

(1996) 10 AP CK 0049
In the Andhra Pradesh High Court
Case No : Writ Petition No. 16657 of 1994

B.V. Ramnarayan

APPELLANT

Vs

State Bank of India, Hyderabad and Others

RESPONDENT

Date of Decision : 17-10-1996

Acts Referred:

Border Security Force Act, 1968 — Section 11(2)
State Bank of India (Supervisory Staff) Service Rules, 1975 — Rule 92

Citation : (1996) 4 ALT 753 : (1997) 1 LLJ 1007

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : E.S. Ramachandramurthy, for the Appellant; K. Srinivasamurthy, for the Respondent

Judgement

1. The action of the respondent-State Bank of India dated April 13, 1988 declaring that the petitioner voluntarily abandoned the service with effect from August 29, 1983 and thereby forfeited his appointment in terms of Rule 92 of the State Bank of India (Supervising Staff) Service Rules, for short "the Rules", is called in question in this writ petition.

2. The petitioner joined the services of the bank as Probationary Officer in the year 1970 and he was confirmed in the service as Officer Grade I with effect from August 1, 1971. In the year 1983, the petitioner was serving as Officer MM-II in the Bible House branch of the bank at Secunderabad. On July 22, 1983, the Regional Manager of the bank issued an order transferring the petitioner to Nandyal branch of the bank as an officer. Sensing that he would be transferred to Nandyal branch of the bank, the petitioner, in advance, had submitted a representation dt. June 21, 1983 to the Chief Regional Manager. In the said representation, he had pointed out that he was suffering from heart disease; life saving drugs prescribed by the doctors were in short supply in the city itself; he would not be able to procure life-saving medicines and expert treatment to the heart disease at Nandyal. Ultimately, the petitioner, in the said representation,

requested the Chief Regional Manager to retain him in the city. After the transfer order was issued on July 22, 1983, the petitioner again submitted another representation dt. July 26, 1983 to the Chief Regional Manager, drawing the attention of the latter to the earlier representation. Along with the said representation, the petitioner also enclosed a medical certificate dated July 16, 1983 issued by Dr. Umeshchander, Assistant Cardiologist, Osmania General Hospital. The petitioner requested the Chief Regional Manager to reconsider his decision and to give him a suitable posting in the city on compassionate humanitarian grounds. On August 10, 1983, the petitioner again submitted another letter to the Regional Manager by registered post referring to the earlier representations and his desire to undergo surgery for the ailment. In the said letter, the petitioner stated that the surgery and the post-operative recovery would likely to take three months time and requested the Regional Manager to grant three months leave as special sick leave with effect from August 27, 1983. On September 13, 1983, the petitioner submitted another letter to the Chief Regional Manager pointing out the delay in sanctioning the leave and paying salary for the leave period. The Regional Manager, after considering the representations of the petitioner, issued an order on November 14, 1983 modifying the earlier transfer order, and transferred the petitioner as an officer to the Kurnool branch of the bank. The petitioner was directed to report for duty at the transferred place immediately. The petitioner admittedly did not report for duty at the Kurnool branch nor did he submit any leave application. It seems quite extraordinary on the part of the bank-management to keep aloof in not taking any action till June 27, 1987. On June 27, 1987, the Regional Manager issued a Memo which reads :

"State Bank of India, Sri B. V. Ram Narayan Region - V (Staff), 18, Viman Nagar, Regional Office, Balamrai, Hyderabad. Secunderabad-3

Memo No. 004728 dated June 27, 1987

UNAUTHORISED ABSENCE FROM DUTY

It is observed that you are absenting from duty unauthorisedly since August 29, 1983.

2. With further reference to our letter Staff Con-No. 31 dated February 21, 1985 and your letter dated September 27, 1985, you are, therefore, advised to report for duty at Kurnool Branch within 3 days of the receipt of this Memorandum and explain the reasons for your absence.

Sd/-

Regional Manager".

The petitioner sent his reply on July 8, 1987. In the said reply, the petitioner referred to his earlier request for grant of special sick leave and payment of leave salary. In the said letter, the petitioner categorically stated that he had no intention to disobey the administrative fiat of the bank. The petitioner stated that

though the management transferred him first to Nandyal branch and subsequently to Kurnool branch, in the transfer orders it was not stated in which capacity he should go to the transferred place and report for duty. The petitioner questioned the management whether he should go to the transferred place as a "Farash, peon/messenger or as Branch Manager". He asked the Regional Manager to clarify the position. At this stage itself, I may point out that the clarification sought by the petitioner was totally unjustified and mischievous. In both the transfer orders issued by the bank on July 22, 1983 and November 14, 1983 transferring the petitioner to Nandyal branch and Kurnool branch respectively, it was clearly stated that the petitioner was transferred to those branches as an officer. The petitioner, despite the memo issued by the Regional Manager on June 27, 1987, did not report for duty at Kurnool branch. Then came the memo dated July 18, 1987 of the Regional Manager which reads :

"State Bank of India Shri B. V. Ram Narayan, Region - V, 18, Viman Nagar, Regional Office, Balamrai, Hyderabad Secunderabad-3. Memo No. 005300 Dated : July 18, 1987 UNAUTHORISED ABSENCE FROM DUTY

It is observed that you are absenting from duty unauthorisedly since August 29, 1983. In this connection, please also refer to our Registered A.D. Notice No. 4728 dated June 27, 1987 and a copy of the notice No. 4728 dated June 27, 1987 sent by Ordinary Post instructing you to report for duty at Kurnool Branch within 3 days of the receipt thereof and explain the reason for your absence. You have, however, so far not complied with the instructions contained therein.

