

(2024) 05 CAL CK 0066

In the Calcutta High Court

Case No : WPA No. 26923 Of 2006, CAN 1 Of 2008 (Old No: CAN 2759/2008),
CAN 2, 3 Of 2022

Chanchal Kumar Ghosh

APPELLANT

Vs

Union Bank Of India & Ors.

RESPONDENT

Date of Decision : 24-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 311(2)
Haryana Civil Services (Punishment and Appeal) Rules, 1952 — Rule 7(5), 14, 14(8)
Indian Penal Code, 1860 — Section 120B, 302
Advocate's Act, 1961 — Section 2(i)

Citation : (2024) 05 CAL CK 0066

Hon'ble Judges : Raja Basu Chowdhury, J

Bench : Single Bench

Advocate : R.L. Moitra, Krishna Pada Pal, Souvik Maji, Ranjay De, Basabjit Banerjee, A.A. Bose

Final Decision : Disposed Of

Judgement

Raja Basu Chowdhury, J

1. The application for restoration, application for condonation of delay and the writ petition have been taken up for consideration together.
2. Since the writ petition itself was taken up for consideration and extensively heard, I am of the view that the writ petition should be disposed of on merits. Having regard to the above and having heard the learned advocates and having considered the explanation given by the petitioner, the delay in filing the restoration application praying for recall of the order dated 11th April, 2016, is condoned and upon being satisfied that the petitioner has been able to sufficiently explain the reasons for non-appearance on 11th April, 2016, when the writ petition was dismissed for default, the order dated 11th April, 2016 is recalled and the writ petition is restored to its original file and number. Accordingly, CAN 2 of 2022 and CAN 3 of 2022 are disposed of.

1. The present writ petition has been filed, inter alia, challenging the show-cause notice dated 18th May, 2002, the Articles of Charge dated 19th August, 2002, the enquiry report dated 11th January, 2003, the Final Order dated 26th March, 2003 and the Appellate Order dated 11th August, 2006.

2. The petitioner was appointed as a Clerk in the Union Bank of India (hereinafter, the "respondent bank") and by dint of his sincerity, devotion and perseverance had risen to the rank of the Assistant Manager. Unfortunately, by an order dated 27th December, 2001, the petitioner was placed under suspension with immediate effect. Following the aforesaid, he was issued a show-cause notice on 18th May, 2002 alleging of his involvement in misappropriation and embezzlement of the respondent bank's finances and utilizing the same for his personal use. The petitioner had duly responded to the said show-cause. The respondent bank, however, having found the said explanation to be neither convincing nor satisfactory, by a communication in writing dated 19th August, 2002 had served upon the petitioner the Articles of Charge and had called upon him to submit written statement of defence. Particulars of the Articles of Charge as leveled against the petitioner are extracted hereinbelow:

"1. Failure to take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence.

2. Doing acts unbecoming of an Officer employee.

3. He acted otherwise than in his best judgment in the performance of his official duties.

The show cause memorandum No.NRO:KOL:DP:2710 dated 18th May 2002 will form Statement of Allegations to this Articles of Charge "

3. Following the aforesaid, by an office order dated 14th September, 2002, the Disciplinary Authority being the Chief Manager appointed an enquiry officer to enquire into the charges leveled against the petitioner. In the interregnum, the petitioner had filed a departmental appeal against the order of suspension. Since, the same was kept pending, the petitioner had filed a writ petition, which was registered as W.P. No. 11667 (W) of 2002. On contest, the said writ petition was disposed of by an order dated 27th August 2002, by directing the appellate authority to dispose of the appeal positively within ten days with a further direction on the disciplinary authority to complete the disciplinary proceeding within two months.

4. It is the petitioner's case that consequent upon the aforesaid, the departmental appeal was taken up for consideration and the same was dismissed. In the meantime, in the pending departmental proceeding, by a communication in writing dated 18th September, 2002, the petitioner had requested for assistance of a legal practitioner, inter alia, on the ground of

complexities of the allegations and the charges leveled against him. By a communication in writing dated 23rd September, 2002 such request for assistance of a legal practitioner was turned down on the ground that the presenting officer in the departmental enquiry is not a legal practitioner. The petitioner was, however, permitted to engage an officer of the respondent bank for his assistance. According to the petitioner, although, a Coordinate Bench of this Court by its order dated 27th August, 2002 had directed the respondents to dispose of the disciplinary proceeding within two months from the date of passing of the said order, despite expiry of the said period the enquiry proceeding was continued by the enquiry officer.

5. Records reveal that the enquiry officer had submitted his findings in the form of a report to the disciplinary authority on 11th January, 2003. By a cover of letter dated 13th January, 2003, the petitioner was forwarded with a copy of the enquiry report for him to make representation, if any. The petitioner had since, made his representations to the findings of the enquiry officer. In the interregnum, the petitioner had filed a writ petition which was registered as W.P. 17178 (W) of 2002 challenging the entire enquiry proceeding. By an order dated 14th January, 2003 the Coordinate Bench of this Court had while entertaining the petition granted liberty to the petitioner to challenge the decision of the disciplinary authority, if he is aggrieved thereby, by filing a supplementary affidavit. It would appear that by a memorandum dated 26th March, 2003 the disciplinary authority had imposed a major penalty in the form of dismissal from the respondent bank. Since then, although, the petitioner had brought the final order on record by filing a supplementary affidavit, by an order dated 17th February, 2006, the Coordinate Bench of this Court taking note that the writ petition would require determination of factual issues was, inter alia, pleased to dispose of the said petition on the ground of alternative remedy by granting liberty to the petitioner to prefer an appeal, by taking all points before the appellate authority. The delay in preferring the appeal was also condoned. In terms of the liberty so afforded, the petitioner had preferred an appeal. Unfortunately, since, the appeal was kept pending the petitioner was constrained to move yet another writ petition, which was registered as W.P. 18781 (W) of 2006. After the aforesaid writ petition was filed, the departmental appeal was disposed of by an order dated 11th August, 2006 confirming the order of dismissal. In the circumstances as noted above, challenging the show-cause notice, disciplinary proceeding, the final order and the appellate order, the present writ petition has been filed.

