

(1997) 03 MAD CK 0019
In the Madras High Court

Indian Bank and Another

APPELLANT

Vs

P.S. Evalappan

RESPONDENT

Date of Decision : 18-03-1997

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19(3)

Citation : (1997) 2 MLJ 93

Hon'ble Judges : AR. Lakshmanan, J;A.R. Lakshmanan, J

Bench : Division Bench

Judgement

AR. Lakshmanan, J.—The writ appeal is directed against the order of K. Venkataswami, J. as he then was, dated 29.12.1987 in W.P. No.

11336 of 1981 allowing the said writ petition filed by the respondent herein holding that the order impugned in the writ petition was passed by an

authority not competent under the new Regulations and also rejecting the argument of the learned Counsel for the Indian Bank that the order was

passed by an authority higher than the competent authority since the respondent herein is deprived of an appeal to the Appellate Authority. The

learned Judge quashed the order impugned in the writ petition on both these grounds. Aggrieved by the order passed by the learned single Judge in

the writ petition, the Indian Bank has preferred the above writ appeal.

2. The respondent was appointed as an Assistant in the Indian Bank. He was promoted as an Accountant in the year 1966 in which position he

served until 1968. He was then promoted as Agent and posted to the Coonoor branch during 1968, which position he held till 13.8.1970, when

he was suspended pending disciplinary proceedings, which culminated in the order of dismissal by proceedings dated 28.10.1972. At the meeting

held on 24.10.1972, the Board of Directors had ordered that the following two punishments should be imposed on the respondent viz.,

(a) Dismissal from the Bank's service; and

(b) Recovery of the amounts due to him from the Bank towards the whole or part of the pecuniary loss alleged to have been caused to the Bank

by the respondent in respect of the advances granted by him.

3. The aforesaid disciplinary proceedings were initiated against the respondent by the Bank under the Indian Bank Limited Officers Service Rules,

1963, which continued to operate as statutory rules by virtue of Section 19(3) of the Banking Companies (Acquisition and Transfer of

Undertakings) Act, 1970. A charge memo was issued to the respondent on 4.12.1970, calling upon him to show cause against the disciplinary

action for various alleged acts of omission and commission pursuant to investigation conducted. The respondent submitted his explanation on

29.1.1971 denying the various charges levelled against him. No further enquiry was conducted on the basis that an enquiry was not contemplated

under the Service Rules, 1963, even though the charges were numerous and contained serious allegations of alleged acts of omission and

commission which warranted enquiry in the light of the defence taken by the respondent. By a communication dated 19.8.1972 from the Secretary

of the Bank, the respondent was informed that the Board of Directors at its meeting held on 11.8.1972 had considered the respondent's case a fit

one to impose the two punishments set out supra and the respondent was called upon to show cause why the said punishments should not be

imposed on the respondent. No reasons were stated in the proceedings but the investigating officer's reports dated 18.3.1970, 15.5.1970,

15.6.1970 and 8.8.1970, pursuant to the investigation conducted behind the back of the respondent, were alone enclosed as contemplated by the

Rules. The respondent submitted his explanation dated 25.8.1972 wherein he once again denied the charges and also submitted that there was

gross violation of principles of natural justice in finding him guilty without holding an enquiry and without giving reasons for holding him guilty of the

charges. However, by proceedings dated 28.10.1972 of the Officer on Special Duty, the respondent was informed that the Board of Directors

had ordered that the two punishments proposed should be imposed on the

respondent. The appeal petition preferred by the respondent for re-consideration of the said order as per Rule 34 of the Service Rules, 1963, was also rejected by a communication of the Officer on special duty on 25.5.1973, and the respondent was informed that the Board of Directors had decided to confirm the punishments imposed on him at its meeting held on 24.10.1972.

4. In the circumstances, the respondent filed W.P. No. 4089 of 1973 before this Court praying for a writ of certiorari to quash the order of the

Board of Directors of the Indian Bank dated 28.10.1972 as confirmed by its order dated 18.5.1973, imposing the above mentioned two

punishments on the respondent. By order dated 22.7.1976, that writ petition was allowed and the above two orders were quashed by Koshal, J.,

as he then was. It was held by the learned Judge that the report of the Secretary and the recommendations made by him, which were relied on by

the Board of Directors while issuing the show cause notice dated 19.8.1972, had not been made available to the respondent and that no reason

also had been given by the Board of Directors in issuing either the show cause notice or the final order of punishment. It was, therefore, held that

the disciplinary proceedings were vitiated and liable to be set aside as being in contravention of the principles of natural justice. The concluding

portion of the order of Koshal, J., as he then was, runs thus:

In the result, the petitioner succeeds and is accepted and the two orders are quashed. It will of course, be open to the Bank to take such

disciplinary action against the petitioner after holding proper proceedings in accordance with law as to which they may be advised. No order as to

costs.

