

(2010) 11 DEL CK 0340

In the Delhi High Court

Case No : Writ Petition (C) No. 2390 of 2006

Gopal Prasad

APPELLANT

Vs

Canara Bank

RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

Canara Bank Officer Employees (Conduct) Regulations, 1976 — Regulation 17, 20, 24, 3(1), 4
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 2

Citation : (2010) 120 DRJ 393

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : V.H. Pillai, for the Appellant; Meenakshi Sood, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Singh, J.—That the petitioner has filed the present writ petition under Article 226 of the Constitution of India for issuing a writ of mandamus thereby quashing the impugned orders dated 26.12.2005 passed by the appellate authority, order dated 5.3.2005 passed by the disciplinary authority and the Inquiry report dated 11.9.2004.

2. Petitioner joined Canara Bank as a clerk on 13-10-1973 and subsequently promoted to senior manager on 20-04-1998. On 02-06-2001 petitioner was shifted to and so joined Pahar Ganj branch of the respondent bank.

3. On the basis of complaints of certain customers regarding undue favour to some customers of bank in violation to bank's rules and procedures, a FIR dated 30-06-2003 bearing No. 8(E)2003-EOW-1/DLI u/s 420/467/468/471/120-B IPC r/w 13(2) and 13(1)(d) of Prevention of Corruption Act, 1988 was registered against the petitioner.

4. The petitioner in pursuant to FIR was arrested by CBI on 04.07.2003 and he

was put under suspension. A charge-sheet dated 15.3.2004 was issued against petitioner for the irregularities/misconduct committed within the meaning of Regulation 3(1) read with Regulation 24 of Canara Bank Officer Employees (Conduct) Regulation, 1976 (hereinafter referred to as the Regulation) punishable under the provisions of the said Regulation for serious irregularities.

5. The petitioner vide letter dated 5.4.2004 replied to the charge-sheet denying all the charges of misconduct and irregularities.

6. Thereafter respondent bank took disciplinary proceedings against the petitioner. A preliminary inquiry was conducted on 1.6.2006 followed by regular inquiry.

7. The petitioner urged that proceedings were not conducted as per rules and norms. The petitioner was not given opportunity to cross-examine witness of the investigative officer. Petitioner alleged that his witnesses and documents were not given consideration and were ignored. All the allegations of the investigative officer were accepted as it is. Inquiring Authority accepted all charges against the petitioner vide inquiry report dated 11-09-2004.

8. The Inquiry Officer vide his report found petitioner guilty of the charges. The respondent bank supplied copy of the findings of the Inquiry Authority report to the petitioner. Thereafter petitioner filed his comments on 04.10.2004 by way of his reply to the said inquiry report to the Disciplinary Authority. On 28 -10-2004, Disciplinary Authority through a letter to the Chief Vigilance Officer (CVO) recommended the punishment of reduction of the grade of the petitioner and also sought second-stage advice in the matter.

9. Disciplinary Authority stated that the allegations against the petitioner can be at most stated as procedural irregularities and there were no evidence of any pecuniary gains made by the petitioner. However, in reply through a letter dated 13-11-2004, CVO advised the punishment of removal of the petitioner from service which shall not be a disqualification for future employment and disagreed with the recommendation of the Disciplinary Authority.

10. Disciplinary Authority in Reply through letter dated 21 -11-2004, informed CVO about the gross irregularities in investigation and past record of the petitioner, but CVO through letter No. VIG-2940-2004 CVC-147 dated 22-12-2004 again suggested same punishment.

11. Disciplinary Authority showed its dissatisfaction with the advice of CVO through letter dated 15-01-2005 giving many reasons and also stated that matter of such dispute can be resolved as per guidelines contained in letter No. 14/10/98VIG dated 11-05-2004 issued by the Ministry of Finance, Govt. of India.