6. Mr. Moitra, learned senior advocate representing the petitioner, by drawing attention of this Court to page 136 of the writ petition, submits that by a communication dated 23rd September, 2002 the petitioner was informed that the preliminary enquiry into the charges leveled against him vide charge-sheet dated 19th August, 2002 shall be conducted. It is submitted that since, a preliminary enquiry was held, no final order could have been passed based on such enquiry. It is next submitted that the enquiry conducted by the respondents suffers not

only from procedural irregularity but violation of principles of natural justice. For appropriately participating in the enquiry proceeding, the petitioner had prayed for assistance of a legal practitioner since, the presenting officer nominated by the respondent bank was a legally trained person with a L.L.B. Degree and had a background of legal practice. Unfortunately, the respondents had declined to adhere to the petitioner's request. Faced with such circumstances, the petitioner was compelled to engage a colleague as his defence assistant. Mr. Moitra by referring to Regulation 6(7) of the Union Bank of India Officers' (Discipline and Appeal) Regulations 1976 (hereinafter referred to as the "said Regulations"), submits that Regulation 6(7) of the said Regulations authorises an employee to take assistance of any other employee not being a legal practitioner unless, the presenting officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority, having regard to the facts and circumstances of the case so permits. By drawing attention of this Court to the visiting card of the presenting officer, it is submitted that the same would demonstrate that he is a highly qualified person holding L.L.B. Degree. According to Mr. Moitra, the presenting officer was a legally trained person and as such denial of assistance of a legal practitioner to the petitioner tantamount to violation of principles of natural justice. In support of his contention, he places reliance on the following judgments: -

I. Board of Trustees of the Port of Bombay v. Dilip kumar Raghavendranath Nadkarni & Ors., reported in AIR 1983 SC 109.

II. J. K. Aggarwal v. Haryana Seeds Development Corporation Ltd. & Ors., reported in AIR 1991 SC 1221.

7. In any event, it is submitted that in the facts of the case, the disciplinary authority failed to exercise the discretion vested in him in refusing the petitioner the assistance of a legal practitioner.

8. By referring to the charge-sheet, it is submitted that the charge-sheet discloses conclusive findings and the same shows a bias mind. According to Mr. Moitra, since, the Disciplinary Authority had already made up his mind to hold the petitioner guilty, the enquiry conducted against the petitioner was only an empty formality. In support of his contention, he placed reliance on the following judgments: -

I. Bimala Kanta Mukherjee v. State of West Bengal & Ors., reported in 1980 (2) CHN 35,

II. Subrata Bhattacharya v. Bharat Process & Mechanical Engineers & Ors., reported in 1984 (2) CHN 185

III. Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant & Ors., reported in AIR 2001 SC 24

9. By referring to the Memorandum of show cause and the reply filed by the petitioner thereto, it is submitted that the petitioner was not supplied with list of

documents along with the charge-sheet. Only in course of the enquiry proceeding that the presenting officer had disclosed the list of documents and list of witnesses without making over the copies thereof, to the petitioner. All this was done to take the petitioner by surprise so as to deny reasonable opportunity of hearing to the petitioner. Copies of the document, and the list of witness which were disclosed by the presenting officer during the enquiry proceeding, on 5th October, 2002 are extracted hereinbelow:-

Sl. No.

Description of documents

1

Cumulative Deposit Account Pass Book, Account No. 2534 in the name of Mr. Jyoti Sekhar Das

2

Cumulative Deposit Account Ledger, Cumulative Account No. 2534, Folio No. 174 of Mr. Jyoti Sekhar Das

3

Account Opening form in the Cumulative Deposit Account No. 2534 of Mr. Jyoti Sekhar Das.

4

Pay-in-slip dated 26.06.2001 bearing the stamp of the Bank for Rs. 4000/-.

5

Cumulative Deposit Account ledger, Cumulative Account No. 2534 of Mr. Jyoti Sekhar Das.

6

Counter foil dated 28.06.2001 for Rs.4000/- for Mr. Jyoti Sekhar Das.

7

Counter foil dated 31.07.2001 for Rs.4000/- of Mr. Jyoti Sekhar Das, Cumulative Deposit Account no. 2534.

8

Counter foil dated 31.08.2001 for Rs.4000/- of Mr. Jyoti Sekhar Das, Cumulative Deposit Account No. 2534.

9

Pay-in-slip dated 31.08.2001 in the Cumulative Deposit Account No. 2534

for Rs.4000/- for Mr. Jyoti Sekhar Das.

10

Representation dated 18.11.2001 of Mr. Jyoti Sekhar Das.

11

a) Representation dated 27.11.2001 of Mr. Jyoti Sekhar Das along with Counter foil dated 28.06.2001 for Rs.4000/- of Mr. Jyoti Sekhar Das.

b) Cumulative Deposit A/c. No.2534.

c) Counter foil dated 21.09.2001 for Rs.4000/- of Mr. Jyoti Sekhar Das, Cumulative Deposit Account 2534.

d) Counter foil dated 16.10.2001 for Rs.4000/- of Mr. Jyoti Sekhar Das, Cumulative Deposit Account no. 2534.

e) Counter foil dated 29.11.2001 for Rs.4000/- of Mr. Jyoti Sekhar Das, Cumulative Deposit Account no. 2534.

f) Counter foil dated 29.12.2001 for Rs.4000/- of Mr. Jyoti Sekhar Das, Cumulative Account No. 2534.