5. According to the respondent, the order of suspension issued against him on 13.8.1972, which had merged, in the order of dismissal dated

28.10.1972, did not stand revived when the order of dismissal was set aside by this Court on 22.7.1976 in W.P. No. 4089 of 1973, there being

no provision for the same under the Service Rules, 1963. No fresh order of suspension was issued against the respondent. However, without

reinstating him in service as per the order this Court dated 22.7.1976, the Bank filed W.A. No. 270 of 1976. The respondent's request for

reinstatement made on 1.8.1976 in the meantime was not accepted. W.A. No.

270 of 1976 was dismissed by a Bench of this Court on

13.3.1979. It was held by the Bench that the show cause notice dated 19.8.1972 as well as the final order of dismissal dated 28.10.1972 were

violative of principles of natural justice, in that, no reasons whatsoever had been given and the proceedings were laconic and nonspeaking. The

Division Bench, while, dismissing the writ appeal, observed as follows:

In this view of the matter, the ultimate order passed by Koshal, J., quashing the order of dismissal is upheld for the reason that the order of

dismissal is not a speaking order. The appeal is, therefore, dismissal with costs.

6. According to the respondent, he was not reinstated even after the dismissal of W.A. No. 270 of 1976. He wrote on 17.9.1979 to the Chairman

and Managing Director of the Indian Bank for permission to join duty. He also requested for payment of salary upto date. Within a short time

thereafter, he was served with proceedings dated 24.9.1979 by the 2nd appellant herein calling upon him to show cause why he should not be

imposed the punishments which had already been imposed on him. The show cause notice extracted certain portions of the report of the then

Secretary (wrongly described as the Disciplinary Authority) and the General Manager concluded on the basis of the same that the respondent was

guilty of grave acts of omission and commission and had acted in a manner highly detrimental to the interests of the Bank. It was further concluded

without any independent reasoning that the respondent's conduct called for extreme punishment of dismissal. After referring to the

recommendation of the Board of Directors at its meeting held on 11.8.1972 to impose the punishments, the respondent was called upon to show

cause as to why such punishments should not be imposed on him. Along with the above proceedings, the respondent also received another

proceedings, of the same date wherein he was informed that he continued to be kept under suspension in view of a fresh second show cause notice

issued to him proposing the punishment of dismissal.

7. The respondent contended that the Indian Bank Officer Employees (Conduct) Regulations, 1976, and the Indian Bank Officer Employees

(Discipline and Appeal) Regulations, 1976, were framed u/s 19(1) of the Banking Companies (Acquisition and Transfer of Undertakings) Act,

1970, superseding the Service Rules, 1963. The same had come into force on

1.10.1976 during the pendency of W.A. No. 270 of 1976 but had not been brought to the notice of the Bench while the writ appeal was taken up for consideration. Under Regulation 22 of the Discipline and Appeal Regulations, the Service Rules, 1963, stood specifically repealed. It was further provided as under:

Notwithstanding such repeal, any proceedings which have already been initiated, but not yet been completed at the commencement of the

Regulations shall be continued and disposed of, as far as may be, in accordance with the provisions of these Regulations as if such proceedings

were proceedings under these Regulations.

8. Thus, there was a specific provision to pursue a pending proceeding under the Discipline and Appeal Regulations, 1976, in the light of the repeal

of the Service Rules, 1963. Regulation 3(g) defined the "Disciplinary Authority" as the authority specified in the Schedule, which is competent to

impose on an officer-employee any of the penalties specified in Regulation 4 and the Schedule prescribed the Deputy General Manager as the

Disciplinary Authority for officers in Grade I and Grade II. The General Manager was designated as the Disciplinary Authority only with reference

to Deputy General Managers and Assistant General Managers. The Board of Directors was not designated as Disciplinary Authority but was

designated only as the Appellate Authority and Reviewing Authority.

9. In the light of the above, the respondent replied to the show cause notice dated 24.9.1979 by letter dated 10.11.1979 pointing out to the 2nd

appellant that after the Discipline and Appeal Regulations, 1976, had come into force on 1.10.1976, the pending proceedings should only be

continued under the said Regulations as contemplated by Regulation 22(2)(d), and the show cause notice dated 24.9.1979 without holding any

enquiry as contemplated by Regulation 6 of the Discipline and Appeal Regulations, 1976, was without jurisdiction and hence should be withdrawn.

