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(2002) 06 KAR CK 0076

In the Karnataka High Court

Case No : Writ Petition No''s. 12948 of 1995 and 12018 of 1999

Gopichander M.L. APPELLANT

Vs

Andhra Bank RESPONDENT

Date of Decision : 25-06-2002

Acts Referred:

Andhra Bank (Officers) Service Regulations, 1982 — Regulation 13, 13 (1), 20
Constitution of India, 1950 — Article 226

Citation : (2002) 3 LLJ 570

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : P.S. Rajagopal, for the Appellant; Kasturi, for Kasturi, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Dattu, J.—Since common questions of facts and law are involved in these two writ petitions, they are disposed off by this common order.

2. Facts in W.P. No. 12946/1995: Petitioner had joined the services of respondent-Andhra Bank, a body constituted under the provisions of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, as Probationary-Officer-Grade III on January 5, 1976. While in service, he had earned successive promotions. At the time of filing of this writ petition, he was working as Officer, Middle Management-Grade Scale II.

3. While he was working at Jayanagar Branch of the respondent Bank, he was kept under suspension by an order dated July 21, 1986 and subsequently disciplinary proceedings were initiated against him by issuing a charge memo dated September 13, 1986. The proceedings culminated in imposing a penalty of ''censure'' by the disciplinary authority by an order dated November 7/9, 1994. The disciplinary authority had further ordered that the period of suspension shall not be treated as on duty except for the purpose of terminal benefits. In the very same order, petitioner was informed that the order of suspension made on July

21, 1986 is revoked and he is posted to work at Zonal Office of the Bank, Bhubaneswar, State of Orissa.

4. Disturbed by the punishment imposed, petitioner was before this Court in W.P. No. 10896/1995. This Court by its order dated July 1, 1999 was pleased to dispose off the petition and in that Court was pleased to modify the orders made by the disciplinary authority as under:

"The petitioner shall be treated as being on duty during the period of suspension for all purposes and he shall be entitled to full pay and the increments and all the consequential monetary benefits. The respondent shall within a period of 60 days from the date of this order, calculate and give the petitioner, all the monetary benefits due to the petitioner by reason of this order. The respondent shall act on the basis of the copy of the order received by it or on the basis of a certified copy of the order produced by the petitioner whichever event occurs early. The petitioner is also entitled to receive costs of Rs.2,500/- from the respondent."

5. Aggrieved by the aforesaid order of the learned single Judge, the respondent Bank had carried the matter in an appeal No. 5826/1999. A Division Bench of this Court by its order dated March 20, 2000 was pleased to reject the writ appeal and was further pleased to direct the appellant Bank to pay an additional cost of Rs. 3,000/- to the respondent therein.

6. Petitioner, pursuant to the directions issued by the respondent Bank in its order dated November 7/9, 1994 reported for duty at Zonal Office of the respondent Bank at Bhubaneswar. After reporting, petitioner in terms of Andhra Bank (Officers'') Service Regulations (hereinafter for the sake of brevity referred to as ''Regulations'') submitted a notice of resignation dated December 20, 1994 and in that informed the authorities that he shall stand relieved from the services of the Bank after the expiry of three months'' notice period i.e. with effect from March 20, 1995. The letter of the petitioner dated December 20, 1994 is as under:

From

20.12.1994

M.L. Gopichander MM-II, Code No. 3313 Andhra Bank, Zonal Office, Bhubaneswar.

To The Asst, General Manager Andhra Bank, Zonal Office Bhubaneswar,

Sir,

Sub: Resignation from the services of the Bank under Regulation 20(2) of Andhra Bank (Officers) Service Regulation, 1982

Under Sub-regulation (2) of Regulation 20 of the ABOSR, I hereby give you notice of my intention to leave the services of the Bank with effect from 3 (three) months from today. This may kindly be taken as notice required under the

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Regulations. Please note that I shall stand relieved from the services of the Bank on the expiry of 3 months from today that is with effect from March 20, 1995.

Thanking you,

Yours faithfully. Sd/- (ML. Gopichander)."

7. The respondent Bank after receipt of the notice of resignation from services of the Bank by the petitioner, has passed an order bearing No. 686/3/SW/2671 dated March 13, 1995, which is served on the petitioner on March 22, 1995, and in that he is informed that his notice of resignation is rejected in view of contemplated disciplinary proceedings pending against him and further he was directed to report for duty immediately. The aforesaid communication reads as under:

"To Mr. M.L. Gopi Chander Officer MM II, (3313) Zonal Office, Bhubaneswar Res. add: No. 4 III Cross Gupta Layout, Ulsoor Bangalore 8.

Dear Sir,

Reg: Your resignation from Bank''s service.

We refer to your letter dated December 20, 1994 and inform you that your resignation from Bank''s service is not accepted in view of the contemplated disciplinary action pending against you. You are advised to report for duties immediately.

Yours faithfully,

Sd/- (K. Narayana Murthy) Deputy General Manager"

8. Even before submitting his letter of resignation, petitioner by his letter dated December 20, 1994 had made a request to the authorities to permit him to avail the joining time of 7 days after his transfer from Bangalore to Bhubaneswar. By yet another letter dated January 9, 1995, petitioner had made a request to the competent authorities of the respondent Bank for extension of the leave period by 30 days and thereafter by another letter dated February 22, 1995, petitioner had requested the authorities of the respondent Bank for further extension of the leave period by another 20 days and had further requested the authorities to inform him what he should do with the advance amount of Rs. 20,000/- which he had received towards advance travelling allowance and dearness allowance.

9. At this stage itself, I should notice the earlier charge memo issued by the disciplinary authority of the respondent Bank dated September 13, 1986. The allegations and accusations pertain to the period between February 14, 1986 and July 1, 1986. It appears petitioner had replied the same by filing his defence statement dated October 28, 1986, denying the allegations contained in the charge memo. It is asserted that the respondent Bank on receipt of the reply had dropped those charges and had issued a separate charge memo dated August 8, 1988, superseding the earlier charge memo. A copy of the charge memo is

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produced along with the writ petition papers and the same is as under:

"In supersession of our charge-sheet No. 668/20/PM/86-83/2872 dated September 13, 1986, the following charges are levelled against you.