12

Letter dated 17.07.2002 given by Mr. Jyoti Sekhar Das

13

Extract of balance book.

14

DRC no. 3309108 for Rs. 75000/- issued to Ishita Ghosh and Indrajit Ghosh and counter foil 3309108.

15

Application form for loan against term deposit receipts dated 14.08.2001 of Mrs. Ishita Ghosh, letter of lien – 9 deposits of Ishita Ghosh.

16

Letter of Salt Lake City Branch dated 24.11.2001 sent to Regional Office, Kolkata along with application dated 23.11.2001 of JDS Technologies Pvt. Ltd. Application dated 28.11.2001 of JDS Technologies Pvt. Ltd. addressed to the Branch Manager, letter of lien (Deposits) of Ishita Ghosh and others containing 28 DRCs

17

Letter of Banani Sen, Computer Operator, Salt Lake City Branch, Kolkata

18

Letter dated 24.12.2001 of Ishita Ghosh addressed to the Branch Manager, Salt Lake City Branch, Kolkata

19

Bearer cheque no. 328101 dated 01.11.2001 for Rs.50000/- issued by Mrs. M Sarkar.

20

Counter foil no. 3309333 of Urmila Singh for Rs.12000/-

21

Letter dated 06.12.2001 of Urmila Singh addressed to the Manager, Union Bank of India, Salt Lake City Branch, Kolkata

22

Letter dated 31.12.2001 of Chandrika Prasad Singh addressed to the Manager, Union Bank of India, Salt Lake City Branch, Kolkata

23

Counter foil no. 3309058 for Rs. 100000/- issued to Dipsikha Chowdhury dated 23.07.2001

24

Counter foil no. 3309038 for Rs.25000/- issued to Sampa Ray Mondal dated 18.07.2001

25

FDR No. 6872028 dated 10.07.2001 issued to Mamta Dey and Naina Dey, counter foil dated 10.07.2001 of Mamta Dey and Naina Dey for Rs. 8000/-

26

Debit and Credit vouchers dated 08.05.2002 pertaining to Suspense Account Fraud of Rs. 8286/-

27

Report on actual or suspected frauds in Banks.

28

Letter dated 05.06.2002 of Branch Manager, Salt Lake City Branch addressed to Officer-in-Charge Bidhan Nagar Police Station, Kolkata.

10. Although, the enquiry officer had permitted the defence assistant to inspect

the documents, copies of such documents, which the presenting officer intended to rely on, were not made over. According to the petitioner, although, on 25th October, 2002, inspection was offered, however, the petitioner was not provided with all-necessary documents asked for during inspection. This apart the enquiry officer permitted the presenting officer to produce new documents and management witness, without making available the copies of such new documents and disclosure thereof, to the petitioner. The said constitutes violation of Regulations 6(3), 10, 11 and 12 of the said Regulations. No steps were taken to call for the defence witnesses though, all of them were employees of the respondent bank, and the petitioner could not on his own cause their appearance, unless the authority gave them permission to appear in the enquiry. The petitioner was made to cross examine the management witness without being supplied with the documents. The petitioner thus, was denied the opportunity to appropriately cross examine the management witness. The petitioner was, therefore, deprived of his opportunity to offer effective defence against the charges leveled against him. The enquiry authority proceeded with the enquiry in the most perfunctory manner in violation of principles of natural justice. This, according to Mr. Moitra, has the effect of vitiating the enquiry. As noted above despite request being made by the petitioner, the defence witnesses who are all employees of the respondent bank were not permitted to be examined. This also constitutes denial of opportunity to put forward an effective defence and also constitutes violation of principles of natural justice. In support of his aforesaid contention, he has placed reliance on the following judgments:

I. Himangshu Kumar Bose v. Union of India, reported in 1984-89 CalWN 1167

II. Committee of Management, Kisan Degree College v. Shambhu Saran Pandey & Ors., reported in (1995) 1 SCC 404.

III. Ram Subhak Ojha v. The Commissioner of Police & Ors., reported in AIR 1967 Cal 381.

11. By referring to the order dated 27th August, 2002, it is submitted that although, the Coordinate Bench of this Court had directed the respondents to dispose of the disciplinary proceeding within two months from the date of passing the order, such direction had not been complied with. No leave was obtained from this Hon'ble Court to proceed with the enquiry beyond the said dated. The period for completion of the disciplinary proceeding expired on 26th October, 2002, thus, rendering the subsequent proceeding bad. In this context, reliance is placed on a judgment delivered by the Hon'ble Supreme Court in the case of Sher Singh v. Union of India & Ors., reported in (2007) 3 SLR 816.

12. In the facts as noted above, it is submitted that the entire enquiry proceeding stands vitiated and the same should be set aside. The petitioner should be relieved of the stigma, which has been inflicted upon him without holding a proper enquiry.

13. Per contra, Mr. De learned advocate representing the respondents has, inter

alia, contended that while the petitioner was working as an Officer-in-Charge of the Deposit Department of Salt Lake City Branch of the Union Bank of India, on the basis of a domestic enquiry conducted against him he had been held guilty and ultimately, was inflicted a punishment in the form of dismissal from service by an order dated 26th March, 2003. Although, he had preferred an appeal from the said order, the appellate authority by an order dated 11th August, 2006, dismissed the appeal while not interfering with the punishment imposed. Mr. De has placed before this Court in the form of a list of dates, the relevant events and their dates, the same are extracted hereinbelow:

Date

Events

18.05.2002

The writ petitioner was issued with a show cause notice for resorting to misappropriation/embezzlement of money given to him by bank customers for depositing in the bank and for issuing fake/bogus DRCs/FDRs, Cumulative Deposit Account. The show cause notice was issued with the details of those activities indicated therein.