12. On 10-02-2005, a letter addressed by CVO was sent to Director, Central Vigilance Commission (CVC), seeking their advice in this matter. According to the letter the case was not formally put in front of CMD for his intervention. In February 2005, CVC agreed with CVO's advice regarding the removal of

petitioner. Petitioner through a letter dated 21-02-2005, requested for the orders of CVC from the Disciplinary Authority but neither copy of the same was supplied to him nor did he receive any reply to his letter.

13. Later on, on the basis of advise, the Disciplinary Authority, vide order dated 05.03.2005 found petitioner guilty of charges levelled against him and imposed punishment of "removal from service which shall not be a disqualification for future employment".

14. The petitioner thereafter filed an appeal with the appellate authority, the Executive Director of the Bank, bringing in notice procedural irregularities, bias and prejudice against him during the departmental proceedings.

15. The Appellate Authority by an order dated 26.12.2005 refused to interfere with the findings of the Inquiry Authority and the order of the Disciplinary Authority. The appeal of the petitioner was dismissed but his punishment was modified to compulsory retirement instead of punishment of removal of the services.

16. The petitioner has now challenged the order dated 11.09.2004, 05.03.2005 and 26.12.2005 by filing the present writ petition.

17. The main point involved in the present case for determination is as to whether the impugned order of the disciplinary authority dated 05.03.2005 being completely based on the DICTA of the Central Vigilance Commission (CVC) / Chief Vigilance Officer (CVO) and without its own independent application of mind, is illegal and unsustainable or not.

18. In the present case, it is indisputable that the Disciplinary Authority (hereinafter referred to as the DA) after going through the Inquiry Report and upon his independent application of mind, had recommended the punishment of "reduction to a lower grade i.e. from MMG Scale III to MMG Scale II and his basic pay to be fixed at Rs. 9820/-" vide his letter dated 28.10.2004.

19. A bare perusal of the letters dated 21.12.2004 and 15.01.2005 from the DA to the CVO reveals that various detailed reasons were assigned by the DA for arriving at the conclusion that most of the charges against the petitioner were merely procedural irregularities and came to the conclusion that, at worst, the same called for a punishment amounting to reduction in lower grade. The recommendation of punishment was issued by the respondent in its letter dated 15.1.2005, for the advice of CVO, the same is reproduced as under:

The General Manager 15.1.2005 Chief Vigilance Officer Canara Bank, Vigilance Department Head Office Bangalore Dear Sir,

Sub: In the matter of misconduct on the part of Sri Gopal Prasad (15229), Senior Manager, Canara Bank, R&L Section, Circle Office, Lucknow

Ref: Your letter 1, VIG 2486 2004 CVC 147

dt 13/11/2004

2. VIG 2940 2004 CVC 147 dt. 22/12/2004

This has reference to your letter dated 22.12.2004 whereby you have reiterated your second stage advice regarding punishment in view of observation made therein./ in this regard, we wish to clarify that while we agreed with the finding of the inquiring Authority, we proposed the punishment of "reduction to a lower grade i.e. from MMG Scale III and his basic pay to be fixed at Rs. 9820/- "which we felt as appropriate for the following reasons:

1. There are three distinct and separate charges framed against Gopal Prasad out of the three charges, under charge no1 the integrity and honesty of the officer employee has not been questioned. Under charge no1 and 3 thought the integrity and honesty of the officer employee have been questioned, there are no specific details available on record with regard to the pecuniary gain alleged to have been derived by him.

2. In charge no1 it has been alleged that he has restored to discounting of 6 cheques aggregating to an amount of Rs69.66 lacs to accommodate the party beyond the branch power. Apart from that a local cheques of Rs 4 lacs was also discounted by him which was subsequently returned unpaid. We observe from the records of the enquiry that out of 6 CD Bs, ratification from circle office is available in respect of 3 CD Bs. However, the said ratification was subject to the condition was not complied with. Further in respect of remaining 3 CD Bs, the branch has sent the ratification note to Circle Office. However Circle Office has neither approved the discounting of the cheques nor disapproved the same. In our view the allegation contained in this charge is to be viewed as procedural irregularities.

