

(1998) 07 KAR CK 0081
In the Karnataka High Court
Case No : Writ Petition No. 29020 of 1992

K. Raja Rao

APPELLANT

Vs

Syndicate Bank, Head Office, Manipal, Dakshina Kannada
District and Others

RESPONDENT

Date of Decision : 10-07-1998

Acts Referred:

Constitution of India, 1950 — Article 154, 226, 227, 309, 310
Syndicate Bank Officer Employees (Discipline and Appeal) Regulations, 1976 —
Regulation 6, 6 (6)

Citation : (1999) 2 KarLJ 500

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

**Advocate : Sri S.V. Shastri, for the Appellant; Sri K. Radhesh Prabhu for M/s.
Tukaram S. Pai, for the Respondent**

Judgement

1. The petitioner in this case is seeking a writ of certiorari to quash the impugned order passed by the 2nd respondent in No. 41/PD-IRD/DA-7, dated 24-4-1990, Annexure-E to the writ petition, in which order the order of removal passed by the 3rd respondent was confirmed by the Appellate Authority. Further the petitioner has sought for a direction to the first respondent-bank to reinstate the petitioner in his post with all consequential benefits, urging the following facts and legal contentions.

2. It is stated that the petitioner was appointed as a Farm Representative and he has reported for duty on 1-4-1980 at Staff Training College, Udupi. Initially the appointment was for a period of 2 years on Probation. After successful completion of his Probationary Period, his services were confirmed by the first respondent-bank.

3. The 3rd respondent issued the charge-sheet dated 17-9-1985 in exercise of his power conferred under Regulation 6 of the Syndicate Bank Officer Employees" (Conduct) Regulations 1976 and Syndicate Bank Officer

Employees" (Discipline and Appeal) Regulations, 1976 (hereinafter called as the "Regulations" in short), alleging that the petitioner, during the period of June 1981 and March 1982, while working as a Farm Representative/Rural Development Officer at Mulki Branch, accepted a sum of Rs. 300/- from Sri Vaman Acharyy, and also accepted Rs. 200/-, demanded a sum of Rs. 1,000/- and accepted Rs. 400/- from one Keshava S. Kunder and he had demanded and accepted Rs. 500/- from one Smt. Sundari Mogerthy as a reward for having shown favour to them in getting Farm Loans and issued a false follow-up inspection report in respect of the above said loaners and recommended an additional loan of Rs. 10,000/- to Keshava S. Kunder on the basis of false estimate receipt and thereby it is alleged that petitioner has failed to discharge his duties which would affect the integrity, honesty, devotion and diligence and exhibited the said conduct of unbecoming of the status of Bank Officer, thereby he has committed a grave misconduct for having violated Regulation 3(i) read with Regulation 24 of the Regulations referred to above. The petitioner submitted his reply on 17-10-1985 explaining the circumstances under which the charges were alleged against him. The third respondent-bank not having accepted the reply statement submitted by the petitioner, has proceeded further appointing an Enquiry Officer to conduct the disciplinary proceedings against him under Regulation 6(6) of the Regulations.

4. It is also further stated that prior to. initiation of the disciplinary proceedings, the Vigilance Officer has conducted a preliminary enquiry to find out the truth or otherwise of the allegations levelled against the petitioner. It is stated by the learned Counsel, Mr. S.V. Shastry that in the preliminary enquiry the Vigilance Officer has recorded the statement of persons whose names are referred to in the charge-sheet at Annexure-B, on the basis of which the charges were framed and disciplinary proceedings were initiated. Further, it is stated that the Enquiry Officer did not conduct the enquiry in accordance with the Regulations referred to above, and in compliance with the principles of natural justice. Therefore, the order of dismissal was not preceded by a valid and legal enquiry as required in law. The learned Counsel submits that the order of dismissal has been confirmed by the Appellate Authority and hence both the impugned orders are not sustainable in law. The learned Counsel elaborating his submissions further submits that in the enquiry, the CBI Investigation Officer, who is a Police Officer, was appointed as a Presenting Officer to present the case on behalf of the 3rd respondent-Management. His presence in the enquiry and conduct of enquiry proceedings against the petitioner has prejudiced his case. Therefore the conduct of enquiry proceedings and the order of removal passed by the Disciplinary Authority against the petitioner is vitiated. Further, the learned Counsel submits that the statements of persons on the basis of which the disciplinary proceedings were initiated by the 3rd respondent-Management, the contents of the documents are not proved in the enquiry proceedings. On the other hand, the statements recorded by the Presenting Officer in the course of preliminary enquiry were put to the witnesses, who were examined as witnesses on behalf of