As the 2nd appellant did not comply with the same but replied on 14.11.1979 that the proceedings were taken in accordance with the

observations of the Division Bench of this Court in W.A. No. 270 of 1976, dated 13.3.1979, the respondent again approached this Court by filing

W.P. No. 5678 of 1979 praying for a writ of mandamus to forbear the General Manager and Deputy General Manager from taking any further

action in pursuance of the proceedings dated 24.9.1979 and calling upon the Deputy General Manager, who is the Disciplinary Authority under the

Discipline and Appeal Regulations, 1976, to take lawful disciplinary proceedings against the respondent under the Regulations 1976. By an order

dated 15.2.1980, W.P. No. 5678 of 1979 was dismissed at the admission stage. The questions raised by the respondent in that writ petition as to

the maintainability of the disciplinary proceedings pursuant to the show cause notice dated 24.9.1979 were specifically left open.

10. According to the respondent, he filed W.A. No. 69 of 1980 and the same was also dismissed by a Bench of this Court with the observation

that the questions raised in the proceedings should be considered by the Disciplinary Authority. The respondent submitted his explanation on

31.3.1980 and set out in detail his objections in regard to the maintainability of the disciplinary proceedings, while submitting his explanation on

merits also. After a lapse of one year and three months, the respondent has received proceedings of the 2nd appellant dated 2.6.1981 informing

him that the Board of Directors had decided to impose the punishment of dismissal against the respondent and that he has been dismissed from

service with immediate effect. It was further stated in the proceedings as under:

The dismissal order is issued to you without prejudice to the rights of the Bank to recover from you the pecuniary loss caused to the Bank by you

in respect of the various advances arbitrarily and indiscreetly granted by you in the capacity as Manager of our Coonoor Branch from out of the

funds due to you by the Bank and without prejudice to file a suit against you for recovery of balances, if any.

11. The 2nd appellant has rejected the various contentions put forward by the respondent in regard to the maintainability of the disciplinary action

without giving any reason whatsoever except stating as under;

The Bank's action under the Old Regulations/Rules to the extent to which it has been held invalid by virtue of the provisions of new Discipline and

Appeal Regulations and such action till the issue of the said show cause to you is deemed to have been taken under the new Regulations. The

Hon'ble High Court Division Bench also held that, under Rule 30(d) of the Old Rules, the Bank could not be said to have acted in violation of the

principles of natural justice in not furnishing you the copy of the report of the

Secretary to the Board of Directors. Moreover, by virtue of the powers vested in it under the Constitution of India, the Hon"ble High Court has given liberty to the Bank to pursue the action against you.

Therefore, in law, the Bank is entitled and is justified in further proceeding ahead with the disciplinary action from the stage upto which it has been

held valid by the Hon"ble High Court. Therefore, none of the contentions raised by you is acceptable to us.

12. The 2nd appellant has given a finding holding the respondent guilty of certain charges and after referring to the decision of the Board of

Directors to impose the punishment; has issued the dismissal order against the respondent. In the circumstances, the respondent approached this

Court with the present W.P. No. 11336 of 1981 for the issuance of a writ of certiorified mandamus for quashing the said proceedings of the 2nd

appellant dated 2.6.1981 and directing the 1st appellant to reinstate him in service with effect from 28.10.1972 with all attendant benefits, there

being no other effective alternative remedy available to him.

13. The respondent contend that the 2nd appellant or the Board of Directors of the Bank have no jurisdiction whatsoever to issue the order of

dismissal as against him and that the respondent as the Agent of the Coonoor Branch will fall within the new Regulations and it will be the

Deputy General Manager who should exercise disciplinary jurisdiction under the Discipline and Appeal Regulations, 1976 and that the 2nd

appellant, if at all, would only be the Appellate Authority and that it would not be open to the Appellate Authority to pass orders at the original

stage. The impugned order was attacked on various other grounds and also on the ground of being violative of the principles of natural justice.

14. The writ petition was resisted by the appellants contending that it was the Board of Directors which was the Disciplinary Authority under the

old Service Rules and which imposed the punishment of dismissal on the respondent and therefore, the Board of Directors considered the entire

matter, the records connected with the disciplinary action, and the explanation of the respondent and ultimately decided that the punishment of

dismissal from service is the appropriate punishment. The 2nd appellant who is the competent authority, issued the order of dismissal to the

respondent based on the decision of the Board of Directors. It was also stated

that the respondent was gainfully employed from 1972 and continued to be so and therefore, the question of paying, him subsistence allowance does not arise. It is also submitted that, the new Service Regulations are admittedly prospective in nature and are not retrospective and that the respondent's case is one where the disciplinary proceedings have been completed before the coming into force of the new Regulations. Therefore, as per the provisions of the old Service Rules, the Board of Directors considered the entire matter once again and show cause notice dated 24.9.1979 was sent setting out the reasons for finding the respondent guilty of the charges and the proposed punishment. On the respondent submitting his explanation, the same was considered and, for the reasons set out in the order of dismissal, the respondent was dismissed from service pursuant to the decision taken by the Board of Directors. Therefore it is submitted by the appellants that the action taken by the Bank is one which is governed by Regulation 22(2)(a) and in accordance with the directions of this Court.