11.06.2002

The writ petitioner submitted reply to the said show cause notice dated 18.05.2002.

19.08.2002

A charge sheet was issued intimating that the show cause notice dated 18.05.2002 would form statement of allegation to this Articles of Charge.

23.09.2002

The petitioner was informed about holding of a preliminary enquiry to be held on 05.10.2002 at 11.00 A.M. at Nodal Regional Officer, Kolkata.

05.10.2002

Preliminary enquiry held wherein on being asked the writ petitioner denied the charges levelled against him. Accordingly, the Enquiry Officer proceeded with the enquiry.

24.10.2002

to 11.12.2002

The regular enquiry held on diverse dates.

11.01.2023

The Enquiry Officer submitted his report holding him guilty of the charges.

13.01.2003

The report of the Enquiry Officer was supplied to the writ petitioner.

24.01.2003

The writ petitioner submitted his representation in connection with the said Enquiry Report.

26.03.2003

By a memorandum no. NRO:Kol:DP:3964 dated 26.03.2003, the Disciplinary Authority imposed the punishment of dismissal from the service of the bank

without notice.

05.04.2006

The writ petitioner preferred an appeal in connection with the order of dismissal passed by the Disciplinary Authority.

11.08.2006

The Appellate Authority by an order confirmed the punishment imposed upon the writ petitioner by rejecting the Appeal preferred by him.

07.12.2006

Hence the writ petitioner has approached this Hon'ble Court challenging the disciplinary proceedings including the imposition of punishment by affirming the present

writ application.

14. It is submitted that there is no irregularity on the part of the enquiry officer in refusing the petitioner to be represented by a lawyer. It is submitted that although, the petitioner claims that the presenting officer was a legally trained person, the same is incorrect. By referring to Regulation 6(7) of the said Regulations, he submits that the said Regulations clearly provides that unless the presenting officer is a legal practitioner, the delinquent is not entitled to avail the opportunity of being represented through a legal practitioner. According to Mr. De, the presenting officer is an employee of the respondent bank and as such he could not have been a legal practitioner. In this context, he places reliance on

Section 2(i) of the Advocate's Act, 1961. It is still further submitted that the defence assistant was an experienced person and was the Branch Manager of Gotalahat Branch under NRO, Kolkata. He was fully conversant with the banking procedure. Further the manner in which he conducted himself and had cross-examined the management's witnesses, the same did not reflect incapacity or ignorance in banking procedure. By placing reliance on a judgment delivered by the Hon'ble Supreme Court in the case of Rajasthan Marudhara Gramin Bank (RMGB) & Anr. v. Ramesh Chandra Meena & Anr., reported in (2022) 3 SCC 44, he submits that there can be no absolute right for the delinquent to avail the services of a legal practitioner. A disciplinary enquiry is required to be conducted as per the service regulations, since, the service regulations create an embargo in the appointment of a legal practitioner, the petitioner cannot be entitled to contend otherwise. In support of the above, he has placed reliance on the judgment delivered in the case of Dinesh Chandra Pandey v. High Court of Madhya Pradesh & Anr., reported in (2010) 11 SCC 500.

15. On the issue of non-supply of documents along with the charge-sheet, he submits that proviso to Regulation 6(3) only mandates inspection of documents. Admittedly, in this case, in due compliance of the above Regulation, the petitioner had been granted opportunity to inspect the documents. The petitioner has not been able to demonstrate that he has suffered any prejudice on account of non-supply of documents along with the charge-sheet. According to Mr. De, from a perusal of the records of the enquiry proceeding, both oral and documentary, it would be apparent that the petitioner was provided with fullest opportunity to defend himself. To corroborate the aforesaid statement, he had prepared a chart along with list of dates, which forms part of the written notes.

The same is extracted hereinbelow:

Dates

Real state of affairs

18.05.2002

The writ petitioner was served with the show cause notice.

It has been specifically mentioned in the said show cause that he would be provided with the opportunity of inspecting the documents and to take note thereof for his defence. This opportunity was afforded in compliance with proviso to Regulation 6(3) of the said

Regulation 1976.

11.06.2002

After a period of one month he replied to the said show cause notice. In his reply he never alleged that he was not allowed either to inspect the documents or disallowed to take note to prepare his defence. Moreover, never ever intimated the Disciplinary

Authority that without the copies of documents or the list thereof he was unable to give proper reply.

19.08.2002

The writ petitioner was served with the Articles of Charge. Towards the end of the said document, it is made clear that show cause shall form part of the said document. Admittedly, writ petitioner did not submit any reply to the Articles of Charge. Therefore, there is no earthly reason to allege violation of Regulation 6(3) of the said Regulation in as much as no scope for

suffering any prejudice.

05.10.2002

PO submitted the list of documents.

AO asked for time for inspection of the documents mentioned in the list.

24.10.2002

AO informed that inspection was done.

AO asked for the documents for effective cross-examination.

26.10.2002

Enquiry Officer directed to start examination of management's witness as the documents required by AO was to cross-examine the management's witnesses.

31.10.2002

Enquiry Officer directed the PO to supply copies of documents to the AO even before starting the cross-

examination of management's witnesses.

05.11.2002, 06.11.2002, 07.11.2002, 08.11.2002, 09.11.2002, 11.11.2002 & 12.11.2002

AO cross-examined MW-1 for 7 days by putting 159 questions in cross-examination.

13.11.2002

AO cross-examined MW-1 on re-examination by PO.

14.11.2002, 15.11.2002, 16.11.2002, 22.11.2002, & 23.11.2002

AO cross-examined MW-1 for 7 days by putting 50 questions in

cross-examination.