the 3rd respondent-Management and those documents were got marked as Management documents. Those documents are being relied upon by the Enquiry Officer in support of the findings recorded by him. The said findings have been accepted in totality by the Disciplinary Authority without applying his mind to the facts of the case and law on the question. Therefore, the learned Counsel submits that conduct of enquiry is not in accordance with the Regulations, law laid down in this regard and in compliance with the principles of natural justice. Therefore the order of removal and the Appellate Authority's order are liable to be quashed. The learned Counsel further submits that the initiation of disciplinary proceedings in the absence of any complaint is bad in law. Therefore, the order of removal is illegal, void and unsustainable in law. It is also further contended that the charges levelled against the petitioner vide Annexure-A are not supported by any documents inasmuch as demanding the money and accepting the same by the petitioner from the loaners as alleged. Neither the so called loaners nor other witnesses produced any documents to substantiate the said charges against the petitioner. Therefore, the learned Counsel submits that the report which has been termed as a follow-up report, none of the witnesses were party to the said follow-up report. It is also further contended that before granting the loan to a customer it is incumbent on the part of the sanctioning authority to get some documents on which basis reliance could be placed in sanctioning the loan. In the instant case, the receipt issued by a party to a prospective loanee is the basis on which loan was sanctioned or released. The petitioner being a Farm Representative, the poor agriculturists approached him for their guidance to obtain the loan from the Bank. He has advised such persons regarding the procedure to be followed by them before granting the loan. Therefore, it cannot be said that at his instance a receipt has been obtained and further the loan for digging the well concerned are sanctioned on a stagewise basis and not at a stretch and further the release of the loan for the purpose of putting cattle shed as well as purchase of milch cows. The petitioner being a Farm Representative submitted his follow-up report. Depending upon his inspection and verification made with reference to the persons who have approached him, without there being a cross-verification by any higher officers of the Bank and solely on the basis of the statement said to have been made by a particular individual, the disciplinary proceedings could not have been initiated against the petitioner. It is also further alleged that the CBI Officer was behind the back of the petitioner in securing the statements of the loaners. Contents of the statements were not made known either to the petitioner or to anybody till the report was served on him at the time of enquiry. Therefore, the learned Counsel submits that the procedure followed by the Enquiry Officer is not proper. The Enquiry Officer without applying his mind and not discharging his statutory duties while conducting enquiry proceedings as he has taken the statements of the witnesses which were recorded in the preliminary enquiry on record and accepted the same without proving the contents of the same. Those statements were recorded by the CBI Officer behind the back of the petitioner, by marking and exhibiting them as Management documents, even though the witnesses have

not spoken to the contents of the statements. Therefore the Enquiry Officer has not followed the proper procedure required in law.

5. It is also further stated that the statements made by the witnesses of the Disciplinary Authority to the CBI Officer who is a Police Officer could not have been taken as the correct statements made by the persons at the stage of preliminary enquiry. The 3rd respondent while accepting the report of the Enquiry Officer failed to apply his mind to the facts of the case, evidence on record without considering the legal aspects in this regard and therefore the order passed by the Disciplinary Authority is bad in law*. Hence the submission of the learned Counsel on behalf of the petitioner is that the impugned order of the Disciplinary Authority is liable to be quashed. Further, it is contended that the 3rd respondent while awarding punishment has not taken into consideration the past service record of the petitioner. The alleged incident said to have taken place during the year 1981 and in the beginning of 1982 and he continued in service till 1988. The order of removal was passed in the year 1988. It is also further stated on account of the alleged acts of misconduct against the petitioner, the first respondent-Bank has not suffered any loss whatsoever, therefore, the 3rd respondent should not have passed an order which is impugned in this writ petition. The Appellate Authority has not exercised its jurisdiction and power properly while considering the appeal filed by the petitioner. Therefore, the orders impugned in this writ petition Annexure-D and E are also liable to be quashed.