It is brought to our notice that you committed serious irregularities while working as Manager of our Jayanagar (Bangalore) branch during the year 1988 in purchasing/discounting cheques of the Group of companies belonging to Shri G. Radhakrishna beyond your discretionary powers without obtaining prior permission from the competent authorities. The cheques as per the details given below were purchased by you and retained at the branch without being despatched to the drawee bank/branch, till your transfer from that branch colluding with the parties jeopardising the interests of the Bank.

Imputation of charges:

On June 29, 1986 you have purchased the following cheques beyond your discretionary powers without obtaining prior permission from the competent authorities.

Cheque No.

CBP No.

Date of Purchase

Purchased from

Amount

Drawn on

390195

307

29.6.86

Balaji Traders

Rs.1,02.000

Andhra Bank (Seetraramana puram Branch) Vijayawada

390198

308

29.6.86

Venkateswara Transports

Rs.98,500

Andhra Bank (Seetraramana puram Branch) Vijayawada

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390196

309

29.6.86

Krishna Cement Agencies

Rs.1,05,000

Andhra Bank (Seetraramana puram Branch) Vijayawada

390197

310

29.6.86

Sharada Traders

Rs.95,000

Andhra Bank (Seetraramana puram Branch) Vijayawada

Total

Rs.4,00,500

You have colluded with Mr. G. Radhakrishna, the Managing Partner of 1) Krishna Cement Agencies, 2) Radha Commercial Corporation, 3) Balaji Agencies, 4) Sharada Traders, 5) Shri Venkateswara Cement Agencies. Mr. G. Radhakrishna was having current accounts in each of the above firm''s name at Jayanagar branch (Bangalore). Mr. K. Lokanath Naidu, a relation of Mr. G. Radhakrishna was also operating a current account in the name of Balaji Traders and Sri Venkateswara Transports at Jayanagar branch (Bangalore). On June 29, 1986, you purchased the above referred cheques presented by Mr. G. Radhakrishna and Mr. K. Lokanath Naidu and debit vouchers of CBPs for a sum of Rs. 4,00,500/- were passed by you and the amounts were credited to the CD accounts of the above referred parties. All the above referred four cheques were drawn by Radha Agencies favouring the concerns of Mr. G. Radhakrishna and Sri M. Lokanatha Naidu. The cheques that were discounted/ purchased were not despatched to our Seetharamapuram (Vijayawada) branch till July 8, 1988 with a view to accommodate the parties. The four cheques amounting to Rs. 4,00,500/- were returned unpaid by our Seetharamapuram branch with the endorsement of "Returned". Thus you failed to ensure and protect the interests of the Bank in discharging your duties with utmost integrity, honesty, devotion and diligence causing huge financial loss to the Bank.

All your above acts, i.e., purchasing/discounting cheques beyond your discretionary powers without any authority and without obtaining prior permission from the competent authorities, accommodating the parties for huge amounts without sufficient balances in the accounts, acting without integrity,

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honesty, devotion and diligence in discharging your duties, causing financial loss to the institution constitutes misconduct on your part as per Regulation 3(1) of Andhra Bank Officer Employees (Conduct) Regulations, 1982 punishable under Andhra Bank Officer Employees (Discipline and Appeal) Regulations, 1981.

You are therefore, called upon to explain as to why suitable disciplinary action should not be taken against you. Your explanation should reach us within 15 days from the date of receipt of this letter failing which it will be construed that you have no explanation to offer and action as deemed fit and proper will be initiated against you without any further reference to you in the matter."

10. The disciplinary authority of the respondent Bank for the reasons best known to him had not proceeded with the enquiry even after issuing the aforesaid charge memo, nor had he passed any order either withdrawing the charge memo or dropping the charges made in the charge memo. The matter was kept alive by the disciplinary authority, may be in view of the pendency of the criminal proceedings initiated by CBI on more or less similar, allegations before the Special Court for economic offences.

11. The Bank after receipt of the letter of resignation submitted by the petitioner has issued one more charge memo bearing No. 692/20/V/011 dated March 15, 1995. The accusations pertain to the period February 14, 1986 and July 1, 1986. The charge memo issued reads as under:

"Articles of Charge:

During your tenure as Manager of Jayanagar branch, Bangalore between 1982 and 1986, it is alleged that you have unduly accommodated one Sri G. Radhakrishna, Mg. Partner of Sri Venkateswara Cement Agencies, Krishna Cement Agencies, Radha Commercial Corporation and Sharada Traders, and Sri K. Loknath Naidu, Managing Partner off Sri Balaji Traders by keeping in your custody 106 cheques of the value of Rs. 43,98,360/- raised by the said parties between February 14, 1986 and July 1, 1986 in favour of Rasi Cements P. Ltd. towards the sale proceeds of Cement purchased by them. It is further alleged that when the said 106 cheques were presented by Rasi Cements Ltd., Bangalore, you failed to return these cheques to the Company, as there was no sufficient balance in the respective accounts of drawers. Your aforesaid acts of accommodating parties by unauthorisedly keeping the cheques issued by the parties in your custody with the prior knowledge that there were no sufficient balances in the accounts of the parties, by abuse of your official position are considered prejudicial to the interests of the Bank which indicates that you have failed to discharge your duties with diligence, devotion, honesty and integrity. Thus you have committed breach of Regulation 3(1) and guilty of misconduct as per Regulation 3(1) and guilty of misconduct as per Regulation 24 of Andhra Bank Officer Employees'' Regulations, 1982. The following is the statement of imputation to support the above articles of charge.