26.11.2002

to 30.11.2002

The writ petitioner during his evidence in chief dealt with each and every document exhibited by the bank's witness. It is well accepted without having copies thereof, he could not have explained the same nor

cross-examined the management's witnesses.

16. By referring to the judgment delivered in the case of (i) Regional Manager, UCO Bank & Anr. v. Krishna Kumar Bhardwaj, reported in (2022) 5 SCC 695; (ii) Kalipada Das v. State of West Bengal & Ors., reported in (2009) SC OnLine Cal 1424; (iii) State of Uttar Pradesh v. Sudhir Kumar Singh & Ors., reported in (2020) SCC OnLine SC 847, it is submitted that mere non-supply of documents is not sufficient to vitiate the enquiry, a case of prejudice must be made out. Since, the petitioner has failed to demonstrate that he suffered prejudice and since, he was given ample opportunity to cross-examine, it cannot be argued that there has been violation of principles of natural justice. By referring to the enquiry report, it is submitted that it is not the case of the petitioner that the enquiry report is not based on materials on record or is based on no evidence. From the plain reading of the enquiry report, it would be apparent and clear that the same is supported by materials. In view thereof, no interference is called for.

17. Heard the learned advocates appearing for the respective parties and considered the materials on records. As would appear from the submissions made on behalf of the petitioner, the petitioner primarily questions the validity of the domestic enquiry on the procedural irregularity committed by the enquiry officer, mainly on two grounds.

18. Firstly, the question of not affording opportunity to the petitioner to engage a legal practitioner to defend, notwithstanding the presenting officer being a legal expert is taken up for consideration. In this context, it must be noted that the presenting officer is an employee of the respondent bank. The petitioner in order to demonstrate that the presenting officer is a legal expert has placed reliance on the visiting card of the presenting officer. It, however, appears that the disciplinary authority by a communication in writing dated 23rd September, 2002, while turning down the request of the petitioner for assistance of a legal practitioner had claimed that unless, the presenting officer in the departmental enquiry is a legal practitioner, the petitioner cannot be entitled to the assistance of a legal practitioner. It has been clarified that the presenting officer was not a legal practitioner. In this context, it may be relevant to consider Regulation 6(7) of the said Regulations which stipulates as under:

" The Officer Employee may take the assistance of any other Officer Employee but may not engage a Legal Practitioner for the purpose unless the Presenting

Officer; appointed by the Disciplinary Authority is a Legal Practitioner or the Disciplinary Authority, having regard to the circumstances of the case so permits."

19. In the case of Board of Trustees of the Port of Bombay (supra), the Hon'ble Supreme Court while taking note of the seriousness of the charges and the adverse verdicts which may have the effect of destroying the future of the delinquent employee and further taking note of the fact that where an employer has on his pay rolls labour officers, legal advisors, lawyers in the grab of employees who are appointed Presenting-cum-Prosecution Officers and where the rules do not place an embargo on the right of the delinquent employee to be represented by a legal practitioner, the matter would be in the discretion of the enquiry officer whether looking to the nature of charges, the type of evidence and, complex or simple issue that may arise in course of enquiry, the delinquent in order to afford a reasonable opportunity to defend himself should be permitted to appear through a legal practitioner.

20. In the present case, however, since there is a stipulation contained in the said Regulations which authorises the disciplinary authority to exercise his discretion, the order dated 23rd September, 2002 refusing legal assistance to the petitioner cannot be said to be dehors the provisions of the said Regulations. Notwithstanding the aforesaid, the question of exercising of discretion is still at large. The judgment relied on by the petitioner in the case of J. K. Aggarwal (supra) cannot come in assistance of the petitioner as in the said case the particular service rule governing the disciplinary proceeding did not create an embargo on the appointment of legal practitioner. To morefully appreciate the same, paragraph 4 of the aforesaid judgment is extracted hereinbelow:

"4. In the present case, the matter is guided by the Provisions of Rule 7(5) of the Haryana Civil Services (Punishment and Appeal) Rules, 1952 which says:

"7.(5) Where the punishing authority itself enquires into any charge or charges or appoints an enquiry officer for holding enquiry against a person in the service of the government, it may, by an order, appoint a government servant or a legal practitioner to be known as a "presenting officer" to present on its behalf the case, in support of the charge or charges.

The person against whom a charge is being enquired into, shall be allowed to obtain the assistance of a government servant, if he so desires, in order to produce his defence before the enquiring officer. If the charge or charges are likely to result in the dismissal of the person from the service of the government. Such person may, with the sanction of the enquiry officer, be represented by counsel."

(Underlining supplied)

It would appear that in the inquiry, the respondent-Corporation was represented by its Personnel and Administration Manager who is stated to be a man of law. The rule itself recognises that where the charges are so serious as to entail a

dismissal from service the inquiry authority may permit the services of a lawyer. This rule vests a discretion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reasons of the appellant being pitted against a presenting officer who is trained in law. Legal Adviser and a lawyer are for this purpose somewhat liberally construed and must include "whoever assists or advises on facts and in law must be deemed to be in the position of a legal adviser". In the last analysis, a decision has to be reached on a case to case basis on the situational particularities and the special requirements of justice of the case. It is unnecessary, therefore, to go into the larger question "whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner" which was kept open in *Board of Trustees of the Port of Bombay v. Dilipkumar* [(1983) 1 SCC 124 : (1983) 1 SCR 828] . However, it was held in that case (SCC p. 132, para 12)

"... In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated...."