2. You are again advised to report for duty and submit satisfactory explanation for your absence within 3 days of the receipt of this Memorandum, failing which you will be liable for forfeiture of your appointment in the Bank, in terms of Rule 92 of the State Bank of India (Supervising Staff) Service Rules or any of the penalties specified in Rule 49 *ibid*. Please note that not only your appointment will stand forfeited in terms of Rule 92 of the Service Rules but also it will be presumed that you have voluntarily abandoned duties or resigned from service without giving requisite notice and such resignation having been permitted on your being required to pay 3 months' total emoluments in lieu of the notice period.

Sd. Regional Manager".

Here, again, the Regional Manager gave opportunity to the petitioner to report for duty at Kurnool branch within 3 days from the date of receipt of the memo and warning the petitioner that if he fails to do so he would be liable for forfeiture of his appointment in the bank in terms of Rule 92 of the Rules. This opportunity and the warning administered by the Regional Manager went in vain. The petitioner, without reporting for duty at Kurnool branch, submitted his reply on July 31, 1987 to the memo issued by the Regional Manager on July 18, 1987. The reply says that the petitioner never absented himself unauthorisedly, and the petitioner contended that even after the transfer order was issued on November

14, 1983, he was described as an Officer of the bank in the call letters sent to him on March 12, 1984 and January 21, 1985 for consideration of his candidature for promotion to MM scale III. Further, the petitioner referred to his earlier communication seeking clarifications as to in what capacity he should report at the Kurnool branch. This is what the petitioner stated in the letter : "I seek the earlier clarifications on the points sought for by me to enable me to report at the Kurnool branch at the very earliest". Despite issuance of the two Memos June 27, 1987 and July 18, 1987 giving the petitioner opportunity to report for duty at Kurnool branch, the petitioner did not report for duty and kept aloof. Under the circumstances, the Chief General Manager issued a notification on April 13, 1988 and the same was caused to be published in the issue of Indian Express dated April 18, 1988. It reads :

"NOTIFICATION STATE BANK OF INDIA Local Head Office Hyderabad PUBLIC NOTICE Shri B. V. Ram Narayan, Shri B. V. Ram Narayan, 18, Viman Nagar, Plot No. 10, Balamari, Railway Colony, Secunderabad-3 Near A.O.C. Gate, West Maredpally, Secunderabad-500026

UNAUTHORISED ABSENCE - VOLUNTARY ABANDONMENT OF SERVICE

You are absenting from duty unauthorisedly since August 29, 1983. The two registered acknowledgement due notices dated June 27, 1987 and July 18, 1987 have been returned undelivered with the remark "PARTY CONTINUOUSLY ABSENT".

2. You have failed to report for duty and you have forfeited your appointment in terms of Rule 92 of the Supervising Staff Service Rules. This is also to notify the forfeiture of your service and voluntary abandonment of service with effect from August 29, 1983. You are hereby requested to pay 3 months total emoluments within 15 days of this publication, failing which the Bank will be constrained to set off the same against your Provident Fund Account without prejudice to recovering the full amount or part thereof by suit.

HYDERABAD LOCAL HEAD OFFICE DATE : APRIL 13, 1988. K. S. Purohit Chief General Manager, Appointing and Disciplinary Authority State Bank of India, Hyderabad Circle".

3. This led to the petitioner making certain representations to the Chief General Manager again reiterating the earlier stand taken by him and requesting the Chief General Manager to reinstate him into service. The petitioner, it seems, had enclosed the news clipping from the issue of the Indian Express dated June 8, 1983 wherein the news of the judgment of the Supreme Court in D.K. Yadav Vs. J.M.A. Industries Ltd., , was reported. The General Manager (Operations) turned down the request of the petitioner by his letter dated June 1, 1994. Hence this writ petition assailing the validity and legality of the Office Order issued by the Chief General Manager dated April 13, 1988 and the order of the General Manager (Operations) dated June 1, 1994.