Sri G. Radhakrishna is the Managing Partner of the following cement agencies

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and was maintaining current accounts as mentioned hereunder at Jayanagar branch:

Krishna Cement Agency

CD A/c No. 159

Radha Commercial Corporation

CD A/c No. 12

Balaji Agencies

CD A/c No. 182

Sri Venkateswara Cement Agencies

CD A/c No. 15

Sharada Traders

CD A/c No. 52

Vigneshwara Cement Agencies

CD A/c No. 106

Balaji Cement Enterprises

CD A/c No. 109

Sri K. Loknath Naidu is the Managing Partner of Sri Balaji Traders and Sri Venkateswara Transport. He was operating Current A/c. No. 110 in the name of Sri Balaji Traders at our Jayanagar branch, Bangalore, Rasi Cements Ltd., were maintaining Current A/c. No. 28 at our Jayanagar branch. The H.O. of the above Company gave standing instructions to Jayanagar branch to transfer the amount credited to their a/c. to their Head office a/c which was maintained with our Ashoknagar branch, Hyderabad on daily basis leaving a balance of Rs. 1,000/- in the account.

In between February 14, 1986 and July 1, 1986, 106 cheques, the details of which are mentioned in the annexure, were received by Jayanagar branch. These cheques were presented by Rasi Cements Ltd., Bangalore alongwith the covering schedule with instructions to credit the amounts totalling to Rs. 43,96,360/- to their Current A/c. No. 28. The said cheques were detained by you in your custody till July 2, 1986, without: returning the cheques to the Company as there was no sufficient balance in the respective current accounts.

By detaining the cheques unauthorisedly in your custody to the extent of Rs. 43,96,360/-of the said parties, you have extended undue favours to the above parties, thereby exposing the Bank to financial risk.

The aforesaid acts committed by you attract disciplinary action and punishable

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under the provisions of Andhra Bank Officer Employees'' (D&A) Regulations, 1981".

12. The disciplinary authority of the respondent Bank has also issued one more charge memo bearing No. 244/20/209 dated March 10, 1995. The memo contains two allegations, namely that the petitioner has remained absent unauthorisedly from duty since December 21, 1994 without prior sanction of the leave from the competent authority. The second charge is that, petitioner has drawn an amount of Rs. 20,000/- towards travelling allowance and dearness allowance at Zonal Office, Bangalore, in connection with his posting to Zonal Office, at Bhubaneswar and has not submitted his travelling allowance bills and further has not adjusted excess amount of travelling allowance and the same is in contravention of the Regulations of the Bank.

13. Petitioner in W.P. No. 1294671995, calls in question the correctness or otherwise of the orders passed by the respondent Bank in rejecting his notice of resignation to resign from the services of the Bank voluntarily and secondly, the legality or otherwise of the charge memos dated March 15, 1995 and March 10, 1995 on the ground that the same are arbitrary, illegal and invalid.

14. This Court while entertaining the writ petition had not granted any interim order, staying further proceedings pursuant to the charge memos dated March 15, 1995 and March 10, 1995, though a request had been made in that regard. Therefore, the disciplinary authority of the Bank had appointed an enquiry officer to enquire into the allegations contained in the charge memo dated March 10, 1995. Since petitioner did not participate in the enquiry proceedings, the enquiry officer has completed ex parte enquiry proceedings and based on the available oral and documentary evidence on record has submitted his report and the findings to the disciplinary authority of the Bank. He is of the view that the petitioner is guilty of both the charges alleged in the charge memo.

15. The disciplinary authority of the respondent Bank after concurring with the findings of the enquiry officer has passed an order dated September 30, 1998, imposing a penalty of "compulsory retirement" from the services of the Bank. Aggrieved by the said order, petitioner has preferred an appeal before the appellate forum as provided under Discipline and Appeal Regulations of the Bank. The appellate authority by his order dated February 20, 1999 has rejected the appeal and has confirmed the orders made by the disciplinary authority. It is the correctness or otherwise of the orders passed by the disciplinary authority and the appellate authority dated September 30, 1998 and February 20, 1999 respectively are the subject matter of W.P. No. 12019/1999. Answer to the legal issues raised in W.P. No. 12946/ 1995 will have some bearing on the fate of the connected petition. Therefore, the legal issues canvassed by learned counsels for the parties to the lis in the first petition is taken first for consideration and decision

16. The learned counsel Sri P.S. Rajagopal, for petitioner firstly submits that

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since petitioner was not suffering from any disqualification as envisaged under Regulation 20 of the Regulations of the Bank, the respondent Bank is not justified in rejecting the reasonable request of the, petitioner, to permit him to resign from the services of the Bank voluntarily, and therefore their impugned action is arbitrary and illegal. Secondly, it is contended that by operation of law and in particular Regulation 20(3) of the Regulations, petitioner ceased to be in the employment of the respondent Bank with effect from March 20, 1995 and therefore the action of the respondent Bank in directing the petitioner to report for duty immediately since petitioner''s request for voluntary resignation from the Bank from its service is not accepted by the Bank is without authority of law and jurisdiction and wholly unfair and unjust. Thirdly, it is contended that by virtue of Regulations 45 and 46 of Service Regulations of the Bank, petitioner is entitled to receive the service benefits at the rates stipulated therein and the action of the Bank in non- settling the statutory terminal benefits is wholly arbitrary and illegal. Accordingly, the learned counsel requests this Court firstly to quash the communication dated March 13, 1995 issued by the Bank and further to direct, the respondent Bank to settle the terminal benefits payable to the petitioner as envisaged under Regulations 45 and 46 of the Regulations of the Bank with interest thereon at 18% per annum.

17. The learned counsel in so far as the charge memo dated March 15, 1995 is concerned, firstly Would contend that the respondent Bank with a mala fide intention and to some how withhold permission to the petitioner to resign from the services of the Bank has caused issuance of the impugned charge memo and therefore, the same is bad and illegal Secondly, that the allegations made in the charge memo pertains to certain acts of omissions and commissions said to have been committed by the petitioner between the periods February 14, 1986 and July 1, 1986 and those allegations are the very same allegations made in the charge sheet dated September 13, 1986 which was not inquired into and infact dropped by the disciplinary authority on receipt of statement of defence of the delinquent officer and had issued a separate charge sheet in supersession to the earlier charge memo dated September 13, 1986 and having thus waived or condoned the allegations of misconduct as early as in the year 1986, it is not open to the disciplinary authority of the respondent Bank to re-open the very charges and hold a domestic enquiry on the very same set of allegations of misconduct. The learned counsel while explaining the meaning of the expression ''supersession'' invites my attention to the observations made by Apex Court in the case of Calcutta Municipal Corporation Vs. Pawan Kumar Saraf and Another, . Thirdly, it is submitted that the charges alleged are a decade old and therefore, they are stale and it would be impossible for the delinquent officer to defend himself in the enquiry proceedings after a long lapse of time and therefore, the action of the disciplinary authority of the respondent Bank is in violation of principles of natural justice. Therefore, a request is made to restrain the respondent Bank from proceeding with any enquiry pursuant to the aforesaid charge memo by issuing an appropriate writ.