6. The learned Counsel appearing for the petitioner placed strong reliance on the judgment reported in the case of B.C. Basak v Industrial Development Bank of India and Others, for the proposition that presence and participation of CBI Officer in the enquiry proceedings, at whose instance the investigation was conducted, who is an outsider thereby there is violation of the principles of natural justice in conducting enquiry proceedings against the petitioner. Therefore the enquiry proceedings are vitiated. Hence the order of removal and the order of the Appellate Authority are not sustainable in law. Further, he relies upon two judgments of the Apex Court, that is in the case of Khardah Co. Ltd. Vs. Their Workmen, , for the proposition that the previously prepared statements of witnesses read over to the workman and asked to cross-examine witnesses then and there, thereby the principles of natural justice are not complied with. In support of the above said legal proposition he also placed reliance on the judgment of the Supreme Court in the case of Kesoram Cotton Mills Ltd. Vs. Gangadhar and Others, .

7. On 6-7-1998 during pre-lunch session after hearing the learned Counsel appearing for the petitioner, the judgment was half dictated. At 2.30 p.m., the learned Counsel appearing for the respondent-Bank submitted that he may be heard in the matter. His request was considered and the case was listed on 9-7-1998 for hearing him.

8. The learned Counsel Mr. Prabhu, appearing for the respondents submits that

the order of removal was preceded by a legal valid enquiry as contemplated under the Regulations referred to above and further, he submits that the petitioner was given sufficient and adequate opportunity to defend his case in the enquiry proceedings. He was provided with a defence representative to effectively present the case of the petitioner before the Enquiry Officer. Further the Enquiry Officer has conducted enquiry following the procedure contemplated under Regulation 6 of the Regulations and further the petitioner-employee at no point of time had protested during the course of the enquiry proceedings with reference to the Regulations that the Enquiry Officer and the Disciplinary Authority was not conducting enquiry proceedings in accordance with the regulations and in compliance with the principles of natural justice and in that regard grounds were not urged in the Memorandum of appeal filed before the Appellate Authority, when he had challenged the order of removal. Therefore the petitioner had waived his right conferred upon him under the Regulations. Further the learned Counsel had elaborated his submission that fair and reasonable opportunity was given to the petitioner in the enquiry proceedings following the required procedure under the Regulations and also in compliance with the principles of natural justice. Therefore, petitioner has not shown to this Court as to how his case was prejudiced with reference to the Regulations. Learned Counsel further placed strong reliance on the judgement of the Supreme Court in the case of State Bank of Patiala and others Vs. S.K. Sharma, , for the proposition that if there is a procedural irregularity while conducting enquiry that cannot be made as a ground for seeking to quash the order of removal passed by the Disciplinary Authority and further he submits placing the reliance referring to various paragraphs in the said judgment - paragraphs 10, 11, 12, 14, 15, 23, 24 and 32, sub-para (3), contending that the petitioner having not protested during the course of conduct of the enquiry proceedings that the Enquiry Officer has not followed the procedure required under the Regulation, has waived his right. Therefore, the learned Counsel submits that the extraordinary and supervisory power conferred upon this Court under Articles 226 and 227 of the Constitution of India cannot be exercised in favour of the petitioner to quash the order of removal passed by the Disciplinary Authority, which order was confirmed by the Appellate Authority. He further submits that the Regulations have laid down certain procedure in conduct of enquiry which are held to be directory but not mandatory and further he had submitted that the principle of audi alteram partem cannot be applied to the facts in the instant case as a breach of procedure under the Regulations and thereof failure of natural justice are an essential administrative part again given him a remedy in the course, unless behind it if there is something of substance which has been lost by the failure, the Court does not act in vain. In sum and substance the submission of the learned Counsel on behalf of the respondent-Bank is that the facts of this case and the ratio laid down in Sharma's case, supra, is with all force applicable to the facts of the present case. Therefore this Court need not exercise its extraordinary and supervisory jurisdiction and power as the petitioner has failed to show that the violation of the Regulations is a procedural irregularity it cannot

be said that it is mandatory, thereby non-observance of the statutory provisions and compliance with the principles of natural justice would not vitiate the enquiry proceedings. Therefore, the order of removal cannot be said to be bad in law.