4. The Bank management has filed counter-affidavit resisting the claim of the petitioner. In the counter, it is urged that the petitioner, for the reasons best known to him, kept quiet for over 11 years after his unauthorised continuous absence; and therefore there is an inordinate delay in approaching this Court and on that ground alone the writ petition is liable to be dismissed in limine without going into the merits of the case; the facts of the case would clearly indicate that the petitioner voluntarily abandoned the employment; the petitioner did not apply for any leave by way of a formal application after August 10, 1983; despite giving all opportunity to the petitioner to report for duty at the Kurnool branch, he deliberately did not report for duty inasmuch as he had no mind to serve in any place except in the twin cities; as on August 22, 1983 the petitioner had exhausted all his leave and he had neither casual leave, nor earned leave, nor privilege leave to his credit, and even out of the maximum sick leave entitlement of 360 days, the petitioner had availed 356 days and in addition to that leave, he was sanctioned extraordinary leave for more than five months; the request of the petitioner was considered compassionately with a humane touch and therefore the first transfer order was modified and he was posted to the Kurnool branch of the bank in Kurnool city where there is a full-fledged medical college with a teaching hospital where all the modern facilities for treating heart ailments are available; the petitioner had no mind to go out of the city and he wanted to stay in Hyderabad-Secunderabad only because his wife Smt. Swarna Ramanarayan started a unit by name M/s. Fornate Chemicals in Hyderabad by availing loan of Rs. 4.69 lakhs from the respondent-bank's branch at Jeedimetla in 1982 and therefore, he wanted to be in Hyderabad only to assist her in her business/enterprise the bank management had taken necessary steps to comply with the principle of "fairness in action" and principles of natural justice before the impugned action was taken, and no case is made out for interference.

5. Sri E. S. Ramachandra Murthy, the learned counsel appearing for the petitioner, quite vociferously and applying the best in him, would contend that the impugned actions suffer from errors apparent on their face and the same could not be sustained in law. Elaborating the submission, the learned counsel would point out that the impugned action was taken in utter violation of Rules 49 and 50 and in violation of principles of natural justice. The learned Counsel would also submit that there was absolutely no justification for the bank management not to grant leave requested by the petitioner and paying him leave salary. The learned counsel would also submit that on the basis of the evidence on record, it could not be said that the petitioner voluntarily abandoned the job inasmuch as the petitioner, although was quite eager and interested to be in the services of the bank. In support of his submissions, the learned counsel would place reliance on the decisions of this Court in *M. Krishnam Raju, Asst. Technical Officer, Commercial Electronics Group, ECIL Vs. The Electronics Corporation of India and Others*, ; *The Managing Director, Non-Conventional Energy Development Corporation of A.P. Ltd. and Another Vs. G. Tirupathi Rao*, , and the Chief Engineer, Central Zone, Andhra Pradesh State Electricity Board, Vijaywada and

Others Vs. K. Naga Hema, . On the other hand, Sri K. Srinivasa Murthy, the learned standing counsel for the bank would highlight the contentions taken in the counter-affidavit and would submit that the facts on record clinchingly prove the voluntary relinquishment of the employment by the petitioner; before the impugned action was taken, the petitioner was twice notified to have his say in the matter, and therefore he would maintain that the impugned action is in accordance with the principles of natural justice and fair play in action.

6. Transfer is an incidence of service. Who should work where is for the management to decide taking into account the interest of the administration. No employee has a vested right to serve in a particular place. In the instant case, the post held by the petitioner was a transferable post. A transfer order cannot be said to be invalid unless such transfer order is issued by an incompetent authority or in violation of mandatory statutory rules or is tainted by mala fide. Even in a case where a transfer results in hardship or in-convenience to an employee, the proper course for such employee is to approach the higher-ups in the administration. That is what the Apex Court declared in *M/s. Shilpi Bose v. State of Bihar* (1997 II LLJ 591); and in *Union of India and Others Vs. H.N. Kirtania*, ; and in *Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani*, . The Supreme Court in *State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others*, rejecting a contention that in an unfortunate situation, the transferee's wife had committed suicide leaving three children and that the transferee would suffer extreme hardship if he had to work at the new place situated in tribal area, held that the Court cannot go into the question of relative hardship, and it would be for the administration to consider the real hardship in the interest of good and efficient administration. The petitioner did not challenge the validity of the modified transfer order dated November 14, 1983, and therefore there is no necessity to delve into it further.

7. A contract of employment can be determined under a number of circumstances such as death, impossibility, frustration, abandonment, voluntary retirement, superannuation, retrenchment, discharge under the contract, discharge on transfer or closure of the establishment, and dismissal or removal by way of punishment. Therefore, if it is proved that an employee voluntarily abandoned the job, then the contract of employment between such employee and the management comes to an end. The contract of service comes to an end where the employee abandons his job. The term "abandonment of service" has not been defined in the Rules. In *Random House Dictionary*, the word "abandonment" has been explained to mean "to leave completely and finally; forsake utterly, to relinquish, to renounce, to give up all concern in something". According to *English Law Dictionary* by Earl. Iovitt (1959 Edn.), abandonment when used in relation to an office, according to *Black's Law Dictionary*, means "Voluntary relinquishment". In order to constitute "abandonment", therefore, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. Abandonment must be total and under the circumstances, it should clearly indicate an absolute relinquishment.