3. Under charge no2, we have alleged that the officer employee has sanctioned 6 LHV SRTO and can mobile loan within the family member of Sri. Kuldeep Agarwal without complying with the laid down norms and procedure of the Bank for accommodation purpose. In one of the LHV SRTO 7/2002, we have alleged that the LHV was sanctioned in the name of Sri. Devender Kumar though the actual beneficiary is Sri. Kuldeep Agarwal. The vehicle delivered under this LHV is reportedly utilised by the son of the officer employee in his Travel Agency M/s Dwarka Tours and Travels. In this regard we observe from the Writ Petition filed by Sri. Kuldeep Agarwal which is also taken on record and marked as document in exhibit MEX-2 Ann 25 that Kuldeep Agarwal and Smt. Anu Bansal have admitted having availed various LHV loans under SRTO and in the affidavit filed by them, they have not mentioned anything about the utilization of vehicle by CSO's sons.

However, we are of the view that mere utilization of the vehicle by the sons of the office employee may not construed as having derived pecuniary benefit. We are of the view that in the absence of specific details with regard to any pecuniary gain derived by the officer employee and any tangible evidence to

establish that the vehicle loan was sanctioned to benefit his son, the irregularities may have to be treated as procedural in nature.

4. In respect of charge no3 we have alleged that the officer employee has sanctioned OCC limit of Rs 24 lacs under branch power to M/s HR Industries of Sri Kuldeep Agarwal, though the aggregate loan amount exceeded Rs 25 lacs including that of LHV. We have further alleged that with intention to generate funds for establishing M/s Dwarka Studio and Color Lab and M/s Dwarka Watch Company, the officer employee has accommodated the party by restoring to discounting cheques and allowing transgression in the account. In this regard, we observe that though we have alleged that sons of the officer employee have business interest in the above two concerns, on perusal of the affidavit as exhibit MEX2 - Ann25, they have deposed that these two concerns are propriety concerns and the proprietary are Sri. Kuldeep Agarwal and Amt. Anu Bansal w/o Sri. Kuldeep Agarwal. Therefore the evidence brought on record has not established that the officer employee's sons have business interest in these concerns. Though the Inquiring Authority has relied on the statement of Sri. Kuldeep Agarwal in the affidavit with regard to demanding of illegal gratification and favour, their concerns have not been taken into account. Therefore the allegation that officer employee has accommodated the party to generate funds to establish the above concerns may not be sustainable.

5. There is no specific detail with regard to deriving pecuniary benefits by the officer employee and the allegation is sought to be founded upon based on the statement of Sri. Kuldeep Agarwal made in Writ Petition.

6. It is on record that officer employee has action against Sri. Kuldeep Agarwal towards recovery of Bank's liability by seizing the goods on 26/02/2003 and it is also probable that Sri. Kuldeep Agarwal may have made statement against the officer employee due to provocation on account of action initiated by the officer employee. Therefore, relying on such statement without providing opportunity of cross examination may not comply with the principle of natural justice.

7. In cases like receipt of illegal gratification, we are of the view that it is necessary that the Chargesheeted employee be provided opportunity of cross examining the persons who have alleged to have paid illegal gratification to comply with the principle of natural justice. In this case these parties have neither been cited or witness nor summoned in the enquiry to depose and/or confirm their statement. In absence of their cross examination by CSO, replying upon the statement to establish the charge of illegal gratification may not be proper.

8. The statement of Sri. Kuldeep Agarwal in the affidavit annexed to WP that M/s Dwarka Colour Lab and M/s Dwarka Watch Company are their proprietary concern may dispel the allegation that the CSO has accommodated the parties to generate funds to establish the above concern for his son. Having this statement on record, it may be difficult to hold that the CSO's sons have business interest

in these concerns. Therefore taking into consideration the above factor/aspects and the fact there is no adverse remark in the past record of the officer employee, we have proposed the aforesaid punishment vide letter dt. 28/10/2004.

