the Labour Court held

that he being a workman was not entitled to such facility. But, the High Court remanding the matter to the Labour Court held that the domestic

enquiry was not fair and proper as the delinquent was not allowed the assistance of an Advocate. But, on an appeal, the Supreme Court has

observed referring to the Company's Service Rules that the delinquent employee could avail the assistance of a co-representative of his choice in

departmental proceeding and that he has no right to be represented by an Advocate in such proceedings.

58. Though it is vehemently argued on the part of the learned counsel for the petitioner that the Rules provide for assistance of a lawyer. On the

part of the Management they would cite healthy propositions propounded by the upper fora of law to the effect that still it is up to the Enquiry

Officer to decide in the circumstances of each case, wherein only if the Presenting Officer is a legally trained person or lawyer, the delinquent

would be unevenly placed and an imbalance would be created, with detrimental effect on the delinquent and that in such cases wherein the

Presenting Officer is not a legally trained person but a departmental man, there is no necessity to consider and permit the delinquent to have the

assistance of a lawyer and only on such grounds, the Enquiry Officer has dismissed the plea of the petitioner to have the assistance of a lawyer.

This argument advanced on the part of the respondent being sensible and reasonable, it has to be held here that the delinquent is not entitled to

have such assistance of the lawyer and it has been rightly decided on the part of the Enquiry Officer in refusing to permit him to have such

assistance which later came to be rightly confirmed by the appellate authority also.

59. On the part of the respondents too certain legal propositions would be pressed into service by their counsel, the first one reported in Union

Bank of India Vs. Vishwa Mohan, wherein the Apex Court without agreeing to the High Court holding that in view of the good report of the

delinquent in the past and the promotions obtained, no charge relating to those periods could sustain since only because he was above board, he

was promoted and held that since the charges are of such nature and inextricably mixed up and hence it is difficult to apply the principles of

severability. The Apex Court further observing that in the Banking business absolute devotion, diligence, integrity and honesty need to be

preserved by every Bank employee in particular the Bank Officer, has ultimately held that the High Court had committed an error in setting aside

the order of dismissal of the delinquent on ground of prejudice.

60. The learned counsel for the respondents would also cite the following judgments reported in:

1. Tara Chand Vyas Vs. Chairman and Disciplinary Authority and Others, :
2. (1996) 7 SCC 509
3. N. Rajarathinam Vs. State of T.N. and Another, :
4. State of Haryana and Another Vs. Rattan Singh, :
5. High Court of Judicature at Bombay through its Registrar Vs. Udaysingh Nimbalkar and Others, :

All the above cases have been cited in support of the case of the respondents insisting one point i.e. either the Tribunal or the High Court, in

exercise of the power of judicial review, cannot act as an appellate forum and cannot enter into the reappraisal or reappraisal of the evidence,

which is the domain of the statutory authorities, nor could it even normally interfere in the quantum of punishment inflicted, but the judicial review is

only to ensure that the delinquent receives fair treatment, that the procedural aspects of law are thoroughly observed and in short, the essence of

judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice that fair play is the

basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusion reached, such finding, even of a

Domestic Tribunal is beyond scrutiny by Court while absence of any evidence in support of the finding is an error of law apparent on the face of

record and the Court can interfere with the finding.

61. No doubt, it is the settled law that no rules of evidence have application to the disciplinary proceedings and the authorities are to consider the

materials on record. It is further settled that the High Court sitting in Judicial Review cannot, normally, trench on the jurisdiction to appreciate the

evidence and arrive at its own conclusion as a second appellate authority, as though it is an appeal from a decision, but a review of the manner in

which the decision is arrived at. Therefore, the judicial review of this Court is to ensure that the delinquent receives fair treatment, that the

procedure is thoroughly followed, that there is no denial of opportunity in violation of the principles of natural justice and that no patent errors of

law nor perversity in approach occurs in the manner in which the conclusions are arrived at and only on such periphery, this Court could exercise

its jurisdiction to interfere with such conclusions. In such circumstances, the grounds such as the Management relied on its own witnesses without

examining a single account holder as the witness in proof of the charges and that the Management has arrived at the pre-determined conclusion etc.

cannot be interfered with by this Court whereas the two strong grounds alleged on the part of the writ petitioner before the appellate authority and

before this Court as well are (i) that the petitioner was not afforded with sufficient and reasonable opportunity to reply the charges and to consider

the materials relied on by the Management, which is nothing short of denial of opportunity in violation of the principles of natural justice and (ii) that

the manner in which the evidence is appreciated and the conclusions are drawn are perverse, need a little discussion and decision.