15. According to the appellants, even assuming without admitting that the proceedings taken against the respondent have not been completed on account of the fact that this Court has set aside the order of dismissal, the action taken by the Bank upto the stage of issuing show cause notice dated 19.8.1972 having been upheld by this Court by virtue of Regulation 22(2)(a), the proceedings upto that stage under the old Service Regulations the Bank continued and completed the proceedings as far as it may be in accordance with the provisions of the new Service Regulations. It was further submitted that there is no infirmity in the continuation of the old proceedings pursuant to the liberty given by this Court and the communication of the order of dismissal by the 2nd appellant, pursuant to the decision taken by the Board of Directors, is perfectly valid and legal.

16. The respondent filed a reply affidavit denying the averments contained in the counter-affidavit filed by the appellants.

17. The appellants have also filed an additional counter-affidavit stating that the respondent was gainfully employed as an Assistant Professor of Commerce, Gurunanak College, Velacheri, which is based on the communication from the said college dated 19.2.1981 in reply to the Bank's

letter dated 11.2.1981 to the said college. The Bank again approached the said college to ascertain as to whether the respondent was even then

working as Assistant Professor. The Principal of the said college by letter dated 7.8.1987 informed the Bank that the respondent was appointed

on 17.11.1972 in their college and that his monthly salary as Assistant Professor of Commerce was Rs. 2,956.

18. K. Venkataswami, J., as he then was, on an elaborate consideration of the facts and materials placed before him held as follows:

After the coming into force of the 1976 Regulations, further proceedings can be continued only under the new Regulations is beyond any doubt in

view of Regulation 22 of Indian Bank Officer Employees" (Discipline and Appeal) Regulations, 1976.... As pointed out earlier, the Division Bench

expressly disagreed with the learned single Judge on the question that the earlier impugned order was bad for non-compliance of the principles of

natural justice. Therefore, the only thing required of the concerned authority was that the order must be reasoned one and in accordance with the

new Regulations. The last point urged on behalf of the petitioner is of substance, namely, that under the new Regulations, the competent authority

to pass the order is the General Manager and the Board is the Appellate/Reviewing Authority. In this case, admittedly, following the old Rules, the

Board has passed the order. Therefore, I hold that the impugned order was passed by an authority not competent under the new Regulations. The

argument of the respondents' counsel that the order was passed by an authority higher than the competent authority cannot be accepted as the

petitioner is deprived of an appeal to the Appellate Authority. On that ground the impugned order is quashed.

It is stated that during the suspension period, the petitioner was employed in the Gurunanak College, Velacheri. The suspension order will merge

with the dismissal order and, therefore, by quashing the dismissal order, the suspension order will also go. The petitioner is entitled to all the

attendant benefits. However, the quantum of backwages and other benefits will have to be ascertained in the light of the petitioner's employment in

the Gurunanak College or in some other place. This matter is left open to be decided separately. The writ petition is allowed with costs. Counsel

fee Rs. 500.

19. Aggrieved by the above order of the learned single Judge, the Bank has filed the present writ appeal reiterating the same contentions raised before the learned single Judge.

20. We have given our anxious consideration to the points argued by both sides.

21. The following questions would emerge for consideration in this writ appeal?

1. Whether the 2nd appellant/General Manager or the Board of Directors of the Indian Bank has jurisdiction to issue the order of dismissal as against the respondent?

2. When the Service Rules, 1963, stand repealed as and from 1.10.1976 by virtue of Regulation 22 of the Discipline and Appeal Regulations, 1976, what is the legal consequence of such repeal?

3. When Regulation 22(d) of the Discipline and Appeal Regulations, 1976, specifically provides for the continuance and disposal of pending proceedings in accordance with the Discipline and Appeal Regulations, 1976, thereby excluding the application of Service Rules, 1963 to a pending proceeding, whether the proceedings taken by the appellants pursuant to the order dated 22.7.1976 in W.P. No. 4089 of 1973 and the order dated 13.3.1979 in W.A. No. 270 of 1976, are to be construed as pending proceedings coming under the purview of the Discipline and Appeal Regulations, 1976, or otherwise?

4. Under the Discipline and Appeal Regulations, 1976, who should exercise the disciplinary jurisdiction against the respondent?

5. Whether the contention of the respondent that the procedure that has to be followed is as laid down in Regulation 22(2)(d) of the Discipline and Appeal Regulations, 1976, which contemplates continuance and disposal of the proceedings, as far as may be, in accordance with the provisions of the new Regulations, is tenable in law? If so, whether the contention of the learned Counsel for the appellants that no prejudice is caused to the respondent because the 2nd appellant/General Manager who is the higher in rank than the disciplinary authority, has passed the order of dismissal, is sustainable in law?