In view of diverging view in the matter, we feel that the matter may have to be further processed in terms of the guidelines contained in letter No. 14/10/1998 VIG dt. 11/5/2004 received from GOI, Ministry of Finance. We request you to kindly do the needful and inform us the CVC's advice to enable us to proceed further in the matter.

Yours faithfully

Sd/-

K. Suresh Rao

General Manager

20. As per the case of the petitioner, however, the letters of the CVO are contrary to the settled principle of service law that punishment in a departmental proceeding should only be decided upon by the disciplinary / punishing authority upon his own independent application of mind based on the material on record, without being influenced by any external sources. It is submitted by the petitioner that the CVO was adamant upon imposition of the punishment of removal from service.

21. The following is the details of chart indicating the variation in the letters/orders passed by the disciplinary authority prior to and pursuant to the directions/ advice of the CVC is as under:

PARTICULARS

RECOMMENDATIONS OF DISCIPLINARY AUTHORITY PRIOR TO DICTA OF CVO/
CVC (15.01.2005)

FINDINGS OF DISCIPLINARY AUTHORITY PURSUANT TO DICTA OF CVO/CVC
(05.03.2005)

PECUNIARY ADVANTAGE

No specific details available on record with regard to pecuniary gain alleged to have been delivered by him

The statement of Kuldeep Aggarwal filed before the High Court corroborates the evidence that has come on

record and proves that the CSO has misused his official position to derive undue pecuniary benefits for himself and his family members

RATIFICATION OF CDBs

Out of 6 CDBs ratification from circle office is available in respect of 3 CDBs- In respect of three remaining CDBs, the branch has sent a ratification note to Circle Office, however, Circle Office has neither approved nor ratified the same ? Allegation is to be viewed as procedural irregularities

Contention of CSO regarding seeking ratification not acceptable The contention of CSO that he had sought ratification for CDBs 400, 401 & 402 not sustainable since there is neither any ratification on record nor has any document been produced to prove that ratification has been granted by the Circle Office.

SANCTION OF CANMOBILE AND VEHICLE LOAN

In absence of specific details with regard to pecuniary gain derived by him and any tangible evidence to establish that vehicle loan was sanctioned to benefit his son, the irregularities may have to be treated as procedural

It is established that CSO has accommodated the party by showing undue favour violating the systems and procedures

22. From the documents on record that the Chief Vigilance Officer (hereinafter referred to as CVO) of the Bank not only disagreed with the punishment imposed by the DA but also wanted the imposition of the punishment of "removal from service".

23. It is argued by the respondent that a bare reading of the order dated 05.03.2005 would show that the order of the Disciplinary Authority is detailed order and it reflects independent and due application of mind. Hence, there can be no reason whatsoever for the petitioner to allege that the disciplinary authority has not exercised its mind in passing the order.

24. It is argued by the respondent that Clause 19 of the Canara Bank Officer Employee's (Discipline and Appeal) Regulation, 1976 provides that the bank shall consult the CVC wherever necessary in respect of all disciplinary cases having a vigilance angle. It is to be underlined that the said Regulation, through provides for consultation with the CVC wherever necessary, it does not mandate compliance with its recommendations.

25. Therefore, the proceedings initiated against the petitioner were within the parameters of the prescribed rules/regulation of the bank. The Disciplinary Authority, exercising the powers conferred under Regulation 4(i) of Canara Bank Officer Employee's (Discipline and Appeal) Regulation, 1976 imposed the punishment on the basis of conducting the regular inquiry.