62. The ground of denial of opportunity, as alleged on the part of the writ petitioner is dual in nature, the first one being that he was not afforded

with any opportunity to reply the charges prior to resorting to appoint the Enquiry Officer and secondly that his reasonable request for an

adjournment demanding all materials relied upon by the Management prior to commencing the enquiry proceeding has not been considered as a

result of which neither he had the opportunity to rebut the charges as framed, explaining the circumstances under which the charges or some of the

charges should not have been framed at all, so that the disciplinary authority, on such explanation submitted, could decide whether the enquiry itself

is necessary in the circumstances of the case nor after the service of the final charge-sheet did he have the reasonable time and opportunity to go

through the charges; and collect such materials and set up his defence since there was no adequate time allowed for him to get ready to face the

enquiry, in spite of his request made for an adjournment on February 5, 1993 when the Enquiry Officer posted the case to commence the enquiry

proceeding. Since he was not provided with sufficient time and opportunity he was not able to participate in the very enquiry proceeding and has to

abstain from the same. It is relevant to point out at this juncture that the other request of the petitioner seeking permission to engage a lawyer to

defend him has been rightly rejected on the part of the Enquiry Officer assigning the reason that such assistance of lawyer is not required since the

Presenting Officer is not a legally trained person and only if he is a lawyer, he could claim that he was unevenly placed in the enquiry proceeding as

against a legally trained person and therefore the Management is right in its rejecting the plea of the writ petitioner seeking permission to defend him

by a Lawyer in the enquiry proceeding.

63. Coming to the aspect of denial of opportunity at two stages, first while serving the charges and subsequently in fixing the date of enquiry after

such service of the charge memo, these are the two aspects pertaining to the denial of opportunity which is highlighted by the writ petitioner not

only before the appellate authority but before this Court as well. There cannot be different opinions regarding the position of law on this principle of

affording sufficient and reasonable opportunity for the delinquent at every stage of enquiry. None of the judgments cited, particularly on the part of

the respondents, speaks to the effect of either to deny or even curtail the fair opportunity that the delinquent is entitled to in law and in accordance

with the high principles of natural justice at any stage of the enquiry nor could there be one either. Contrarily, the judgments so far rendered by the

upper fora of law particularly the Honourable Apex Court are unique and unequivocal to the effect of laying emphasis on fair opportunity to be

afforded to the delinquent at all stages and in every manner.

64. While such being the position, it is relevant to apply the norms of law and the legal propositions to the case in hand so far as it relates to the

charge of the writ petitioner that he was denied of the due in the affording of fair opportunity by the disciplinary authority at the time of serving the

charges, seeking explanation to the same preliminarily and secondly after deciding to conduct the enquiry and effecting the service of charge memo,

on the writ petitioner by allowing sufficient and reasonable time for him to get ready to defend his case in all fairness.

65. The learned counsel appearing on behalf of the writ petitioner citing the judgment delivered by the Orissa High Court in Bhagirathi Sahu v.

Orissa University of Agriculture and Technology (supra) wherein it is held that in disciplinary proceedings, the Enquiry Officer cannot be appointed

at the time of framing and service of charges on delinquent without an opportunity to show cause, which would only show the preconceived mind

and ill-intention of the Management and would exhort that this proposition squarely applies to the case in hand. There is no denying of the fact that

an opportunity afforded to the delinquent to explain the charges will not only preliminarily reflect the true state of affairs but also lot of informations

regarding either the truthfulness or the falsity of the charges or some of the

charges at least, would be revealed and at this stage itself the disciplinary authority, on receipt of the explanation offered on the part of the delinquent, would be able to decide whether really the enquiry has to be carried on against the delinquent on all the charges as framed or whether it has to be rescinded with or even to delete one or two charges from out of the whole charges framed, so as to make the enquiry a fruitful and purposeful one without allowing the situation for vagueness to prevail at large. In such an exercise, the possibility of the disciplinary authority to arrive at the preliminary satisfaction whether the enquiry is really required and to do away with the same or at least to do away with some of the charges if the enquiry is held. In the case in hand, we are able to see that the Enquiry Officer has been appointed in the very charge-sheet itself thereby denying not only the opportunity for the delinquent to explain the charges but also the disciplinary authority declining itself to arrive at the preliminary satisfaction whether the enquiry should really be held and if it is decided to be held whether on all the charges framed or regarding some of the same based on the explanation submitted by the delinquent. Therefore, in these circumstances, this Court is in perfect agreement with the sentiments expressed by the Orissa High Court in its judgment cited supra reported in 1989 LIC 15 thereby holding that in disciplinary proceedings, the Enquiry Officer cannot be appointed at the time of framing and serving the charges on the delinquent without an opportunity to show-cause, which would only show the preconceived mind and ill-intention of the Management which applies to the case in hand in all fours. It is therefore held here that the act of the Management in appointing the Enquiry Officer in the very charge memo, itself is nothing short of an act of denial of opportunity for the writ petitioner to preliminarily explain the charges framed resulting in violation of the high principles of natural justice.