Abandonment may be actual or can be imputed. Abandonment or relinquishment of service is a question of intention, and, normally such intention is not attributed to an employee in the absence of adequate and substantial evidence in that behalf. However, the intention may be inferred from the acts and conduct of the employee. The question whether an employee has abandoned the employment or not is a question of fact which is required to be resolved in the light of facts and circumstances of each case. There cannot be any straight-jacket formula in that regard. Temporary or short absence, perhaps, may not constitute an abandonment of an office. The length of absence and other attending facts and circumstances of the case may lead to an inference that an employee has voluntarily abandoned the employment. Under Common Law, an inference that an employee has abandoned or relinquished his service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn, and it can be assumed that the employee intended to abandon the service. But, in those cases, where parties agree upon the terms and conditions of service and they are included in Certified Standing Orders or in Service Rules, the doctrine of Common Law would not be relevant.

8. A three-Judge Bench of the Supreme Court in *The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another*, observed : at p. 642

"It is true that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and, normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. But where parties agree upon the terms and conditions of service and they are included in certified standing orders, the doctrines of common law or considerations of equity would not be relevant. It is then a matter of construing the relevant term itself".

In that case, the Court held that under the relevant standing order, an employee remaining absent for eight consecutive days without leave shall be deemed to have terminated his contract and thus relinquished or abandoned his employment. The court also held that the fact that such absence is also a misconduct under the other standing order would not affect the position as it is not incumbent on the management to take recourse to the standing order providing for disciplinary proceedings for such absence on the part of any employee. A two-Judge Bench of the Supreme Court in *National Engineering Industries Ltd. Vs. Hanuman*, , held that when a standing order provides that a Workman will loose his lien on his appointment in case he does not join his duty within eight days of the expiry of his leave, it obviously means that his services are automatically terminated on the happening of the contingency; where, therefore a standing order provides that a workman would lose his lien on his

appointment, if he does not join his duty within certain time after his leave expires, it can only mean that his service stands automatically terminated when the contingency happens. In *Binny Ltd. Vs. Their Workmen*, the concerned workman therein was held to have himself left the service, terminating his contract under the relevant standing order for absenting himself without leave for eight consecutive working days.

9. However, another three-Judge Bench of the Supreme Court, in *D. K. Yadav v. J. M. A. Industries Ltd.* (supra), held that the principles of natural justice must be read into such standing order. In that case, the respondent management, acting under standing order No. 13(2)(iv), by its letter December 12, 1980 informed the appellant, D. K. Yadav, a workman that the appellant wilfully absented from duty continuously for more than 8 days from December 3, 1980, without leave or prior information or intimation or previous permission from the management, and, therefore, "deemed to have left the service of the company on your own account and lost your lien and the appointment with effect from December 3, 1980". In that context, the Supreme Court held that the procedure prescribed in the Standing Order affecting the civil rights of workmen would have to answer the requirement of Article 14, and, therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given complying with the principles of natural justice. What emerges from the aforementioned decisions of the Supreme Court is that the management cannot put an end to the tenure of an employee/workman straight-away acting under an enabling provision in the Standing Orders or Service Rules, and before taking a decision under such enabling Standing Order or Service Rule, principles of natural justice are required to be complied with. In other words, the affected employee against whom an adverse action is proposed should be given a right of hearing. There cannot be any rigid or straight-jacket formula for affording a reasonable opportunity to the affected employee or workman to have his or her say against the proposed action, and it is for the Court to decide what should have been a fair hearing in a given case taking into account the totality of facts and circumstances of such case.

10. I do not find any necessity to refer to the facts of, and the law laid down, in the three decisions of this Court viz., *M. Krishnam Raju v. The Electronics Corporation of India* (Supra), *Managing Director, Non-Conventional Energy Dev. Corp. of A. P. Ltd. v. G. Tirupathi Rao* (supra) and *Chief Engineer, APSEB v. K. Naga Hema* (supra) in detail, because, this Court in the first two cases dealt with altogether different facts-situations, whereas, in the third case, the Division Bench only reiterated what the Supreme Court has laid down in *D. K. Yadav's* case (supra). In *Krishnam Raju's* case (supra), the unauthorised absence of the employee was treated as misconduct under the Regulations and departmental enquiry was conducted; the employee was punished as a disciplinary measure. When challenged, the learned Judge of this Court found that the enquiry was vitiated on account of leaving out medical certificates, considered to be relevant materials, from considerations, and, held that the order made by the disciplinary