6. Whether the order of dismissal passed by the 2nd appellant suffers from an inherent defect as alleged by the respondent since the respondent is deprived of the remedy of appeal, which is a substantive right given to him under

the Regulations?

22. Point Nos. 1 and 4 : The Indian Bank Officer Employees (Conduct) Regulations, 1976, and the Indian Bank Officer Employees (Discipline

and Appeal) Regulations, 1976, were framed u/s 19(1) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970,

superseding the Service Rules, 1963. Under Regulation 22 of the Discipline and Appeal Regulations, the Service Rules, 1963 stood specifically

repealed. The Regulations were made by the Board of Directors of the Indian Bank on consultation with the Reserve Bank of India and with the

previous sanction of the Central Government in exercise of the powers conferred by Section 19 of the Banking Companies (Acquisition and

Transfer of undertakings) Act 5 of 1970. They shall come into force on 1.10.1976.

23. Regulation 22 is the specific provision to pursue a pending proceeding under the Discipline and Appeal Regulations, 1976, in the light of the

repeal of the Service Rules, 1963. Rule 3(g) defines "Disciplinary Authority" as the authority specified in the Schedule which is competent to

impose on an officer employee any of the penalties specified in Regulation 4. Regulation 3(o) defines "Schedule" as the Schedule appended to

these Regulations. Under Regulation 4, different types of penalties are provided, which may be imposed on an officer employee for acts of

misconduct or for any other good and sufficient reasons. There are major penalties and minor penalties. Regulation 6 deals with the procedure for

imposing major penalties. Regulation 6(1) provides that no order imposing any of the major penalties specified in Clauses (e), (f), (g) and (h) of

Regulation 4 shall be made except after an enquiry is held in accordance with that Regulation.

24. Regulation 22 deals with repeal and saving. It runs thus:

(1) Every rule, regulation, bye-law or every provision in any agreement or a resolution corresponding to any of the regulations herein contained and

in force immediately before the commencement of these regulations and applicable to the officer employees is hereby repealed.

(2) Notwithstanding such repeal - (a) any order made or action taken under the provisions so repealed shall be deemed to have been made or

taken under the corresponding provisions of these regulations.

(b) nothing in these regulations shall be construed as depriving any person to

whom these regulations apply of any right of appeal which had accrued to him under any of the provisions so repealed;

(c) an appeal pending at the commencement of these regulations against an order made before the commencement of these regulations shall be

considered and orders thereon shall be made in accordance with these regulations;

(d) any proceedings which have already been initiated but not yet been completed at the commencement of these regulations shall be continued

and disposed as far as may be, in accordance with the provisions of these regulations, as if such proceedings were proceedings under these regulations.

25. Regulation 3(g) defined the "Disciplinary Authority" as the authority specified in the Schedule, which is competent to impose on an officer

employee any of the penalties specified in Regulation 4 and the Schedule prescribes the Deputy General Manager as the Disciplinary Authority for

officers in Grade I and Grade II. The General Manager was designated as the Disciplinary Authority only with reference to Deputy General

Managers and Assistant General Managers. The Board of Directors was not designated as the Disciplinary Authority for officers in Grade I and

Grade II, but was designated only as the Appellate Authority and Reviewing Authority with reference to Deputy General Managers and Assistant

General Managers. Thus, it is seen, that so far as the respondent is concerned, the General Manager was not the Disciplinary Authority as per the

Discipline and Appeal Regulations, 1976, and the Board of Directors was not even designated either as the Appellate Authority or the Reviewing

Authority. Therefore, on Point No. 1 we hold that the 2nd appellant, who passed the order impugned in the writ petition, had no jurisdiction to

issue the order of dismissal as against the respondent and on point No. 4 we hold that the Deputy General Manager alone is empowered to

exercise the disciplinary jurisdiction against the respondent. Both the points are answered accordingly.

26. Point Nos. 2 and 3 : We have already seen that the 2nd appellant or the Board of Directors have no jurisdiction whatsoever to issue the order

of dismissal as against the respondent. Service Rules, 1963 were repealed on and from 1.10.1976 by virtue of Regulation 22 of the Discipline and

Appeal Regulations, 1976. The legal consequence of such repeal is that after the repeal, it should be considered as though the Service Rules, 1963

have never existed except for the purpose of actions which were commenced, prosecuted and concluded while it was an existing law. Further

Regulation 22(2)(d) of the Discipline and Appeal Regulations, 1976, specifically provides for the continuance and disposal of pending proceedings

in accordance with the provisions of the Discipline and Appeal Regulations, 1976, thereby excluding the application of Service Rules, 1963 to a

pending proceeding.