21. The respondents, however, have relied on the judgment delivered in the case of *Rajasthan Marudhara Gramin Bank (RMGB)* (supra) to, inter alia, contend that there is no absolute right in favour of the delinquent officer to be represented by a counsel of his choice in the departmental proceeding and the same can be restricted by the employer. I find that the issue involved in the present petition is not limited to whether there is an absolute right in favour of the delinquent officer to be presented by a counsel. Having regard to the aforesaid, I find that the aforesaid judgment does not assist the respondents at all. Insofar as the judgment relied on by the respondents in the case of *Dinesh Chandra Pandey* (supra) is concerned, I find that in the said judgment the Hon'ble Supreme Court in paragraphs 13 and 14 by relying on the service regulations and the opportunity available to the delinquent to appoint a legal expert has, inter alia, pleased to observe as follows:

"13. While Rule 14 deals not only with imposition of punishment but also gives the entire procedure which is required to be followed by the enquiry officer as well as the Disciplinary Authority before inflicting any punishment upon the charged officer, Rule 14(8) deals with providing of legal assistance or engagement of a legal practitioner during the course of a departmental enquiry. As the reliance has been placed by both the parties on this Rule, it will be useful

to reproduce the same here:

'14. (8) The government servant may take the assistance of any other government servant to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the presenting officer appointed by the Disciplinary Authority is a legal practitioner, or, the Disciplinary Authority, having regard to the circumstances of the case, so permits.'

14. The bare reading of this Rule shows that the government servant may take the assistance of any other government servant to represent his case but may not engage a legal practitioner for the purpose unless the presenting officer appointed by the authority is a "legal practitioner" or the Disciplinary Authority, having regard to the circumstances of the case, so permits. The expression "may" cannot be read as "shall". The normal rule is that a delinquent officer would be entitled to engage another officer to present his case. But if the presenting officer is a "legal practitioner", he may normally be permitted to engage a legal practitioner. The third category is where the Disciplinary Authority having regard to the circumstances of the case, so permits. It is, therefore, not absolutely mandatory that the Disciplinary Authority should permit the engagement of a legal practitioner irrespective of the facts and circumstances of the case. There is some element of discretion vested with the authority which, of course, has to be exercised properly and in accordance with the settled principles of service jurisprudence."

22. As would appear from the above, Rule 14(8) as recorded therein is somewhat similar to Regulation 6(7) of the said Regulations, which creates an embargo on the petitioner seek appointment of a legal practitioner unless, the conditions for appointment are satisfied. However, it may be noticed that a discretion vests in the authority as regards permitting the delinquent to be represented by a legal practitioner. For the present, this Court is of the opinion that the order dated 23rd September, 2002 refusing to permit the petitioner to be represented by a legal practitioner in the enquiry does not appear to be contrary to the provision of Regulation 6(7) of the said Regulations further, taking note of the fact that the petitioner has failed to demonstrate that he had suffered any prejudice for not being able to avail the assistance of a legal practitioner, the opinion of the disciplinary authority in refusing to permit the petitioner to be represented by a legal practitioner, does not require further consideration.

23. Secondly, it has been contended on behalf of the petitioner that the enquiry stands vitiated by reasons of failure on the part of the respondents to disclose the list of witnesses and the list of documents along with enquiry report. Admittedly, in this case, it is noticed that the disciplinary authority did not make any disclosure along with the Articles of Charge dated 19th August, 2002.

24. From the enquiry proceeding it would appear that after the enquiry proceeding had commenced, the presenting officer had not only submitted a list of documents comprising of 28 several documents but a list of witnesses who

were all associated with the respondent bank. It would also appear from the minutes of the enquiry proceeding held on 5th October, 2002 that the aforesaid disclosure was a complete surprise to the petitioner. The enquiry officer, however, appears to have acted reasonably in directing the presenting officer to arrange inspection of the documents at the branch.

25. From the records of the proceeding, it appears that notwithstanding the petitioner through the assisting officer having requisitioned 12 several documents on 5th October, 2002, the entirety of the aforesaid documents was not disclosed. It appears that on 24th October, 2002, the petitioner through the assisting officer had requested 13 other documents. Inspection of such documents were ordered by the enquiry officer on the following day. Unfortunately, the records reveal that on 26th October, 2002 when the proceeding again started, the petitioner had invited the attention of the enquiry officer that despite defence documents being requisitioned during the proceeding held on 5th October, 2002 and despite the enquiry officer directing inspection thereof, the same were not made available till that date. Similarly, other defence documents requisitioned by the petitioner during the proceeding held on 24th October, 2002 were not provided. Since, in absence of such documents it was extremely difficult to cross-examine the prosecution witnesses effectively, an adjournment was sought for.

The enquiry officer, however, by refusing adjournment had permitted the proceeding to continue by observing as follows "Can the Management case start by producing Management witnesses pending furnishing copies of defence documents to the CSO?"

The IA having carefully examined the various contentions and apprehensions of the CSO answers the above question in the affirmative and holds that furnishing copies of defence documents is intended for preparing the defence of the CSO and therefore the Management case shall proceed notwithstanding the fact that copies of defence documents could not be made available at the commencement of Examination-in-Chief of Management witnesses.

The PO may, therefore, present Management witness to enable the inquiry to hear the witness."

26. Records also reveal that the enquiry officer permitted the enquiry to proceed on 29th October, 2002, though the requisitioned defence documents were made available only on the previous evening. Although, the petitioner had sought for an adjournment to prepare and go through the management documents, such prayer was not allowed. In course of the departmental proceeding on 29th October, 2002, the presenting officer once again tendered additional documents without making available copies thereof, or offering inspection thereof to the petitioner. Notwithstanding objection, the enquiry officer had permitted such documents to be taken on record. On the subsequent date, on 30th October, 2002, once again the presenting officer was permitted to introduce additional documents to be disclosed. Notwithstanding objection raised on behalf of the

petitioner, the presenting officer was permitted to introduce new documents/ vouchers dated 8th August, 2001 as according to the enquiry officer the same related to routine transactions of the respondent bank.