9. The learned Counsel further submits that the petitioner has not shown as to how the impugned orders suffer from error apparent on the face of the record or error in law. Therefore, this Court should not interfere with the penalty imposed by the Disciplinary Authority in exercise of its power under the Regulations.

10. I have perused the records and the impugned orders Annexure-C and D.

11. The submission of the learned Counsel, Mr. Shastry that presence of the CBI Officer as a Presenting Officer has vitiated the enquiry proceedings is not well founded for the reason that Regulation 6 of the Regulations provides for as hereunder:

"(6) Where the Disciplinary Authority itself enquires or appoints an Inquiring Authority for holding an inquiry, it may, by an order, appoint a public servant to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge".

The said Regulation provides for appointing a public servant as a Presenting Officer to present the case before the Inquiring Authority on behalf of the Disciplinary Authority. It is not in dispute that the CBI Officer who had conducted preliminary enquiry is not a public servant -- Regulation permits the Disciplinary Authority to appoint public servant as the Presenting Officer. He may be a Police Officer. He has not participated in the enquiry proceedings as a Police Officer but as a Presenting Officer for which the Disciplinary Authority has duly appointed him to present the case on behalf of the Management. Therefore, the reliance placed by the learned Counsel, on the judgment in the case of B.C. Basak, *supra*, has no application to the facts of the case for the reason that the similar regulation was not available in the Regulations of the B.C. Basak's case, *supra*, and no such occasion had arisen for the Court to interpret the regulation as to whether the Investigation Officer could have been appointed as the Presenting Officer or not. Therefore the submission on behalf of the petitioner in that regard must fail, accordingly the said legal contention urged by the learned Counsel is rejected.

12. Insofar as the second submission on behalf of the petitioner is concerned that the order of removal is not preceded by a fair legal valid enquiry, the learned Counsel on behalf of the petitioner has placed strong reliance on the two aforesaid Judgments of the Supreme Court.

13. Insofar as the second submission of the learned Counsel appearing for the petitioner that the Enquiry Officer has violated the procedure required to be followed under the Regulations and in compliance with the principles of natural justice in allowing the respondent-Bank to produce and mark the statements of witnesses who were examined on behalf of the Disciplinary Authority, wherein

the statements of witnesses who were examined by the Investigation Officer at the time of preliminary enquiry behind the back of the petitioner were recorded. Those statements have been marked as Exs. MEX-1, MEX-2, MEX-7, MEX-18, 19, 22, 43, 44, 46 to 51. All these persons were examined in the enquiry as respondent-Bank witnesses to prove the charges against the petitioner.

14. The learned Counsel Mr. Prabhu made submissions in the course of his arguments that it is not in dispute that those statements have been recorded by the Investigation Officer in the course of preliminary investigation conducted by him before initiating the disciplinary proceedings to find out the truth or otherwise of the allegations made against the petitioner and further to find out as to whether it was a proper and fit case for initiation of the disciplinary proceedings against the petitioner in exercise of the powers by the Disciplinary Authority under the Regulations.

15. It is not the grievance of the petitioner that the copies of the said documents exhibited and marked were not given to the petitioner. The grievance of the petitioner is that contents of those exhibits have not been put to each one of the witnesses who were examined in the enquiry proceedings and proved the same. This fact cannot be disputed in view of the enquiry proceedings recorded by the Enquiry Officer. In the Enquiry proceedings which were made available to the Court, it is noticed that those statements have been put to the witnesses stating as hereunder in the enquiry proceedings:

"P.O. I am reading out and translating your statement given before Shri P.K. Jacob, I/P, CBI, Bangalore, dated 20-12-1984 and pleased to say the contents therein are correct.

Ans: Yes, I agree with the contents translated to me in Kannada. The said statement was given by me on 20-11-1984 to Shri P.K. Jacob who came for investigation. As regards the amount it is not Rs. 200/- but Rs. 250/-. Further, I identify the said statement (which has been marked as MEX-1)".