27. Admittedly, the proceedings taken by the appellants pursuant to the order dated 22.7.1976 in W.P. No. 4089 of 1973 and the order dated

13.3.1979 in W.A. No. 270 of 1976 were pending proceedings coming under the purview of the Discipline and Appeal Regulations, 1976. In

fact, the 2nd appellant had virtually conceded this position by stating in the proceedings dated 2.6.1981 that the disciplinary action till the issue of

the show cause notice is deemed to have been under the new Regulations. It reads thus:

The effect of the decisions of the learned single Judge of the Hon'ble High Court and that of the Division Bench of the said Court is that the action

of the Bank upto the stage of issuing to you show cause notice has been upheld and it is open to the Bank to continue the disciplinary action against

you. On a technical ground that the Board did not render a speaking order in dismissing you from service, the Division Bench quashed the order of

dismissal. The order of the Division Bench leaves the matter at large and the learned single Judge's observation that it is open to the Bank to take

such disciplinary action against the petitioner after holding proper proceedings in accordance with law as..." has not been in any way interfered with

by the Division Bench.

Therefore, the proceedings taken by the appellants pursuant to the two orders referred to above are to be construed as pending proceedings

coming under the purview of the Discipline and Appeal Regulations, 1976. Both these points are answered accordingly.

28. Point Nos. 5 and 6 : In our opinion, the order dated 2.6.1981 impugned in the writ petition is liable to be quashed, being contrary to

Regulation 6 of the Discipline and Appeal Regulations, 1976, which has to be

followed for imposing any of the major penalties prescribed by Regulation 4. Regulation 6(1) provides that no order imposing any major penalties specified in Regulation 4 shall be made except after an enquiry is held in accordance with this Regulation. The impugned proceedings dated 2.6.1981 itself concedes that under the new Regulations, the appellants' action till the issue of the show cause notice dated 19.5.1972 is deemed to have been taken under the new Regulations. Thereafter, the procedure that has to be followed is laid down in Regulation 22(2)(d), which contemplates continuance and disposal of the proceedings as far as may be, in accordance with the provisions of these 1976 Regulations. It cannot also be disputed that the Board of Directors are not the Disciplinary Authority under the Discipline and Appeal Regulations, 1976, as they were under the Service Rules, 1963. The Board cannot issue a show cause notice under Rule 30(d) of the Service Rules, 1963, after the Discipline and Appeal Regulations, 1976, have come into operation pursuant to the repeal of the Service Rules, 1963. Since under the Discipline and Appeal Regulations, 1976, it is only the Deputy General Manager who can exercise the disciplinary functions as Disciplinary Authority, he should only follow the procedure that is prescribed in Regulation 6 of the Discipline and Appeal Regulations, 1976, which has not been done in this case. We are, therefore, of the view that the order dated 2.6.1981 impugned in the writ petition is contrary to law and the Discipline and Appeal Regulations, 1976, and therefore it is liable to be quashed.

29. What is contemplated under Regulation 6 is the conduct of the proper enquiry, examination and cross-examination of the witnesses in the presence of the respondent and consideration of the relevant materials and passing of an order furnishing reasons. In our view, this has not been adhered to in this case. It is submitted that the show cause notice dated 24.9.1979 has been issued by the 2nd appellant merely on the basis of the report of the then Secretary, who is wrongly described as the Disciplinary Authority, and on the basis of the investigation reports of 1970 submitted pursuant to the investigations made behind the back of the respondent. This is grossly violative of the principles of natural justice. Therefore, it is contended by the learned Senior Counsel for the respondent, that the order dated 2.6.1981 impugned in the writ petition, which

imposed a penalty on the respondent pursuant to such a show cause notice, is also violative of the principles of natural justice and the same is liable to be quashed. We see force in this contention.

30. While disposing of the earlier proceedings, the Bank was given liberty to take disciplinary action only after holding proper proceedings in

accordance with law. Being a statutory functionary, the Bank as well as its officers can only function within the purview of the statutory regulations

empowering them to take disciplinary action. It is not open to the Board to rely on the Service Rules, 1963, after the same stood repealed as and

from 1.10.1976, and especially when the Service Rules, 1963 would not hold the field in the light of Section 19(3) of the Banking Companies

(Acquisition and Transfer of Undertakings) Act, 1970. Therefore, the 2nd appellant cannot function as the Disciplinary Authority in the light of the

Schedule to the Disciplinary and Appeal Regulations, as per which he is not the Disciplinary Authority. Therefore, the first part of Point No. 5 is

answered in favour of the respondent.