authority could not be sustained. In G. Tirupathi Rao's case (supra) also, the unauthorised absence of the employee was treated as a misconduct and he was dealt with departmentally by issuing a charge memo. The learned single Judge found the proceedings under which he was removed from service was in violation of the principles of natural justice. The Division Bench of this Court did not disturb that finding, but held that the employee was entitled to be reinstated only on the conditions that the disciplinary authority should be free to proceed against him and he would be entitled to back-wages only when the disciplinary authority has no reason to hold that the employee was unauthorisedly absent and his service should not be terminated. The Division Bench, in Chief Engineer, A. P. S. E. B. v. K Naga Hema (supra) has specifically referred to the decision of the Supreme Court in D. K. Yadav's case (supra) and held that notwithstanding the rules or Certified Standing Orders providing for automatic cessation of contract of service of an employee in case of unauthorised absence, such cessation of service can be brought about only after an enquiry, otherwise it will be violative of Articles 14, 16(4) and 21 of the Constitution of India. A careful reading of the observations of the Apex Court in paras 12, 13 and 14 of the judgment makes it clear that what is insisted on is that before taking any action putting an end to the tenure of any employee/workman, a reasonable opportunity to put forth his or her case is given, and, not necessarily a domestic enquiry should be held particularly when the act of the employee in overstaying after the expiry of the leave is not considered to be a misconduct under the Regulations by the employer. This is what I gather from the combined reading of the judgments of the Co-ordinate Benches of the Supreme Court in Buckingham and Carnatic Company's case (supra) and D. K. Yadav's case (supra). In D. K. Yadav's case (supra), the Supreme Court did not notice its earlier decisions in Buckingham and Carnatic Company's case (supra) and in National Engineering Industries' case (supra). However, it may be noted that when the Supreme Court delivered the judgments in Buckingham and Carnatic Company's case (supra) and National Engineering Industries' case (supra) the question whether the principles of natural justice were applicable to purely administrative actions was not settled and there was divergence of opinions on the question. It was in 1970, in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , that the Supreme Court made a categorical statement that the distinction between quasi-judicial and administrative actions should be discarded for the purpose of giving a hearing to the affected parties. K. S. Hegde, J. speaking for the Bench said :

"The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated ... The concept of rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily and capriciously In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power".

11. In *Kraipak*, (supra) the extension of the right of hearing to the person affected by the administrative process has been consummated by extension of the scope of quasi-judicial and natural justice as well as by discarding the distinction between "quasi-judicial" and "administrative action. The innovative trend set in by *Kraipak* (supra) was subsequently expanded and reinforced by the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another, Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , *Swadeshi Cotton Mills Vs. Union of India (UOI)*, , to cite the few. In *Maneka Gandhi's* case (supra) Bhagwathi J. has emphasized that natural justice is a great "humanising principle" intended to invest law with fairness and to secure justice. In *Mohinder Singh Gill* (supra) the Supreme Court has observed :

"To-day in our jurisprudence, the advances made by natural justice far exceed old frontiers and if judicial creativity be lights penumbral areas it is only for improving the quality of Government by injecting fair-play into its wheels ... Law lives not in a world of abstractions but in a cosmos of concreteness and to give something good must be limited to extreme cases. If to condemn unheard is wrong, it is wrong except where it is overborne by dire social necessity".

12. The Supreme Court in *Swadeshi Cotton Mills*" case (supra) spoke in the same vein :

"..... This rule of fair-play must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. The Court must make every effort to salvage this cardinal rule to the maximum extent possible, with situational modifications".

13. In England too with the decision of the House of Lords in *Ridge v. Baldwin* 1964 AC 40 and the decision of the Court of Appeal in *Infant K (H)* 1967 1 All E.R. 226, the horizons of the right of hearing, whether as a part of natural justice or of fairness, have been expanding.

14. Therefore, it is now well established law that irrespective of the nature of an administrative action, whether it is quasi-judicial or purely administrative, if such administrative action has the effect of affecting civil rights of a person, principles of natural justice and fair play should be complied with before the action is taken. Power to determine contract of employment vested in the employer is an administrative act and when the same is exercised, it would certainly affect the legal rights of the employee concerned. That power has to be exercised judiciously and in consonance with the principles of natural justice and fair play. Therefore, the law laid down in *D. K. Yadav's* case (supra) is in consonance with the enunciation of law in *Kraipak* (supra) and followed subsequently in large number of cases. But, from the decision of the Supreme Court in *D. K. Yadav's* case (supra), it cannot be said that the bank management is stripped of power to declare that the petitioner voluntarily abandoned the appointment and thereby forfeited his appointment, acting under second part of Rule 92 without holding regular departmental enquiry envisaged under Rule 50 of the rules. What is

important is that even while acting under second part of Rule 92, the management's action should be fair and in accordance with the principles of natural justice. If an employee absents himself unauthorisedly for number of years, then, it cannot be said that the management should necessarily treat such unauthorised absence as a misconduct under the Rules and hold a regular departmental enquiry under Rule 50, and it cannot act under Rule 92 and declare that the employee forfeited contract of employment. The legal consequences of abandonment of a job by an employee may be different from removal or dismissal of an employee as a disciplinary measure. If it is a case of abandonment, it will not disentitle the employee to seek fresh employment under the same employer or elsewhere, whereas, dismissal of an employee as a disciplinary measure will disenable him to seek employment anywhere. The declaration of law in D. K. Yadav's case (supra) cannot be considered to be sacrosanct or inviolable. There are instances where the Apex Court itself upheld the validity of Service Rules enabling the management to dismiss its employees, under certain extraordinary circumstances, without holding a departmental enquiry or without compliance with audi alteram partem rule. In Hari Pada Khan Vs. Union of India and others, , the petitioner, Hari Pada Khan who was a permanent staff member, at the relevant time, of the Indian Oil Corporation was dismissed by the management of the Corporation acting under Standing Order No. 20-IV of the Corporation. Standing Order No. 20-IV reads :