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18. In so far as charge memo dated March 10, 1995 is concerned, the learned counsel would contend, that the same has no basis and infact opposed and contrary to the fact situation. In aid of this submission, the learned counsel would contend that petitioner had submitted his appropriate leave applications by assigning appropriate reasons and the respondent Bank without considering the request made in the leave applications cannot unilaterally accuse that the delinquent officer had remained unauthorisedly absent from the services of the Bank with effect from March 21, 1994 without obtaining prior sanction of leave from the competent authorities of the Bank. This accusation according to learned counsel is made only to prevent the petitioner from leaving the services of the Bank and this action is not only arbitrary but also in violation of the statutory provisions. In support of this submission, the learned counsel invites my attention to Regulation 13(1) of Andhra Bank Officers Employees (Conduct) Regulations. Secondly, he would contend that the petitioner had submitted a detailed letter dated February 22, 1995 and in that he had informed the respondent Bank that he has received the advance amount towards travelling allowance bills at the Zonal Office, Bangalore, and that he has not submitted his travelling allowance bill since he has not taken his family members to Bhubaneswar and he had further offered that he would submit his travelling allowance bills if he is advised in that regard, and learned counsel would further submit that the petitioner infact had requested the Bank to deduct travelling allowance/dearness allowance from the arrears of salary payable to him and therefore, the respondent Bank is not morally justified in accusing the petitioner that though he had availed advance amount towards TA/DA at Zonal Office, Bangalore. In connection with his posting to Zonal Office, at Bhubaneswar, he has not submitted travelling allowance bills and thereby has committed breach of Regulation 3(1) of the Conduct Regulations and in view of all these, the enquiry officer appointed to inquire into the allegations made in the charge memo could not have come to the conclusion that the petitioner is guilty of the charges alleged in the charge memo dated March 10, 1995 and based on such perverse findings, the disciplinary authority of the respondent Bank could not have imposed any punishment much less punishment of ''compulsory retirement'' from the services of respondent Bank.

19. Per contra, the learned counsel Smt. Kasturi for the respondent Bank would contend that the service conditions of the employees of the respondent Bank are governed by Andhra Bank Service Regulations, 1982 and by virtue of Regulation 20(3) of the Regulations, the officer employee against whom the disciplinary proceedings are pending shall not leave or discontinue or resign from the services of the Bank without prior approval of the competent authority and notice of resignation given by such officer during the pendency of disciplinary proceedings shall not have effect unless the same is accepted by the disciplinary authority and since the respondent Bank had rejected the notice of resignation submitted by the petitioner informing his intention to resign voluntarily from service on March 13, 1995 itself, petitioner cannot contend that the respondent

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Bank is not justified in rejecting the notice of resignation submitted by the petitioner. Secondly, it is submitted that the Bank is justified in rejecting the request made by the petitioner in his application dated December 20, 1984, since the case filed by CBI was pending against the petitioner before the CBI Court and the contemplated disciplinary proceedings against him for the irregularities in respect of which CBI case had been filed against the petitioner and other irregularities said to have been committed during the period February 1, 1986 and July 1, 1986 and for the unauthorised absence from the services of the Bank from December 21, 1994. The learned counsel further contends that the order made by the respondent Bank on March 13, 1995 was sent to the petitioner by registered post with acknowledgment due on March 13, 1995 itself and therefore, when the communication was received by the petitioner is immaterial. Alternatively, it is submitted that even in the absence of any communication, petitioner was not supposed to have discontinued or leave the services of the Bank, since a case was pending against him in the CBI Court, Bangalore and further in view of Regulation 20(3) of the Service Regulations of the Bank unless the resignation is accepted and communication to that effect is sent to the petitioner.

20. In so far as the charge memo dated March 15, 1995 the learned counsel would contend that the Bank had issued earlier, a charge sheet dated March 13, 1986 for certain irregularities said to have been committed by the petitioner as a Manager of Jayanagar Branch of the respondent Bank. Since the CBI, Bangalore had also taken up the matter for investigation and had filed charge sheet against the petitioner and others for some irregularities in the CBI Court, Bangalore, the Bank had to supersede the charge sheet dated September 13, 1986 by another charge sheet dated August 8, 1988 duly deleting the irregularities that form the part of the CBI case. The learned counsel would further submit that Bank had to issue subsequently, another charge sheet dated; March 15, 1995 containing allegations, which formed part of CBI case. Therefore, there is no irregularity committed by the Bank in issuing the charge memo dated March 15, 1995 and deleting the charges which formed part of the CBI case in the charge sheet dated August 8, 1988 does not amount to dropping the proceedings in respect of the charges omitted therein.

21. In justification of the charge memo dated March 10, 1995, the learned counsel would contend that in view of Regulation 13 of Andhra Bank Officers Employees (Conduct) Regulations, an officer employee cannot absent himself from his duty without obtaining permission from the competent authority and since petitioner without sanction of the leave had remained absent from the services of the Bank with effect from December 21, 1994, the same is in violation of Service Regulations of the Bank and the learned counsel very fairly submits that the charge regarding non-adjustment of the advance drawn by him towards travelling allowance, and dearness allowance is dropped by the Bank in view of the recovery of the aforesaid amount by the Bank subsequently.