31. In the show cause notice, the 2nd appellant has given a finding that the respondent is guilty of grave acts of omission and commission and that

his conduct called for extreme punishment of dismissal without giving any reasons. The show cause notice has been issued on the basis of the

report of the Secretary furnished in 1972 and on the basis of the decision taken by the Board of Directors at its meeting held on 11.8.1972. The

show cause notice dated 24.9.1979 suffers from the same vice as the earlier show cause notice dated 19.8.1972 for non-furnishing of reasons. In

our view, the order dated 2.6.1981 impugned in the writ petition cannot cure the defect that is inherent in the show cause notice dated 24.9.1979

as the conclusion of guilt has been already arrived at by the 2nd appellant. Therefore, the contention of Mr. R. Thiagarajan, learned senior Counsel

for the respondent, that the punishment imposed on the respondent by the order impugned in the writ petition is liable to be set aside on the ground

of violation of the principles of natural justice in issuing the show cause notice dated 24.9.1979, merits acceptance. The contention of Mr. G.

Venkatraman, learned Counsel for the appellants, that it was the Board of Directors which was the Disciplinary Authority and also the superior

authority under the old Service Regulations to impose the punishment of

dismissal on the respondent and therefore, the Board of Directors considered the entire matter, the records connected with the disciplinary action and the explanation of the respondent and the punishment of dismissal was considered to be the appropriate punishment, and therefore, the 2nd appellant, who is the competent authority to issue the order of dismissal, issued the same based on the decision of the Board of Directors and when the matter was decided by a superior authority viz., the 2nd appellant, who is higher in rank than the Disciplinary Authority, no prejudice is caused to the respondent, cannot at all be countenanced. We have already held that the Board of Directors are not the Disciplinary Authority under the Discipline and Appeal Regulations, 1976 as they were under the Service Rules, 1963 and therefore, the Board cannot issue a show cause notice under Rule 30(d) of the Service Rules, 1963 after the Discipline and Appeal Regulations, 1976, have come into operation pursuant to the repeal of the Service Rules, 1963. We have also held that the Discipline and Appeal Regulations, 1976, alone shall apply to the case on hand and that it is only the Deputy General Manager who can exercise the function as the Disciplinary Authority and not the 2nd appellant. The order impugned in the writ Petition passed by the 2nd appellant, though a superior officer than the disciplinary authority, is not sustainable in law for the reasons set forth above.

32. We are also unable to accept the contention of Mr. G. Venkataraman, learned Counsel for the appellants, that since the Board of Directors are at the helm of affairs of the Bank and it is that body which framed the new Service Regulations and when it decided to dismiss the respondent from service, the respondent can have genuine grievance only if the authority lower in rank to the Deputy General Manager has imposed the punishment of dismissal on him. In our opinion, the order of dismissal passed by the 2nd appellant suffers from inherent defect since, as rightly pointed out by the learned Senior Counsel for the respondent, the respondent is deprived of the remedy of appeal, which is a substantive right given to him under the Regulations. The argument of Mr. G. Venkataraman that the Board of Directors was competent to issue the order of dismissal under the new Regulations is without substance. The further submission of Mr. G. Venkataraman that the 2nd appellant is competent to

communicate the same is also without substance. These submissions, in our view, are made without any relevance to the Regulations of 1976. The

submissions of Mr. G. Venkataraman that the Board of Directors being at the helm of affairs can decide to dismiss the respondent from service

even if contrary to the Service Regulations, is contrary to the rule of law. Even the State is bound to follow the rules framed by itself and no

authority or body howsoever highly placed is above the rule of law and can ignore law and the rules framed. Therefore, the contention of the

learned Counsel for the appellants that the Board of Directors can do as they pleased cannot merit a moment's scrutiny. Point No. 6 is answered

against the appellants.

33. A recent ruling of the Supreme Court reported in *Surjit Ghosh v. Chairman, and Managing Director, United Commercial Bank J.T. (1995) 2*

S.C. 74 cited by the learned Senior counsel for the respondent would lend a strong support to his contention that the order of dismissal passed by

the 2nd appellant suffers from an inherent defect since the respondent is deprived of the remedy of appeal, which is a substantive right given to him

under the Regulations. That was also a case of denial of an opportunity to prefer an appeal provided under the Regulations of the United

Commercial Bank. In that case, the Appellate Authority chose to exercise the power of a Disciplinary Authority. The Supreme Court held that the

appellant was deprived of the right of appeal and that the order of dismissal suffered from inherent defect. The appellant before the Supreme Court

was ordered to be reinstated in service with continuity of service and without loss of seniority in the post to which he would be entitled. A

compensation of Rs. 50,000 was also allowed in lieu of arrears of salary. The Supreme Court in paragraphs 5 and 6 observed as follows:

Some grievances have been made by the appellant in the present appeal touching upon the illegalities in the conduct of the proceedings such as that

(a) the disciplinary proceedings were initiated by an incompetent disciplinary authority in breach of Regulation 8(2)(iii) read with Regulation 3(g) of

the Regulations; (b) the statement of witnesses recorded earlier were not supplied to him in breach of Regulation 8(10)(b)(iii) and (c) he was

denied opportunity to explain circumstances appearing against him in evidence in breach of Regulation 6(17) of the Regulations. However, it is not

necessary to go into the merits of the said grievances since we are of the view that one of the objections taken by the appellant to the dismissal viz.,

that the appellant was deprived of an opportunity to prefer an appeal provided under the Regulations, goes to the root of the dismissal order. The

undisputed facts relating to the said grievance of the appellant are that the disciplinary action was taken against him by the Deputy General