"Where a workman has been convicted for a criminal offence in a Court of Law or where the General Manager is satisfied, for reasons to be recorded in writing, that it is neither expedient nor in the interest of security to continue the workman, the workman may be removed or dismissed from service without following the procedure laid down under III of this clause".

The petitioner therein questioned the validity of the above rule on the ground that the rule is ex-facie arbitrary and violative of Articles 14 and 16 of the Constitution. The Calcutta High Court upheld the validity of the rule and dismissed the petition. In the appeal preferred by the employee, the Supreme Court, while dismissing the appeal held that the impugned rule has been made by the Corporation with the intention to prevent an employee of the Corporation served with a chargesheet and arrested in furtherance thereof, from continuing in service; the continuance of such employee in service of the Corporation would demoralise the service and therefore it was most expedient in the public interest not to hold any further enquiry and terminate his services forthwith, however, subject to the result of the trial. The Court also held that the doctrine of principles of natural justice has no application when the authority concerned is of the opinion that it would be inexpedient to hold an enquiry and that it would be against the interest of security of the Corporation to continue in employment the offender-workman. It is relevant to note that the judgment in both D. K. Yadav's case (supra) and Hari Pada Khan's case (supra) was delivered on behalf of the Benches by K. Ramaswamy J. Ofcourse, there is a difference in the provisions of Standing Order 20-IV of the Indian Oil Corporation and Rule 92 of the State Bank

of India (Supervising Staff) Service Rules. Standing Order 20-IV specifically excludes procedure laid down under Clause III of Standing Order 20. I have referred to the decision of the Supreme Court in Hari Pada Khan's case (supra) only for the limited purpose to say that a regular departmental enquiry is not a "must" before termination of contract of employment in all cases. Regular departmental enquiry becomes imperative only in a case where a particular objectionable conduct of an employee is treated as misconduct under the governing service regulations, and the disciplinary authority chooses to punish such employee by removal or dismissal on that ground. But, a contract of employment can be determined on account of many other factors/grounds stated supra.

15. In the back-drop of the principles noticed above, now let me advert to the facts of this case to see whether the requirement emphasized and mandated by the Supreme Court in D. K. Yadav's case (supra) has been complied with by the bank management before the impugned action was taken.

16. Rule 92 of State Bank of India (Supervising Staff) Service Rules reads :

"92 An employee who overstays his leave, except in the circumstances beyond his control, shall not be entitled to any salary or allowance for the period of his absence without leave and shall also be liable to forfeiture of his appointment or to any of his (sic. the) penalties specified in Rule 49".

17. The impugned action was admittedly taken under Rule 92. Rule 92 provides that an employee, overstaying his leave except in the circumstances beyond his control, shall be liable to forfeiture of his appointment. In other words, if an employee overstays his leave under the circumstances beyond his control, the management will not be justified in resorting to the provisions of Rule 92. Therefore, the first question to be considered is whether the petitioner overstayed his leave in the circumstances beyond his control. The question need not detain the Court for long. The facts stated supra clearly go to show that there was consistent effort on the part of the petitioner to stay only in the twin-cities of Hyderabad-Secunderabad, and he had no mind to go and report at the transferred place i.e., at the bank's Kurnool branch. In the first place, it may be noted that it is not the case of the petitioner that with effect from November 14, 1983, he had been hospitalised as in-patient till the impugned action was taken. It is true that the petitioner was a heart patient and the certificates issued by the doctors prima facie support that fact. When the management transferred the petitioner to Nandyal branch, the petitioner made representations to the Chief Regional Manager, and the Regional Manager of the bank after reconsideration, posted the petitioner to the bank's branch at Kurnool in which place there is a full-fledged medical college and an attached teaching hospital with all modern medical facilities to treat heart ailments. It is quite curious that after the modified transfer order was issued on November 14, 1983, the petitioner did not make any representation or submit his application for grant of any leave, and he kept himself aloof as if he had nothing to do with the transfer order and he could