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22. The parties to the lis are governed by the provisions of Andhra Bank (Officers) Service Regulations, 1982, Andhra Bank Officer Employees (Discipline and Appeal) Regulations and Andhra Bank Officer Employees (Conduct) Regulations. The termination of service of an officer employee of the Bank is governed by Regulation 20 of Service Regulations of the Bank. These Regulations are relevant for the purpose of the case and therefore, they are extracted and it reads as under:

"20. Termination of service:

(1) Subject to Sub-regulation (3) of Regulation 16, the bank may terminate the service of any officer by giving him three months'' notice in writing or by paying three months'' emoluments in lieu thereof.

(2) An officer shall not leave or discontinue his service in the bank without first giving a notice in writing of his intention to leave or discontinue the service or resign. The period of notice required shall be three months and shall be submitted to the Competent Authority as prescribed in these Regulations.

Provided that the competent authority may reduce the period of three months or remit the requirement of notice.

(3)(a) Not withstanding anything to the contrary contained in the Sub-regulation (2) an officer against whom disciplinary proceedings are pending shall not leave/ discontinue or resign from his service in the bank without the prior approval in writing of the competent authority and any notice of resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the competent authority

(b) Disciplinary proceedings shall be deemed to be pending against any employee for the purpose of this regulation if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings should not be instituted against him or where any charge sheet has been issued against him and will be deemed to be pending until final orders are passed by the Competent Authority.

(c) An officer under suspension on a charge of misconduct shall not be retired or permitted to retire on his reaching the date of compulsory retirement, but shall be retained in service until the enquiry into the charge is concluded and a final order is passed thereon."

23. The other Regulation which requires to be kept in view for the purpose of deciding the legal issues, canvassed in these petitions is Regulation 13 of Andhra Bank Officer Employees (Conduct) Regulations. The said Regulation is as under:

"23. Absence from duty:

(1) No officer employee shall absent himself from his duty or be late in attending office or leave the station without having first obtained the permission of the competent authority;

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Provided that in the case of unavoidable circumstances where availing of prior permission is not possible or is difficult, such permission may be obtained later subject to the satisfaction of the competent authority that such a permission could not have been obtained.

(2) No officer employee shall ordinarily absent himself in case of sickness or accident without submitting a proper medical certificate:

Provided that in the case of temporary indisposition or sickness of a casual nature, the production of medical certificate may, at the absolute discretion of the competent authority, be dispensed with."

24. Sub-regulation (1) of Regulation 13 commences with a non obstante clause and it says that an officer employee shall not absent himself from his duty or be late in attending the office or leave the place of working without the prior permission of the competent authority of the Bank in writing. Proviso appended to the main Regulation is an exception and the same is introduced in the Regulations to take care of unavoidable circumstances namely where availing of prior permission is not possible or difficult, the officer employee may obtain the post facto permission of the competent authority after satisfactorily explaining the circumstances under which he could not obtain the prior permission of the competent authority for having absented himself from his duty or late in attending the office or leaving the working place (station).

25. Sub-regulation (2) is not relevant for the purpose of the case and therefore, the same is not noticed in this order.

26. Now the questions that requires to be considered and decided are:

1. Whether the rejection of the petitioner''s request for permission to resign from the services of the Bank by the competent authority is in any way contrary to Regulation 20 of the Service Regulations of the Bank?

2. Whether the communication of the respondent Bank dated March 13, 1995, which was received by the petitioner only on March 22, 1995, wherein he was asked to report for duty, since his request for permission to resign from service is rejected is without authority of law or jurisdiction?

3. Whether the petitioner is entitled to terminal benefits as provided under Regulations 45 and 46 of the Service Regulations of the Bank.

4. What is the meaning of the expression supersession and whether the respondent Bank could have revived the same allegations which they had given up earlier?

5. Whether the absence of the petitioner from the place of working (station) after December 20, 1994 after applying leave and without waiting for sanction of the same could be construed as unauthorised absence, which would attract the breach of Regulation 13(1) of the Regulations?

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6. Whether the non-service of the orders made by the respondent Bank dated March 13, 1995 before the effective date of petitioner''s request for resigning from the service of the Bank namely March 20, 1995, the charge memos dated March 10, 1995 and March 15, 1995 are of no consequence at all?

7. Whether the respondent Bank should have accepted the resignation of the petitioner from the services of the Bank with retrospective effect i.e. from the date petitioner was unauthorisedly absent?

8. What order?

27. Issues I and III can be taken together since they are interconnected. The disciplinary authority of the Bank had issued a charge memo dated September 13, 1986 and in that it was alleged that petitioner while he was working as a Manager of Jayanagar Branch of the Bank had, committed serious irregularities with the'' clandestine motives, exposing the Bank to a great financial risk. After holding a regular domestic enquiry, the respondent Bank had imposed a punishment of censure and in the very same order, petitioner had been informed that the order of suspension made on July 21, 1986 is revoked and he is posted to work in the Zonal office of the Bank at Bhubaneswar. After reporting for duty at the Zonal Office, petitioner by his letter dated December 20, 1994 had informed the competent authority of the Bank of his intention to leave the services of the Bank with effect from March 20, 1995 i.e. after the expiry of three months'' notice period as required under the Service Regulations of the Bank. By yet another letter dated December 20, 1994 he had informed the authorities of the Bank that he would be availing the joining time of seven days in view of his transfer from Bangalore to Zonal Office at Bhubaneshwar. Without even waiting for sanction of the leave, petitioner had left the place of his posting. The competent authority of the Bank by its correspondence dated March 13, 1995 which is served on the petitioner only on March 22, 1995 informs the petitioner that his intention to resign from the services of the Bank is not accepted in view of the contemplated disciplinary action against him.