Manager. As the Regulations stood then, the disciplinary authority for officers in Grades E, D, C and B (excepting Divisional Managers in Grade

B) was the Divisional Manager/AGM (Personnel) and the appeal against their order lay to the Deputy General Manager or any other officer of the

same rank. Against the order of the Deputy General Manager, the review lay to the General Manager. It is not disputed that the appellant was an

officer in Grade D. Hence in this case, as per the said Regulations, the disciplinary authority was either the Divisional Manager or the AGM

(Personnel) and if the action was taken by either of them, he had no opportunity to appeal to the Deputy General Manager or any other officer of

the same rank, and thereafter he had a further right of review to the General Manager. However, since the action against him was taken by the

Deputy General Manager although the Divisional Manager and AGM (Personnel) were available for taking the action, the appellant was denied the

right of an appeal and also the right of a review which lay only against the appellate order. The impugned order of dismissal passed by the Bank,

therefore, suffers from an inherent defect.

The respondent-Bank in its submission contended that although it is true that the Deputy General Manager had acted as the disciplinary authority

when he was in fact named under the Regulations as an appellate authority, no prejudice is caused to the appellate because the Deputy General

Manager is higher in rank than the disciplinary authority, viz., the Divisional Manager/AGM (Personnel). According to the Bank, it should be held

that when the order of punishment is passed by a higher authority, no appeal is available under the Regulations as it is not necessary to provide for

the same. It was also contended that there is no right to appeal unless it is provided under the Rules or Regulations. Although the argument looks

attractive at first sight, its weakness lies in the fact that it tries to place the Rules/Regulations which provide no appeal on par with the

Rules/Regulations where appeal is provided. It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of the appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent-bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted.

34. In the instant case, the respondent was suspended from service on 13.8.1970. A show cause notice was issued in the year 1972 and the respondent was dismissed from service on 28.10.1972. The appeal preferred by the respondent was also rejected by the Board of Directors. A writ petition was filed by the respondent, which was allowed by this Court on 22.7.1976. The writ appeal preferred by the bank was dismissed by a Division Bench sustaining the decision of the learned single Judge on the sole ground that the order of dismissal was a non-speaking order. A second show cause notice was given in September, 1979. The writ petition and the writ appeal filed by the respondent were dismissed by this

Court. The respondent submitted his explanation on 31.3.1980 and the order impugned in the writ petition was passed on 2.6.1981, which was challenged in the writ petition. The Writ petition was allowed by a learned single Judge of this Court on 29.12.1987 and the writ appeal is now before us.

35. During the pendency of the writ appeal, the respondent has attained the age of superannuation in the year 1996 in the bank. Challenging the

action of the appellants, the respondent filed three writ petitions, three writ appeals and one contempt application and has also incurred legal

expenses. Admittedly, the respondent has joined as a Lecturer in Gurunanak College, Velacheri on 17.11.1972. At the time of appointment, he

was drawing a monthly salary of Rs. 2,976. He could not have been continued in that post till his date of superannuation on 29.9.1994. Further,

while deciding the issue arising in this case, it is necessary that the gainful employment of the respondent as a Lecturer and Assistant Professor of

Commence in Gurunanak College, Velacheri also should be taken into account. Admittedly, the present proceedings have been pending against the

respondent from 1970 onwards and till date, the respondent has been out of bank's employment. The compensation amount is directed to be paid

on the basis of the salary the respondent was drawing at the time of suspension and taking into consideration the subsequent increments and

promotion he could have earned, leaving margin for probability. As his promotion would be dependent on his performance, we calculate the annual

salary of the respondent at the rate of Rs. 40,000, as he was earning only Rs. 3,000 per mensem. Calculating on that basis, the salary payable for

the period from 1972 to 1996 would come to Rs. 9,60,000. The Bank is a nationalised Bank and the money belongs to the public. Huge amounts

from the Bank cannot be paid to anyone, who had done no work during the long period. The question of reinstatement also does not arise since

the respondent has reached the age of superannuation. He has also been employed elsewhere gainfully during this period. Therefore, taking into

consideration all the facts that he has been employed gainfully and has been drawing a salary of Rs. 2,950 per mensem, we direct the appellant to

pay a lump sum of Rs. 6,00,000 (Rupees six lakhs only) in Full Quit inclusive of all claims to the respondent in lieu of his claim for arrears of salary.

The amount shall be paid within a month from to-day.

36. In the result, the writ appeal is dismissed subject to the above directions. However, there will be no order as to costs.