27. It is noticed that Mr. Moitra by placing reliance on the judgment delivered by a Coordinate Bench of this Hon'ble Court in the case of Himangshu Kumar Bose v. Union of India (supra) has, inter alia, claimed that unless, a delinquent is permitted reasonable opportunity to defend in conformity with the principles of natural justice, the same renders the enquiry invalid. In the said case, the grievance of the petitioner was that although, the petitioner by his letter had sought about 10 documents and statements of witnesses mentioned in the charge-sheet and the report of the vigilance inspector, only copies of some of the documents were given and inspection of some of the documents were allowed but a number of other documents, asked for, had not been supplied. It is, in that context, the Coordinate Bench of this Hon'ble Court in paragraph 6 was, inter alia, pleased to observe as follows:

"6. In my view the first three grievances of the petitioner have substance and the enquiry which was held cannot be sustained for the reasons which are discussed hereinafter.

It is an accepted position in law that; the necessity of supplying copy of a document will have to be judged not only from the stand point of the prosecuting authority but also from the stand point of the defence. A document may not at all be relevant or useful for the purpose of prosecution but may be of immense value for the purpose of defence. The reason, justifying the recognition of this principle, is not far to seek. The right to cross-examine a particular witness, on which reliance has been placed by the prosecution, is a fundamental part of the principle of natural justice. Keeping the defence or the delinquent deprived of the previous, statements or reports renders illusory such a right. No doubt, normally, the rules of natural justice are intended to supplement the law and not to supplant it and their application can be excluded either by express words or by necessary implication, yet where it is found that the rules are silent the principle operates with full force and a Court of law would not entertain an argument that even if such principle had been observed the result would have been the same, as justice must not only be done but must be shown to have been done. The grievance of the petitioner about the justice being denied to him as proved by non supply of the copy of the necessary documents has been sought to be countered by Mr. Ghose for the respondents saying that the Rules do not provide for any opportunity being given to the delinquent at the stage of fact finding preliminary enquiry. Reliance was placed on the principle laid down in the case of Champak Lal vs. Union of India reported in AIR 1964 SC 1854. This case, however, is distinguishable on facts in as much as the termination of service in that case was made not in course of disciplinary proceeding but in terms of the contract and accordingly principles of article 311(2) were found inapplicable."

28. Mr. De has, however, attempted to distinguish the said judgment by, inter

alia, contending that the same had been delivered prior to decision rendered by the Hon'ble Supreme Court in the case of State Bank of Patiala. v. S. K. Sharma., reported in (1996) 3 SCC 364 and the Court failed to take note of the prejudice caused, I am, however, not in agreement with the same as the issue of prejudice caused would be apparent from paragraph 6 of the said judgment.

29. On the aforesaid issue as regards the stage when opportunity for inspection is to be given to the delinquent, reliance has been placed by the petitioner in the case of Committee of Management, Kisan Degree College v. Shambhu Saran Pandey & Ors., reported in (1995) 1 SCC 404. The Hon'ble Supreme Court in paragraph 5 thereof has clearly reiterated that if the management seeks to rely on any documents in proof of the charge, the principles of natural justice require that such copies of documents need to be supplied to the delinquent. If the documents are voluminous and cannot be supplied to the delinquent, an opportunity has to be given to him for inspection of the documents. It would be open to the delinquent to obtain appropriate extracts at his own expense. If that opportunity is not given, it would be violative of the principles of natural justice. To morefully appreciate the same, paragraph 5 of the aforesaid judgment is extracted hereinbelow:

"5. On the facts and circumstances, we are of the view that at the earliest the respondent sought for the inspection of documents mentioned in the charge-sheet and relied on by the appellant. It is settled law that after the charge-sheet with necessary particulars, the specific averments in respect of the charge shall be made. If the department or the management seeks to rely on any documents in proof of the charge, the principles of natural justice require that such copies of those documents need to be supplied to the delinquent. If the documents are voluminous and cannot be supplied to the delinquent, an opportunity has got to be given to him for inspection of the documents. It would be open to the delinquent to obtain appropriate extracts at his own expense. If that opportunity was not given, it would violate the principles of natural justice. At the enquiry, if the delinquent seeks to support his defence with reference to any of the documents in the custody of the management or the department, then the documents either may be summoned or copies thereof may be given at his request and cost of the delinquent. If he seeks to cross-examine the witnesses examined in proof of the charge he should be given the opportunity to cross-examine him. In case he wants to examine his witness or himself to rebut the charge, that opportunity should be given. In this case, at the earliest, the delinquent sought for inspection of the documents. It is now admitted in the affidavits filed in this Court and in the letter written by the enquiry officer, that some of the documents were seized by the police after the murder of the Manager of the appellant-institution on 31-7-1980 for investigation. In that case the respondent was also one of the accused charged for the offences under Section 302 read with Section 120-B IPC. It is now an admitted fact that in Sessions Trial No. 228 of 1981 dated 31-7-1986 he was convicted for the said offence and was sentenced to undergo imprisonment for life. It would appear

that he filed an appeal in the High Court and bail was granted to him.”

30. On the same issue, the petitioner has also relied on the judgment delivered in the case of Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant & Ors., reported in AIR 2001 SC 24, an unreported judgment delivered by the Hon’ble Supreme Court in the case of The Inspector of Panchayats and District Collector, Salem v. S. Arichandran & Ors. in Civil Appeal No. 6776 of 2022, the judgements in the cases of S. L. Kapoor v. Jagmohan & Ors., reported in (1980) 4 SCC 379 and Professor Ramesh Chandra v. University of Delhi & Ors., reported in 2015 SCC OnLine SC 103.