28. Regulation 20 of the Service Regulations of the Bank provides for termination of services of an employee officer of the Bank. Under Sub-regulation (1) of the Regulations, termination of the service of an employee is at the instance of the employer and under Sub-regulation (2), it is at the instance of an employee officer. Under Sub-regulation (1), the employer can terminate the services of an Officer of the Bank either by giving him three months'' notice or in the alternative by paying him three months salary. Under Sub-regulation (2), an employee officer may choose to resign from the services of the Bank but sub-regulation mandates that before resigning or leaving the services of the Bank, to serve a notice in writing of such proposed intention of resignation. The employee officer is entitled to choose a date with effect from that date his resignation would be effective and give notice to the employer accordingly. The only restriction is that the proposed date should not be less than three months from the date on which the notice is given of the proposed resignation. The proviso

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contemplates that in a case where the employee officer desires that his resignation should be effective even before the expiry period of three months or without notice being given by him, the prescribed authority on such a request may either reduce or waive the notice period, if it considers fit to do so. This sub-regulation does not provide for any acceptance or rejection of the resignation by the employer. Therefore, by operation of law, resignation would become effective on the expiry of three months notice period.

29. Sub-regulation (3) of the Regulations is an exception to Sub-regulation (2). The resignation from service is a voluntary act of an employee officer. The employee officer has a right to resign from service, but that right cannot be exercised by him under certain exceptional circumstances, namely, the officer is not entitled to leave or discontinue or resign from service, if any departmental proceedings are pending against him. In that exceptional circumstance, he is required to obtain the prior approval of the competent authority in writing, before resigning from the services of his employer and further any notice of resignation given by him before or during the disciplinary proceedings, the same shall not take effect unless it is accepted by the prescribed authority, Regulation 3(b) of the Regulations defines the meaning of the expression ''disciplinary proceedings'' for the purpose of Regulation 3(a) of the Regulations. It is an inclusive definition. For the purpose of this Regulation, the disciplinary proceedings is deemed to be pending against an employee officer until final orders are passed. If an Officer is placed under suspension in contemplation of domestic enquiry proceedings or any notice is issued to him to show cause why disciplinary proceedings should not be instituted against him or if any charge sheet is issued against him for the purpose of holding a domestic enquiry. Sub-regulation 3(c) of the Regulations speaks of retirement of an officer employee during the pendency of disciplinary proceedings. This sub-regulation may not be very relevant for the purpose of the case.

30. The concept of "resignation" is explained by the Apex Court in the case of Moti Ram Vs. Param Dev and another, . In that, the Court was pleased to state at pp. 634 & 635 of LLJ:

"16. ''Resignation'' means the spontaneous relinquishment of one''s own right and in relation to an office, it connotes the act of giving up or relinquishing the office. It has been held that in the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment. It has also been observed that the act of relinquishment may take different forms or assume an unilateral or bilateral character, depending on the nature of the office and the conditions governing it. If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the

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resignation is intended to operate in praesenti. A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication. In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g., acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it.

18. A contract of employment, however, stands on a different footing wherein the act of relinquishment is of bilateral character and resignation of an employee is effective only on acceptance of the same by the employer. In so far as Government employees are concerned, there are specific provisions in the Service Rules which require acceptance of the resignation before it becomes effective."

31. In the aforesaid judgment, the Apex Court is of the view that in cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish by itself would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, it was held that whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it.

32. As noticed by me earlier, Regulation 20(2) of the Regulations operates under normal circumstance but Regulation 20(3) of the Regulations comes into play only under certain special circumstances namely, if any disciplinary proceedings are pending against an employee officer, who intends to leave or discontinue or resign from the services of the Bank. If we construe both these sub-regulations, it is evident that where the disciplinary proceedings are deemed to be pending against an officer, the discretion is vested with the competent authority to grant or not to grant approval to the officer, who is desirous of leaving or discontinuing or resigning the services of the Bank. Further conjoint reading of the aforesaid Regulations would also indicate that in case disciplinary proceedings are pending against an employee officer, then notice given by the officer of his intention to resign from the services of the Bank shall not take effect unless it is accepted by the competent authority and disciplinary proceedings would be deemed to be pending in case the officer is kept under suspension pending or in contemplation of domestic enquiry or a show cause notice is issued inter alia directing the employee officer to show cause why disciplinary proceedings should not be initiated against him or if a charge sheet is issued and served on the officer.

33. Keeping in view the facts stated and the possible construction of Regulation 20 of the Service Regulations, let me now consider whether the communication

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of the respondent Bank dated March 13, 1995 served on the petitioner on March 22, 1995 is justiciable. In terms of Sub-regulation (2) of Regulation 20 of the Service Regulations, petitioner had submitted a notice of his intention to resign from the services of the Bank with effect from March 20, 1995, that is after the expiry of three months'' notice period from the date of his letter of resignation. The respondent Bank has passed an order dated March 13, 1995, and the same is served on the petitioner on March 22, 1995, to the effect that petitioner''s resignation is not accepted in view of the contemplated disciplinary proceedings against him. Sub-regulation (3) of Regulation 20 of the Regulations empowers the Bank to withhold permission to resign from service only if any disciplinary proceeding is pending against an employee officer. In the present case, when petitioner served the notice of his intention to resign from the services of the Bank on the respondent, the Bank had already initiated a disciplinary proceedings against the petitioner by not only issuing a charge memo dated August 8, 1988 but also by effectively serving the same on the petitioner. Those proceedings were not continued further, as I have already stated, in view of the pendency of a criminal case against the petitioner on more or less similar allegations by the CBI and at no point of time, the disciplinary authority had passed any order either withdrawing the aforesaid charge memo or dropping any charges alleged therein by a specific order. Therefore, for all practical purposes, there was a pendency of disciplinary proceedings against the petitioner but the same was in a dormant condition.

34. Sub-regulation 3(a) of the Service Regulations of the Bank is an exception to Sub-regulation (2) of Regulation 20. It mandates that an Officer against whom the disciplinary proceedings are pending shall not leave/discontinue or resign from service in the Bank without the prior approval in writing of the competent authority and any notice of resignation given by such an Officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the competent authority. Therefore, though the petitioner in his letter dated December 20, 1994 had informed the respondent Bank that he would be ceasing to be an employee officer of the Bank with effect from March 20, 1995, the same will not have any effect unless it is accepted by the competent authority. In the present case, the competent authority by his communication dated March 13, 1995, rejected the intimation of the petitioner of his intention to resign from the services of the Bank in view of the tendency/contemplation of disciplinary proceedings by his communication dated March 13, 1995, which is received by the petitioner on March 22, 1995. Therefore, in view of the clear language of the Statute, the notice of resignation given by the petitioner by invoking Regulation 20(2) of the Regulations will not take effect unless it is accepted by the competent authority. Since that acceptance is not there, petitioner cannot contend that he ceased to be an employee officer of the Bank after the expiry of the notice period viz., March 20, 1995. Therefore, the contention of the learned counsel that the communication dated March 13, 1995 was served on the petitioner only after petitioner ceased to be an employee of the Bank cannot be

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accepted and therefore, the same is rejected.