ignore the same. In a case like this, it is not one piece of evidence but the whole evidence has to be taken into account to infer an intention on the part of the petitioner to decide whether voluntary abandonment could be imputed having regard to the conduct of the petitioner. The petitioner chose to send his reply only after the management issued memo on June 27, 1987, after a lapse of nearly four years from the date of the modified transfer order. Then, what was the reply of the petitioner to the memo ? In the reply dated July 8, 1987, the only reason set up by the petitioner for not reporting at the bank's branch office, Kurnool was that in the transfer order, it was not stated as to in which capacity or official status he should report at Kurnool branch. I have already pointed out supra that this attempt on the part of the petitioner is condemnable for the deliberately stated falsehood to drag on his unauthorised absence. Both the transfer orders clearly state that the petitioner was transferred as an officer of the bank, not as "farash, peon/messenger", to use the language of the petitioner in his reply dated July 8, 1987. In the said reply, it was not the case of the petitioner that he could not possibly go to Kurnool and report for duty for any other reason. On the other hand, the petitioner sought so-called clarifications from the management only with an intention to "take up new posting". Again, in his reply dated July 31, 1987 to the memo issued by the Regional Manager on July 18, 1987, the petitioner sought imaginary clarifications to enable him to report at the Kurnool Branch "at the very earliest." The reading of the replies dated July 8, 1987 and July 31, 1987 make it abundantly clear that even according to the petitioner, he wanted to report for duty at the bank's branch at Kurnool but he did not do so because the imaginary and untenable clarifications sought by him were not furnished by the management. In both the replies, it was not the case of the petitioner that it was an impossibility for him or beyond his control to go and report for duty at the bank's branch at Kurnool. Therefore, it could not be said that the over stay of the petitioner nearly for a period of five years anterior to the date of the impugned action taken by the management on April 13, 1988 was on account of circumstances or reasons beyond the petitioner's control. The materials placed before the Court clinchingly demonstrate that the petitioner had no mind to go and report for duty at the Kurnool branch; he indirectly dictated the management that he would not go to the transferred place unless the management sanctioned him 3 months special sick leave sought by him in his letter dt. August 10, 1983 and leave salary was paid though he had no leave of any kind to his credit; he was mischievous in seeking the clarification from the management whether he should go to Kurnool branch as "farash/Peon/messenger"; he did not make any formal application for leave after August 10, 1983 nor did he make any representation to retain him in Hyderabad-Secunderabad after the modified transfer order was issued on November 14, 1983. Therefore, from these cumulative established facts and conduct of the petitioner, an inference that he voluntarily abandoned the appointment can validly be drawn. I therefore, hold that the management of the bank was justified in declaring that the petitioner has voluntarily abandoned the job and thereby forfeited his appointment.

18. The next question to be considered is whether the management of the bank has complied with the principles of natural justice and fair play before the impugned action was taken. Although the modified transfer order was issued on November 14, 1983 and the petitioner did not make any representation nor apply for leave, the management did not take any hasty adverse action against the petitioner. Only in the year 1987, the management, noticing that the petitioner did not yet report for duty at the bank's branch at Kurnool, thought it necessary to issue a memo on June 27, 1987. The management even at that belated stage gave an opportunity to the petitioner to go and report for duty at Kurnool. The management also gave an opportunity to submit his explanation for not reporting. No valid explanation was offered, as already pointed out. Even then, the management did not proceed to pass the final order in exercise of its power reserved under Rule 92. The management, again, issued another memo on July 18, 1987. Even at that stage, the petitioner was given one more opportunity to report for duty at the bank's branch at Kurnool. In the same memo, the petitioner was also called upon to submit his explanation, if any. The petitioner submitted the explanation on July 31, 1987. I have already referred to the replies of the petitioner to the two memos issued by the management and there is no need to repeat the same. The stand taken by the petitioner in both the replies was totally untenable. Therefore, it cannot be said that the impugned action was taken by the management in violation of principles of natural justice or fair play. The law laid down by the Apex Court in D. K. Yadav's case (supra), in substantial terms, has been fully complied with by the management. At this stage, it will be useful to refer to the decision of the Supreme Court in Union of India and others Vs. Ram Pal, . In that case the respondent Ram Phal who was a constable in the Border Security Force was dismissed from service by the Commandant acting u/s 11(2) of the Border Security Force Act, 1968 on the ground that he was a deserter, without holding enquiry. Before the Supreme Court, the questions were (i) whether the power u/s 11(2) could be exercised without holding an enquiry; and (ii) if not, whether the show cause notice issued to the delinquent satisfied the requirements of the prescribed procedure. The Supreme Court answered the first question in the negative and the second one in the affirmative. The Supreme Court answered the second question in the affirmative having regard to the fact that a show cause notice was given to Ram Phal calling upon him to show cause why he should not be dismissed as his further retention in service was considered undesirable. Ram Phal did not reply. Under the circumstances, the Supreme Court held that the procedure prescribed under Rule 21 of the Border Security Force Rules providing for procedure for holding enquiry was not violated. In that case the Supreme Court also pointed out that the order of dismissal passed by the Commandant was not by way of penalty for the misconduct of absence from duty without leave, but on the ground that the conduct of the constable had rendered his retention in service undesirable; and the dismissal order was an outcome of the exercise of an independent and separate power conferred by Section 11(2) on the Commandant. Even assuming, that before the impugned action was taken an

enquiry was necessary, it should be held that, in the facts and circumstances of this case, that requirement was substantially complied with by the management of the bank by issuing the two memos calling for explanation from the petitioner and giving him opportunity to report for duty at the bank's branch in Kurnool.