31. Thus, from the aforesaid, it would be clear that the enquiry proceeding was conducted not in free and fair manner. Not only the disciplinary authority held back relevant documents and list of witnesses from the petitioner at the time of issuance of the charge-sheet and the petitioner was called for to file his defence statement, but also once, the proceeding started the presenting officer on more than one occasion was permitted to introduce new documents and witnesses. The enquiry proceeded even without offering the petitioner inspection on the pretext that the same would be provided to the petitioner before he is permitted to cross-examine. In my view, although, it has been vehemently argued by Mr. De by placing reliance on the judgment delivered in the cases of Regional Manager, UCO Bank & Anr. (supra), Kalipada Das (supra), Himangshu Kumar Bose (supra) and State of Uttar Pradesh (supra) that mere non-supply of documents is not sufficient to vitiate the enquiry and a case of prejudice must be made out, I find that there can be no grater prejudice suffered by the petitioner than defending the enquiry of this nature without being afforded with due opportunity to appreciate the documents which the management wishes to rely. On more than one occasion, the petitioner had been surprised by introduction of new documents and the enquiry officer permitted the presenting officer to introduce new documents as a matter of course without insisting for any explanation. In the case of Regional Manager, UCO Bank (supra), only copy of one particular document was not made over though, he was afforded inspection thereof. In the said facts, the delinquent having failed to establish the prejudice suffered by him the Hon’ble Supreme Court was pleased to observe that the delinquent having failed to identify the prejudice caused and the charges having been proved it was held that the High Court had exceeded in its jurisdiction in interfering the disciplinary proceeding.

32. In the case of Kalipada Das (supra) although, the name of two particular witnesses did not appear in the charge memo, but prior to fixation of the date of examination the enquiry officer had disclosed the names of witnesses and issued summons for their appearances. Documents were marked exhibits without objection in the presence of the delinquent. Further the delinquent, in the said case without filing any objection had participated in the enquiry and had also declined to cross-examine. In the said facts, the Court observed that the delinquent had failed to make out a case of prejudice. Admittedly in this case,

the Articles of charge is bereft of not only the list of documents but list of witnesses. The said judgment is, thus, distinguishable in the facts of the present case. In the case of State of Uttar Pradesh (supra), it appears that in paragraph 39, the Hon'ble Supreme Court by analysing several authorities had been pleased to observe as follows:

"39. In Aligarh Muslim University v. Mansoor Ali Khan [Aligarh Muslim University v. Mansoor Ali Khan, (2000) 7 SCC 529 : 2000 SCC (L&S) 965] , the aforesaid authorities were relied upon, and the answer given was that there is no absolute rule, and prejudice must be shown depending on the facts of each case, as follows : (SCC pp. 539-40, paras 24-25)

"24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L. Tripathi v. SBI [K.L. Tripathi v. SBI, (1984) 1 SCC 43 : 1984 SCC (L&S) 62] Sabyasachi Mukharji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed, quoting Wade's Administrative Law (5th Edn., pp. 472-75), as follows : (SCC p. 58, para 31)

'31. ... [I]t is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent. ... There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth.'

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in State Bank of Patiala v. S.K. Sharma [State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364 : 1996 SCC (L&S) 717] . In that case, the principle of "prejudice" has been further elaborated. The same principle has been reiterated again in Rajendra Singh v. State of M.P. [Rajendra Singh v. State of M.P., (1996) 5 SCC 460]

25. The "useless formality" theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta [M.C. Mehta v. Union of India, (1999) 6 SCC 237] referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Staughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark, etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be

prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.'"

From the aforesaid it would appear that there can be no technical infringement of natural justice and real prejudice must be shown as against apprehension. This, however, does not appear to be a case of mere apprehension of prejudice.

33. From the enquiry proceeding, it would be apparent that the manner in which the enquiry was conducted, the petitioner had been severely prejudiced. I have no doubt in my mind that the petitioner had been denied the reasonable opportunity to defend. Having regard to the aforesaid and taking note of the seriousness of the charges, I am of the view that the stigma could not have been attached to the petitioner without the petitioner being afforded with appropriate opportunity to defend. In view thereof, the enquiry proceeding having been vitiated on the grounds discussed above, stands set aside. As a sequel thereto the final order of punishment inflicted by the disciplinary authority dated 26th March, 2003 is also set aside. I find that the appellate authority did not appropriately address the aforesaid issue consequentially, the order dated 11th August, 2006 passed by the appellate authority also stands set aside. In view of the aforesaid, finding the question, whether the enquiry could be continued beyond 26th October 2002, having become academic, it is not necessary to discuss the same.

34. The petitioner, however, in the interregnum has already reached the age of superannuation and as such neither do I find any reason nor there is any opportunity to refer back the petitioner to the respondents for a fresh enquiry. At the same time, taking note of the fact that the petitioner did not render any service with the respondents nor there being any averment in the petition that the petitioner remained otherwise unemployed from the date of dismissal, I am of the view that no compensatory relief in the form of back wages post the order of termination can be awarded. The petitioner shall, however, be entitled to all consequential benefits including the differential amount of his actual salary by treating the petitioner to be in service on the date of passing of the final order of dismissal less the subsistence allowance already paid. The petitioner shall also be entitled to all consequential benefits by treating him to be in notional service until he reached the age of superannuation.

35. With the aforesaid observations and directions, the writ petition stands disposed of.

36. There shall be no order as to costs.

37. In view of disposal of the writ petition the connected application being CAN 1 of 2008 being an application for fixing a date for early hearing having become infructuous also stands disposed of.

38. Let the original records be returned to the learned advocate on record for the respondents against a proper receipt to be retained in the file.

39. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of necessary formalities.