35. Secondly, Clause 3(b) of Regulation 20 of the Regulations envisages that if a charge sheet is issued against any employee officer of the Bank, the same will be deemed to be pending until final orders are passed by the competent authority. It is not in dispute nor it is disputed in these proceedings that the respondent Bank had issued a charge memo dated August 8, 1988 inter alia alleging certain omissions and commissions said to have been committed by the petitioner while working as a Manager of a Branch office of the respondent Bank. The disciplinary authority for the reasons stated by me earlier has not held any enquiry proceedings and no final orders are, passed in that regard. Therefore, in view of the language employed in the Regulations, the disciplinary enquiry proceedings are deemed to be pending against the petitioner. Therefore, the notice of resignation given by the petitioner during the pendency of the disciplinary proceedings will not have any effect until it is accepted by the competent authority. Therefore, there cannot be automatic resignation or snapping of service relationship of the petitioner on the expiry of three months'' notice period, though petitioner has a right to seek resignation from service but he has no right to resign from service unless he is permitted to do so and thus in view of Regulation 20(3) of the Regulations, the respondent Bank is justified in declining the request of the petitioner seeking voluntary resignation from service. Reference may be made to observations of the Apex Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, , wherein the Court has observed that an employer can refuse to accept the resignation when there is disciplinary enquiry proceedings pending against an employee, because in such case, to permit an employee to resign would be to allow him to go away from the service and escape the consequences of any adverse finding against him in such an enquiry. In view of the law declared by the Apex Court in the aforesaid decision, the resignation submitted by the employee officer against whom disciplinary enquiry proceedings are pending becomes effective and operates only when it is accepted by the competent authority and communicated the same to the employee officer. Till such acceptance and communication, the officer submitting the resignation continues to remain in service. Therefore, the payment of terminal benefits as envisaged under Regulations 45 and 46 of the Service Regulations of the Bank does not arise at all. In view of the aforesaid circumstances, it cannot be said that the impugned communication is either arbitrary or illegal.

36. Re. issue No. IV: Learned counsel Sri P.S. Rajagopal strenuously contends that since the respondent Bank had superseded its earlier charge memo dated September 13, 1986 by issuing charge memo dated August 8, 1988, they are estopped from issuing the impugned charge memo dated March 15, 1995, inter alia alleging the very same allegations and accusations made in the charge memo dated September 13, 1986. In support of this submission, the learned counsel relies upon the observations made by the Apex Court in the case of I.E. Newspapers (Bombay) Private Ltd. v. Union of India (1), (1986) 159 ITR 856

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(SC) , wherein it is stated that the quashing of subsequent notification would not effect in revival of earlier notification in whose place the subsequent notification was issued. The legal effect on an earlier law when the later law enacted in its place is declared invalid, does not merely depend upon the use of the words like substitution or supersession. It depends upon the totality of circumstances and the context when it is used. The other case on which reliance was placed is the case of Calcutta Municipal Corporation v. Pawan Kumar Saraf and Anr., (supra) wherein it is observed that when the Statute says that the certificate shall supersede the report, it means that the report would stand annulled or obliterated. The word ''supersede'' in law means obliterate, set aside, annul, replace, make void or inefficacious or useless or repeal, etc. Per contra, Smt. Kasturi, learned counsel for respondent Bank relies on the observations made by Apex Court in the case of S. Pratap Singh Vs. The State of Punjab, .

37. The learned counsel nextly contends that the charges alleged against the petitioner by the impugned charge memo pertains to the period February 14, 1986 and July 1, 1986 and at this length of time, it would be impossible for the petitioner to defend himself in the enquiry proceedings and therefore, the initiation of the enquiry proceedings nearly after a decade is contrary to principles of natural justice.

38. In my opinion, it may not be desirable to express any opinion on the merits or demerits of the charges alleged in the charge memo dated March 15, 1995, since the respondent Bank has not conducted any enquiry proceedings pursuant to the aforesaid charge memo. The Apex Court in the case of Dy. Inspector General of Police Vs. K.S. Swaminathan, in fact has observed:

"4. It is settled law by catena of decisions of this Court that if the charge memo is totally vague and does not disclose any misconduct for which the charges have been framed, the Tribunal or the Court would not be justified at that stage to go into whether the charges are true and could be gone into, for it would be a matter on production of the evidence for consideration at the enquiry by the enquiry officer. At the stage of framing of the charge, the statement of facts and the charge sheet supplied are required to be looked into by the Court or the Tribunal as to the nature of the charges, i.e., whether the statement of facts and material in support thereof supplied to the delinquent officer would disclose the alleged misconduct. The Tribunal, therefore, was totally unjustified in going into the charges at that stage. It is not the case that the charge memo and the statement of facts do not disclose any misconduct alleged against the delinquent officer. Therefore, the Tribunal was totally wrong in quashing the charge memo, in similar circumstances, in respect of other persons involved in the same transactions, this Court in appeals arising out of SLP (C) Nos. 19453-63 of 1995 had on February 9, 1996 allowed the appeals, set aside the order passed by the Tribunal and remitted the matter holding that:

"This is not the stage at which the truth or otherwise of the charges ought to be looked into. This is the uniform view taken by this Court in such matters."

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39. In view of the above settled position of law, I am not inclined to express my opinion on the legal issues canvassed by the learned counsel for petitioner. Liberty is reserved to urge the aforesaid legal issues, in case necessity arises in future.