66. Coming to the second aspect of the denial of opportunity, it is the admitted case on the part of the respondents herein that the enquiry commenced on February 5, 1993 i.e. on the third day of the disciplinary authority coming out with the correction memo, whereby the definite charges are arrived at and there is no need to mention that the interregnum period is only two days. Even this period of two days is disputed by the petitioner stating that the charge memo was served on him only on February 4,

1993 virtually with no time left for the petitioner to consider the charges and get ready for the enquiry to defend himself. Furthermore, the petitioner would allege that all the materials relied upon by the Management were not supplied to him but he was asked to get ready to face the enquiry on February 5, 1993. No valid or tangible reasons have been assigned on the part of the disciplinary authority for having denied an adjournment reasonably sought for on the part of the writ petitioner and not to conduct the enquiry proceeding so early and therefore it cannot under any circumstance, be held that the delinquent had been afforded with sufficient and reasonable opportunity as required by law. It is further relevant to mention, that on February 5, 1993, when it was fixed for the commencing of the enquiry proceeding, the writ petitioner having promptly appeared before the Enquiry Officer and admittedly making a request to adjourn the case, since he would require so more time to consider the materials relied upon by the Management and in spite of such a reasonable request, the Enquiry Officer would reject his request and proceed with the enquiry, as a result of which, it should be held that the petitioner is quite justified in abstaining from the enquiry since he did not at all have any time to get himself equipped with all such materials to face the enquiry at all. It is not at all fair on the part of the enquiry Officer to have not considered the reasonable request made on the part of the petitioner so as to allow a little latitude of time for him to make his defence and to come prepared to face the enquiry proceeding. This attitude exhibited on the part of the Enquiry Officer is nothing short of denial of opportunity and it should have been taken note of by the disciplinary authority and the appellate authority as well, who do not seem to have considered this lack of opportunity. On the contrary, they have ratified the act of denial of opportunity by the Enquiry Officer, which is not only unjustifiable on their part but also quite repugnant to the principles of the domestic enquiry. This denial of opportunity is also nothing short of violation of natural justice and therefore this Court has no hesitation in holding that the whole enquiry proceeding has vitiated for lack of due opportunity for the petitioner to be heard in all fairness especially in view of the fact that he was facing serious charges.

67. In view of the denial of due opportunity in violation of the principles of

natural justice which is quite evident and established from the very proceeding conducted by the disciplinary authority, as aforesaid, this Court is left with no option but to set aside the order of the disciplinary authority/the Regional Manager, Central Bank of India, Regional Office, Madurai dated March 8, 1993 in RO : DAD 92-93 inflicting the punishment of dismissal without notice on the petitioner and as confirmed by the order dated July 13, 1993 in RO Staff: 93-94 by the appellate authority/the Zonal Manager, Zonal Office, Egmore, Madras since both these authorities have failed to note the non-compliance of this legal necessity. However, since the charges are serious in nature, this Court is of the further view to give liberty to the respondents to order for a re-enquiry in compliance of the legal requirements and the procedures established by law.

In result,

- (i) W.P. Nos. 11803 and 11804 of 1992 are dismissed as infructuous;
- (ii) W.P. No. 1.087 of 1998 is dismissed as without merit;
- (iii) W.P. No. 15947 of 1998 succeeds and the same is allowed;
- (iv) the order of the second respondent impugned in W. P. No. 15947 of 1993 made in RO : DAD 92-93, dated March 8, 1993 and the order passed by the first respondent in RO Staff: 93-94, dated July 13, 1993 are hereby quashed.
- (v) However, the respondent/Management is at liberty to reinstitute the disciplinary proceeding from where the flow crept in as indicated above with sufficient and reasonable opportunity for the petitioner to be heard as held by the upper fora of law and in accordance with the rules and procedures established by law.

68. Consequently, W. M. P. No. 1674 of 1993 is dismissed and W. M. P. No. 24673 of 1993 is closed.

69. However, in the circumstances of the cases, there shall be no order as to costs.