16. Similar procedure has been followed while marking the remaining Exhibits referred to above while examining other witnesses. The learned Counsel for the respondent submits that some of the witnesses were illiterate people and were not in a position to give evidence on their statement recorded before the Investigation Officer, therefore, the Presenting Officer of the Disciplinary Authority had read over and translated and explained the contents of those statements to the respective witnesses. After following the said procedure the witnesses who were examined have given their answers as stated above, which are recorded in the enquiry proceedings by the Enquiry Officer.

17. In this view of matter what is required to be examined by this Court is the nature of power entrusted to the Enquiry Officer to conduct an enquiry under the regulations and in compliance with the principles of natural justice and whether it is an empty formality or not. Based on findings submitted by the Enquiry Officer, holding that charges are proved, the impugned order of removal is passed. It had

entailed serious civil consequence upon the livelihood of the petitioner and his family members. In such circumstances, the procedure laid down under the Regulation is required to be followed strictly by the Enquiry Officer under the regulations in compliance with the principles of natural justice. The Apex Court in the case of Central Bank of India Ltd. Vs. Prakash Chand Jain, , it has laid down the law that the conduct of the domestic enquiries against delinquent employees the rules of Evidence Act are not applicable, but the substantive rules of Evidence Act are applicable as the Enquiry Officer is required to comply with the principles of natural justice. The Supreme Court considering the above said question has laid down the law the relevant portion at paragraph 8 is extracted as hereunder:

"..... It is in this connection that importance attaches to the views expressed by this Court in the cases cited above where it was pointed out that a finding of a domestic tribunal may be perverse if it is not supported by any legal evidence. It is true that, in numerous cases, it has been held that domestic tribunals, like an Enquiry Officer, are not bound by the technical rules about evidence contained in the Indian Evidence Act; but it has nowhere been laid down that even substantive rules, which would form part of principles of natural justice, also can be ignored by the domestic tribunals. The principle that a fact sought to be proved must be supported by statements made in the presence of the person against whom the enquiry is held and that statements made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act".

18. It has nowhere been laid down that even substantive rules which would form part of the principles of natural justice also can be ignored by the domestic Tribunals. Probably that a fact sought to be proved must be supported by statements made in the presence of a person against whom the enquiry is held and that statement made behind the back of the person charged are not to be treated as substantive evidence, is one of the basic principles which cannot be ignored on the mere ground that domestic Tribunals are not bound by the technical rules of procedure contained in the Evidence Act.

19. This case has to be examined in view of the law laid down in the above said case. Further, the reliance placed by the learned Counsel on behalf of the petitioner that statements which were recorded by the preliminary Investigation Officer behind the back of the petitioner were required to be put to the respective Management witnesses and proved the contents of the documents by following the procedure laid down under the regulations and in compliance with the principles of natural justice. The Enquiry Officer has placed strong reliance on the above said statements and recorded the findings holding that the charges levelled against the petitioner are proved, which findings have been accepted by the Disciplinary Authority and passed the impugned order of removal against the petitioner. Therefore, what is required to be examined in this case is as to

whether the Disciplinary Authority has exercised its power properly, while passing the impugned order against the petitioner, keeping in view the law laid down by the Apex Court in conducting enquiry as per the Regulations and in compliance with the principles of natural justice.

20. Learned Counsel Mr. S.V. Shastry placed strong reliance on the judgment of the Supreme Court in the case of Kesoram Cotton Mills Limited, *supra*. The relevant paragraph 15 of the judgment reads thus:

"15. It is urged on behalf of the appellant that rules of natural justice are the same whether they apply to inquiries under Article 311 or to domestic inquiries by managements relating to misconduct by workmen. It may be accepted that rules of natural justice do not change from Tribunal to Tribunal. Even so the purpose of rules of natural justice is to safeguard the position of the person against whom an inquiry is being conducted so that he is able to meet the charge laid against him properly. Therefore the nature of the inquiry and status of the person against whom the inquiry is being held will have some bearing on what should be the minimum requirements of the rules of natural justice. Where, for example, lawyers are permitted before a Tribunal holding an inquiry and the party against whom the inquiry is being held is represented by a lawyer it may be possible to say that a mere reading of the material to be used in the inquiry may sometimes be sufficient. (see *New Prakash Transport Co. Limited v New Swarna Transport Company Limited*, but where in a domestic inquiry in an industrial matter lawyers are not permitted, something more than a mere reading of statements to be used will have to be required in order to safeguard the interest of the industrial worker. Further we can take judicial notice of the fact that many of our industrial workers are illiterate and sometimes even the representatives of labour union may not be present to defend them. In such a case to read over a prepared statement, in a few minutes and then ask the workmen to cross-examine would make a mockery of the opportunity that the rules of natural justice require that the workmen should have to defend themselves. It seems to us therefore that when one is dealing with domestic inquiries in industrial matters, the proper course for the management is to examine the witnesses from the beginning to the end in the presence of the workman at the inquiry itself. Oral examination always takes much longer than a mere reading of a prepared statement of the same length and brings home the evidence more clearly to the person against whom the inquiry is being held. Generally speaking therefore we should expect a domestic inquiry by the management to be of this kind. Even so, we recognise the force of the argument on behalf of the appellant that the main principles of natural justice cannot change from tribunal to tribunal and therefore it may be possible to have another method of conducting a domestic inquiry (though we again repeat that this should not be the rule but the exception) and that is in the manner laid down in *State of Mysore v Shivabasappa Shivappa Makapur*. The minimum that we shall expect where witnesses are not examined from the very beginning at the inquiry in the presence of the person charged is that the person charged should be given

a copy of the statements made by the witnesses which are to be used at the inquiry well in advance before the inquiry begins and when we say that the copy of the statements should be given well in advance we mean that it should be given at least two days before the inquiry is to begin. If this is not done and yet the witnesses are not examined-in-chief fully at the inquiry, we do not think that it can be said that principles of natural justice which provide that the person charged should have an adequate opportunity of defending himself are complied with in the case of a modest inquiry in an industrial matter. In the present case all that had happened was that the prepared statements were read over to the workmen charged and they were asked then and there to cross-examine the witnesses. They were naturally unable to do so and in the circumstances we agree with the Tribunal - though for different reasons - that the inquiry did not comply with the principles of natural justice".

21. For the same proposition the learned Counsel for the petitioner placed reliance in the case of M/s. Khardah and Company Limited, *supra*. In Sharma's case, *supra*, different facets of principles of natural justice and fair play has been extensively dealt with by the Apex Court placing reliance upon various judgments of that Court and Privy Council and so many other cases which have been extensively referred to in that judgment. It is worth mentioning from extracting the judgment of the Sharma's case, *supra* at paragraph 23 of the judgment. Wherein the judgment of Apex Court in the case of K.L. Tripathi is referred which reads thus:

"23. In K.L. Tripathi Vs. State Bank of India and Others, :

The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular Us, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no Us regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly".

22. This principle has been reiterated by Supreme Court in Sharma's case, *supra*. In Sharma's case, *supra*, with reference to the facts of that case it has been held no prejudice has been caused by conducting enquiry and passing an order of penalty against the employee referring to the proceedings of the enquiry and facts which have been admitted by the parties in that case. The finding recorded by the Apex Court was that in fact there was substantial compliance of the statutory regulations and compliance of principles of natural justice, in conducting enquiry against an employer in that case. It is worth noting that the findings recorded by the Apex Court in Sharma's case, *supra*, is that the

preliminary enquiry was conducted in the presence of employee in that case. The distinguishing factor in this case is that preliminary enquiry was not conducted by the Investigation Officer in the presence of the petitioner. That makes a lot of difference in applying the ratio laid down in the Sharma's case, *supra*, to the facts of this case. While dealing with various aspects of the matter, the Supreme Court has also considered that the compliance of the principles of natural justice is required and it is stated that if an employee or officer shows that prejudice is caused in conducting enquiry and exercising power by the Disciplinary Authority while passing an order of either removal or dismissal, such orders and proceedings are subject to the judicial review of this Court in exercise of its powers under Articles 226 and 227 of the Constitution of India. Therefore, the law declared in Sharma's case, *supra*, is helpful to the case of the petitioner to the extent indicated above.