19. Now let me advert to the other argument of the learned counsel for the petitioner that the impugned action was taken in violation of the provisions of Rules 49 and 50 of the Rules. Rule 49 reads :

49. Without prejudice to any other provisions of these rules, an employee who commits a breach of the rules and regulations of the Bank or who displays negligence, inefficiency or indolence or who knowingly does anything detrimental to the interest of the Bank or in conflict with its instructions, or who commits a breach of discipline or is guilty of any other act of misconduct, shall be liable to any one or more of the following penalties :-

- (a) Censure;
- (b) Cancellation, withholding, reducing or delaying of increments;
- (c) reduction to a lower post or grade;
- (d) recovery from pay of the whole or part of any pecuniary loss caused to the Bank by the employee;
- (e) requiring the employee to resign;
- (f) dismissal.

Rule 49 provides for imposition of penalties specified in that rule for breach of discipline or commission of misconduct. Rule 50 provides for the procedure for an enquiry in case the management proceeds to hold a departmental enquiry against a delinquent on an alleged ground of misconduct. It may be true that the act of the petitioner in absenting himself from the duty unauthorisedly for a period of five years before the impugned action was taken may tantamount to commission of a misconduct entailing imposition of a penalty under Rule 49. But, Rule 92 specifically provides that an employee overstaying his leave shall be liable for forfeiture of his/her appointment. Rule 92 also states that if an employee overstays his leave, in the alternative, he shall be liable to any of the penalties specified in Rule 49. In *Buckingham and Carnatic Company's* case (supra), the Supreme Court held that the fact that the unauthorised absence is also made a misconduct under the other Standing Order will not affect the power of the management to hold that the employee voluntarily abandoned the employment, and it is not incumbent on the management to take recourse to the other Standing Order providing for disciplinary proceedings for such absence on the part of the employee on the ground that it is a misconduct. In a case where necessary conditions to invoke the power under Rule 92 exist, then, it is permissible for the management either to hold that the concerned employee forfeited his appointment, or, in the alternative, to proceed against such

employee departmentally under Rules 49 and 50 by instituting departmental enquiry. Therefore, the contention of the learned counsel for the petitioner that the management has violated provisions of Rules 49 and 50 in taking the impugned action is not well-founded.

20. There is merit in the submission of the learned standing counsel for the management of the bank that the writ petition is otherwise liable to be dismissed in limine for inordinate delay and laches on the part of the petitioner in approaching this Court. The impugned action was taken by the management as far back as on April 13, 1988 whereas the Writ Petition was filed in this Court only on September 19, 1994. There is absolutely no satisfactory and acceptable explanation for the inordinate delay in approaching this Court after a lapse of more than six years from the date of the impugned action. At the time of hearing, the only explanation offered by the learned counsel for the petitioner was that the petitioner was corresponding with the bank authorities. That is not a valid and sufficient cause to condone the inordinate delay. There is clearly laches on the part of the petitioner.

21. It may not be proper if I do not advert to the very passionate appeal made by Sri E. S. Ramachandra Murthy, the learned counsel for the petitioner, to look at the case with a humane touch and compassion. Treatment of humane touch and compassion is nobody's monopoly or reserve. The Courts and the Judges are not respectors of persons; they only respect the law. In the light of this repeated appeal made by the learned counsel for the petitioner during the course of the hearing spreading over almost two complete days, I reflected on the appeal of the learned counsel quite deeply, and even after such reflection, I do not find any extenuating circumstance or factor to grant relief to the petitioner. I should say that in the present case, the management of the bank unduly gave a long rope to the delinquent. It is most unfortunate that the petitioner did not make use of the opportunity afforded by the management to go and report for duty at the bank's branch at Kurnool even in the year 1987. The conduct of the petitioner is such that it is highly unbecoming of an officer of the bank. Added to that, I am also not satisfied that the petitioner could not report for duty at the transferred place on account of circumstances or for reasons beyond his control. The petitioner is out of employment with effect from August 10, 1983. The terms dictated by the petitioner to the management for reporting for duty at the transferred place were untenable as well as mischievous. Even assuming that the procedure followed by the management preceding the impugned action was not strictly in accordance with law, the petitioner is not entitled to the reliefs at this distance of time. He does not deserve to receive judicial compassion. There is no failure of justice. In this context, it is apt to quote what B. P. Jeevan Reddy, J. speaking for the Bench in State Bank of Patiala and others Vs. S.K. Sharma, has observed :

"Justice means justice between both the parties. The interest of justice equally demand that the guilty should be punished and that technicalities and

irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise".

22. In the result and for the foregoing reasons, the Writ Petition fails, and it is accordingly dismissed. No costs.