26. It is further argued that the Appellate Authority also considered the Appeal filed by the petitioner and after giving a personal hearing, keeping in view facts and circumstances of the case, reduced the punishment of "removal from service which shall not be disqualification for future employment? modified to "compulsory retirement" vide order dated 26.12.2005.

27. In the present case, it is evident after comparison of the initial view taken by

the DA vide his letter dated 15.01.2005 and the final order of punishment passed by him on 05.03.2005 , it is clear without any doubt that the order of services was not only entirely based upon the dicta of the CVO/CVC but was also completely contrary to the bank's earlier stand/decision which was arrived at, upon his own independent application of mind. The reasons assigned by the DA in his order dated 05.03.2005 for imposing the punishment of removal from service upon the petitioner, is exactly opposite to the reasons assigned by the bank in his letter dated 15.01.2005 by concluding that the charges against the petitioner, at worst, amounted to procedural irregularities.

28. The reasons assigned by the DA in his order dated 05.03.2005 are almost the same to the reasoning given by the CVO in his letter dated 22.12.2004. Hence, DA took a different stand from his earlier stand.

29. One can easily come to the conclusion that the DA had exactly followed the command of the CVO and imposed the punishment of removal from service as directed, it was only on an appeal preferred by the petitioner wherein the order passed by the DA was brought to the notice of the Appellate Authority , the punishment was altered. In case, the order passed by the DA is in line with the letter dated 15.01.2005 the petitioner would have continued to be in service albeit at a lower scale w.e.f. 05.03.2005.

30. An important thing in the matter that it was the same officer viz. K. Suresh Rao, General Manager, who was the DA on 15.01.2005 when the earlier decision was communicated to the CVO and on 05.03.2005 when the final order was passed within the gap of later than two months as per command of the CVO.

31. The decision of the Hon'ble Supreme Court in the case of Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another, is directly applicable to the facts of the instant case. In the present case, the bank in question had recommended a lesser punishment upon the delinquent which was not agreed upon by the CVC, whereupon the Supreme Court at Paras 16 & 17 held that it was only for the disciplinary authority alone to decide upon the imposition of punishment. While setting aside the orders passed by the disciplinary and the appellate authority in the said case, it was held in Para 19 that "The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the CVC or the Central Government. No third party like the CVC or the Central Govt. could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment should they impose on the delinquent officer". The claim of the respondent that in the said case there was a Circular from the Ministry of Finance, making the advice of the CVC binding does not render the rate of the said judgment as invalid. The conclusions drawn therein by the Apex Court with respect to the power of imposition of punishment solely being vested with the disciplinary authority without any interference by any third party like the CVC holds equally good in the instant case. It was in that context that besides the orders of the disciplinary authority

and the appellate authority, the Apex Court chose to quash the directive issued by the Ministry of Finance as well, in the said case. Paras 16, 17 and 19 of the decision of the Apex Court are reproduced hereunder:

16. The power of the punishing authorities in departmental proceedings is regulated by the statutory Regulations. Regulation 4 merely prescribes diverse punishment which may be imposed upon delinquent officers. Regulation 4 does not provide specific punishments for different misdemeanours except classifying the punishments as minor or major. Regulations leave it to the discretion of the punishing authority to select the appropriate punishment having regard to the gravity of the misconduct proved in the case. Under Regulation 17, the appellate authority may pass an order confirming, enhancing, reducing or completely setting aside the penalty imposed by the disciplinary authority. He has also power to express his own views on the merits of the matter and impose any appropriate punishment on the delinquent officer. It is quasi-judicial power and is unrestricted. But it has been completely fettered by the direction issued by the Ministry of Finance. The Bank has been told that the punishment advised by the Central Vigilance Commission in every case of disciplinary proceedings should be strictly adhered to and not to be altered without prior concurrence of the Central Vigilance Commission and the Ministry of Finance.