40. Nextly, petitioner''s learned counsel while contending that the charge memo dated March 10, 1995 is frivolous and vexatious, submits that as long as the competent authority of the respondent Bank has not rejected the leave applications submitted by the petitioner and as long as no order has been passed recalling the petitioner to duty, the respondent Bank could not have alleged that the petitioner was unauthorisedly absent and thereby has violated the provisions of Regulation 13 of the Conduct Regulations. In so far as the other allegation made in the charge memo is concerned, the same does not require any discussion, in view of the specific stand of the respondents in their statement of objections.

41. The learned counsel Smt. Kasturi, not only justifies this particular accusation made against the petitioner but also the findings of the enquiry officer in this regard and the punishment imposed by the disciplinary authority dated September 30, 1998.

42. With the available facts on record firstly what requires to be considered is whether the first charge alleged by the disciplinary authority is wholly premature as contended by learned counsel for petitioner. To answer this contention, the provision of Regulation 13 of Conduct Regulations requires to be noticed.

43. Regulation 13(1) of the Regulations provides for absence from duty. It mandates, that no officer employee shall absent himself from duty or leave the station without having first obtained the permission from the competent authority. Proviso appended to Regulation contemplates a situation where an officer employee is not able to obtain the prior permission of the competent authority.

44. The facts in this regard are, pursuant to an order made by the disciplinary authority dated December 7/9, 1994, directing the petitioner to report for duty at Zonal Office of the respondent Bank, the petitioner had reported for duty on December 19, 1994 and thereafter, he was asked to report for duty at the currency chest of the Regional Office, but for the reasons mentioned in his leave application dated December 20, 1994, petitioner did not report for duty in that place but availed leave, without prior permission of the competent authority. These facts are not in dispute. Even the inquiry officer, in the enquiry proceedings relying upon the documentary evidence and the evidence of MW1 to 3, gives a categorical finding that the petitioner remained absent from duty since December 21, 1994 without prior sanction of leave from the competent authority.

45. The learned counsel for petitioner contends that the respondent Bank without firstly considering and rejecting the leave application filed by the petitioner, cannot allege that the petitioner had remained absent from duty without prior

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sanction of the leave from the competent authority. Therefore, what requires to be considered and decided is whether the charges alleged by the disciplinary authority is premature as contended by petitioners learned counsel.

46. Regulation 13(1) of the Conduct Regulations provides for absence from duty. It mandates that no officer/employee shall absent himself from his duty or leave the station, without having obtained the prior permission from the competent authority. Proviso appended to the Regulation contemplates a situation, where it is not possible to obtain prior permission of the competent authority, under such circumstances, the employee officer may obtain such permission at a later date after satisfying the competent authority that such permission could not be obtained earlier.

47. The admitted facts are, petitioner after reporting for duty at Bhubaneshwar, he shoots out first letter on December 20, 1994, informing the authorities that he would avail privileged leave and leave for joining time. By a subsequent letter dated December 21, 1994, he would inform the authorities that he would be proceeding to Bangalore to attend a criminal case pending against him and also to file an appeal against, an order made by the disciplinary authority. Petitioner for the reasons best known to him alone, would not wait for a response from the competent authorities on his leave applications and absents himself from duty from December 21, 1994 till the date of the impugned charge memo. In a situation like this, could it be said that petitioner had remained absent from his duty or had left the station without having obtained permission of the competent authority and whether the proviso appended to the Regulation comes to the rescue of the petitioner in any manner?

48. Petitioner in his leave applications dated December 20, 1994 and December 21, 1994 respectively offers only two reasons for sanction of leave and to leave the place of posting, firstly to file an appeal against the order passed by the disciplinary authority and secondly to appear in a criminal case pending against him. Under Regulation 17, an appeal requires to be filed within 45 days from the date of receipt of the orders passed by the disciplinary authority. By the time, the petitioner filed his application for sanction of leave, the time limit prescribed for filing of the appeal had expired and therefore, there was no such urgency, which had prompted the petitioner to leave the place of working without prior permission of the competent authority. Secondly, it is not the case of the petitioner that he was not represented by any learned advocate before the learned Magistrate, who could have pleaded to dispense with the petitioner''s appearance under the circumstance that the petitioner was placed. Therefore, in view of all these, there was no such urgency for the petitioner to have absented himself from duty without having obtained the prior permission of the competent authority. Nextly, in my opinion, the proviso appended to the Regulations comes into picture only under unavoidable circumstance, namely, where availing of prior permission is impossible or difficult, the employee/officer may obtain such permission at a later date, after satisfying the authority that such permission

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could not be obtained earlier. Therefore, on the facts and circumstances of this case, it can be safely said, that petitioner had absented himself from his duty without prior permission of the competent authority. Absenting from duty without sanction of leave amounts to misconduct. There cannot be any difference of opinion on this aspect of the matter. The law is well settled on this issue. Therefore, the contention of the learned counsel that as long as the competent authority has not rejected the leave applications submitted by the petitioner and as long as no order has been passed recalling the petitioner to duty, there cannot be any charge of misconduct on the ground of unauthorised absence, cannot be accepted.

49. In the inquiry proceedings held by the inquiry officer on this particular charge alleged in the charge memo dated March 10, 1995, petitioner had remained absent inspite of service of notice of enquiry proceedings. The inquiry officer with the available documentary and oral evidence on record has come to the conclusion that petitioner is guilty of the offence of unauthorised absence from his duty and this finding is accepted by the disciplinary authority. The finding of the enquiry officer at this stage cannot be said either a perverse finding or a finding without any evidence before him. Since that finding is accepted by the disciplinary authority and a punishment is imposed, he cannot take exception to such punishment, since the interference with the punishment imposed by the disciplinary authority is very much limited in a petition filed before this Court under Article 226 of the Constitution.

50. In so far as not affording sufficient opportunity of hearing during the enquiry proceedings is concerned, though it is pleaded in the pleadings, nothing was canvassed at the time of hearing of these petitions. Therefore, that issue need not be noticed nor answered by me at this stage. In conclusion, the following:

ORDER

I. Petitions fail. Accordingly, they are rejected. Rule discharged.

In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.

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