17. We are indeed surprised to see the impugned directive issued by the Ministry of Finance, Department of Economic Affairs (Banking Division). Firstly, under the Regulation, the Bank's consultation with Central Vigilance Commission in every case is not mandatory. Regulation 20 provides that the Bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle. Even if the Bank has made a self imposed rule to consult the Central Vigilance Commission in every disciplinary matter, it does not make the Commission's advice binding on the punishing authority. In this context, reference may be made to Article 320(3) of the Constitution. The Article 320(3) like Regulation 20 with which we are concerned provides that the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted-on all disciplinary matters affecting a civil servant including memorials or petitions relating to such matters. This Court in *A.N. D'silva Vs. Union of India (UOI)*, has expressed the view that the Commission's function is purely advisory. It is not an appellate authority over the inquiry officer or the disciplinary authority. The advice tendered by the Commission is not binding on the Government. Similarly, in the present case, the advice tendered by the Central Vigilance Commission is not binding on the Bank or the punishing authority. It is not obligatory upon the punishing authority to accept the advice of the Central Vigilance Commission.

19. The corresponding new bank referred to in Section 8 has been defined u/s 2(f) of the Act to mean a banking company specified in column 1 of the First Schedule of the Act and includes the Syndicate Bank. Section 8 empowers the Government to issue directions in regard to matters of policy but there cannot be

any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in different cases. The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See: De Smith's Judicial Review of Administrative Action, Fourth Edition, p. 309). The impugned directive of the Ministry of Finance, is therefore, wholly without jurisdiction, and plainly contrary to the statutory Regulations governing disciplinary matters.

32. On the similar circumstances, the judgment rendered by the Hon'ble Bench of the Punjab & Haryana High Court in the case of S. Sheokand Vs. Oriental Bank of Commerce and Others, is applicable to the instant case, both in the factual and legal matrix.

33. The judgment relied upon the learned Counsel for the respondent in this context viz. Union of India (UOI) and Others Vs. Alok Kumar, is clearly distinguishable in the facts of the present case. In the said judgment it was held by the Apex Court that in a case where the advice/notes of the CVC have not affected or tainted the mind of the punishing authority, non -furnishing of the same to the delinquent would not be fatal. However, in the present case the advice tendered by the CVO vide his communication dated 22.12.2004 when compared with the first letter of the DA dated 15.01.2005 and his final order dated 05.03.2005 leads to the conclusion that the subsequent final order was totally influenced by the advice of the CVC. The opposite view from its own earlier letter dated 15.01.2005 along with the exact reasoning assigned by the CVO in his letter dated 22.12.2004 was taken which establishes that the final order of the DA dated 05.03.2005 was passed solely based on the CVO's advice.

34. In case of Union of India v. Alok Kumar (supra), the Apex Court has not only affirmed the judgment in the case of DC Aggarwal, but also reproduced the finding in the case of Sushil Kumar at Para 52 which reveals that the same was based upon a case wherein the final conclusions of the disciplinary authority were at variance with the opinion of the Vigilance Commissioner. Para 52 reads as under:

52. From the aforenoticed facts it is clear that, there is nothing on record to show that the alleged CVC notes have actually been taken into consideration and that the same have affected the mind of the disciplinary authority while considering the defence of the delinquent officer and imposing punishment upon him. Unless such notes were actually considered and had some prejudicial effect to the interest of the delinquent officer, it will not be necessary for the Court to

interfere in the departmental inquiry proceedings on that ground. In the case of Sunil Kumar Banerjee (*supra*), where the Vigilance Commissioner had been consulted, there was alleged non-supply of Vigilance Commissioner's report to the officer. A three Judge-Bench of this Court took the view that the findings of the disciplinary authority and its decision was not tainted and, therefore, would not be termed as illegal. The Court in Para 4 of the judgment held as under:

4. We do not also think that the disciplinary authority committed any serious or material irregularity in consulting the Vigilance Commissioner, even assuming that it was so done. The conclusion of the disciplinary authority was not based on the advice tendered by the Vigilance Commissioner but was arrived at independently, on the basis of the charges, the relevant material placed before the Inquiry Officer in support of the charges, and the defence of the delinquent officer. In fact the final conclusions of the disciplinary authority on the several charges are so much at variance with the opinion of the Vigilance Commissioner that it is impossible to say that the disciplinary authority's mind was in any manner influenced by the advice tendered by the Vigilance Commissioner. We think that if the disciplinary authority arrived at its own conclusion on the material available to it, its findings and decision cannot be said to be tainted with any illegality merely because the disciplinary authority consulted the Vigilance Commissioner and obtained his views the very same material. One of the submissions of the appellant was that a copy of the report of the Vigilance Commissioner should have been made available to him when he was called upon to show cause why the punishment of reduction in rank should not be imposed upon him. We do not see any justification for the insistent request made by the appellant to the disciplinary authority that the report of the Vigilance Commissioner should be made available to him. In the preliminary findings of the disciplinary authority which were communicated to the appellant there was no reference to the view of the Vigilance Commissioner. The findings which were communicated to the appellant were those of the disciplinary authority and it was wholly unnecessary for the disciplinary authority to furnish the appellant with a copy of the report of the Vigilance Commissioner when the findings communicated to the appellant were those of the disciplinary authority and not of the Vigilance Commissioner. That the preliminary findings of the disciplinary authority happened to coincide with the views of the Vigilance Commission is neither here nor there.

35. Learned Counsel for the petitioner has argued that despite of petitioner's request in his letter dated 2 1.2.2005, copies of orders passed by CVC were not supplied to him. In support of his submission, he referred the decision of the Apex Court in *State Bank of India and others Vs. D.C. Aggarwal and another*, . No satisfactory answer has been given by the respondent. In the case referred above, *State Bank of India and Ors. (supra)*, Hon'ble Apex Court has dealt with the similar point in para 5 of the judgment. The relevant portion of para 5 reads as under:

5 ... The order is vitiated not because of mechanical exercise of powers or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of Sub-rule (5). But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the disciplinary authority but was examined and relied on, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From the letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as "The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the appointing authority deals with the recommendation of the CVC which is considered sufficient". Taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the disciplinary authority. May be that the disciplinary authority has recorded its own findings of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the Vigilance report was one of the grounds taken in appeal. But that was so because the respondent prior to service of the order passed by the disciplinary authority did not have any occasion to know that CVC had submitted some report against him. The submission of learned Additional Solicitor General that CVC recommendations are confidential, copy of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different than CVC recommendation which was the basis of the order passed by the disciplinary authority.)

Therefore, there is a force in the submission of the petitioner in this regard also.

36. The other important fact of the matter is that during the pendency of the matter the Chairman & Managing Director (CMD) of the Bank, on the request of the petitioner for review of order, took a humane approach, considering the fact that there had been a death in the family of the petitioner, and agreed to recommend to Central Vigilance Commission to reconsider the matter on humanitarian grounds, so as not to deprive him of livelihood and recommended to Central Vigilance Commission to reconsider the matter and permit the bank to impose the punishment originally suggested by Disciplinary Authority for reduction to a lower grade. However, the request for reinstatement was not approved by the bank due to pendency of litigation and recommendation by Central Vigilance Commission.

37. In view of the facts and circumstances of the case and the law laid down by the Apex Court as stated above, the writ petition is allowed. The order of the Disciplinary Authority dated 05.03.2005 and the subsequent order passed thereon by the Appellate Authority are set aside. Consequently, the recommendation of the Disciplinary Authority dated 28.10.2004 by which the punishment of "reduction to a lower grade i.e. from MMG Scale III to MMG Scale II and his basic pay to be fixed at Rs. 9820/ -" be deemed to be the punishment imposed upon the petitioner .

38. The petitioner shall be entitled to all service and terminal benefits including pensionary benefits.

39. No costs.