22(a). The learned Counsel appearing for the respondent-Bank submits that after the witnesses were examined and the documents were marked, they have been cross-examined by an able defence representative on behalf of the petitioner. Therefore, no prejudice has been caused to the petitioner in not following the procedure required to be followed in accordance with the Regulations and compliance of principles of natural justice. This submission is not tenable for the reason that what was cross-examined was the oral evidence adduced by the witnesses and the same does not amount to proof of documents. The Enquiry Officer has placed strong reliance on the contents of the documents which have not been proved. On account of that, substantial injustice has been caused to the employee. In other words, failure to mark the documents in the enquiry has vitiated the report. Mere extraction of evidence with regard to the contents of the documents is not sufficient and reliance placed on such evidence with regard to the contents of the documents is wholly untenable and bad in law.

23. For the reasons stated above, the Enquiry Officer has violated the substantive rules of Evidence Act in permitting the Disciplinary Authority to produce the documents and exhibit the same in the evidence on behalf of the respondent-Bank without speaking to the contents of the statements of the witnesses who were examined in the preliminary investigation. Therefore, the statements and documents which were marked and exhibited in the enquiry against the petitioner have not been proved and the same have been considered by the Enquiry Officer and submitted his enquiry report holding that the charges levelled against the petitioner are proved, which report has been accepted by the Disciplinary Authority without applying his mind independently to the facts of the case and evidence on record. Therefore, great prejudice has been caused to the case of the petitioner as there was no evidence on record on behalf of the respondent-Bank in support of its charges, as their witnesses have not spoken to the contents statements which were exhibited and placing reliance on the said documents as substantive evidence on record in support of the charges levelled against the petitioner and recording findings against the petitioner is wholly untenable in law. Therefore, the impugned order passed by the Disciplinary

Authority, without taking into consideration of this important aspect of the matter has vitiated the entire disciplinary action taken against the petitioner. The learned Counsel appearing for the respondent submitted that the petitioner has waived his right in not urging the ground that the procedure followed by the Enquiry Officer has not vitiated the enquiry proceedings as he had allowed the Disciplinary Authority in marking the documents and submitting his findings on the basis of the contents of the unproved documents is a procedural irregularity. Therefore, this Court should not exercise its power under Articles 226 and 227 of the Constitution of India, cannot be accepted in view of the law declared by the Supreme Court in the cases referred to above. What is stated in the S.K. Sharma's case, *supra*, with regard to the right of waiver is with reference to the facts of that case, but the same is not applicable to this case for the reasons stated in the preceding paragraphs.

24. The Supreme Court in the case of Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , has quoted the law laid down in *Vitarelli v Seaton*², at pages 546 and 547, as hereunder:

"An executive agency must be rigorously held to the standards by which it professes it's action to be judged...Accordingly, if dismissal from the employment based on defined procedure even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now fairly established and if I may act rightly so he that takes procedural sword shall perish with that sword".

25. The law has been laid down by the Supreme Court in the Sukhdev Singh's case, *supra*, in the background of interpretation of the Rules and Regulations framed by the statutory corporation which have got the force of law. While interpreting the rules Supreme Court has held that Rules and Regulations framed by the Oil and Natural Gas Commission, Life Insurance Corporation and Industrial Finance Corporation have got the force of law. The employees of the statutory bodies have a statutory status and they are entitled for declaration of being in public employment when their removal or dismissal is in contravention of the statutory provisions. In another judgment the Hon''ble Supreme Court in the case of *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, , interpreting the Articles 309, 310, 311 and 154 and the provisions of the Police Act in Police Regulations holding that the statutory rules cannot be treated as mere administrative directions but the rules made in a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect and further law has been succinctly laid down by the Apex Court in the said judgment at para 23 relevant portion of the judgment reads thus:

"Rules made under a statute must be treated for all purposes of construction or

obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation"; see Maxwell "on the Interpretation of Statutes", 10th Edition, pages 50 and 51. The statutory rules cannot be described as, or equated with; administrative directions. If so, the Police Act and the rules made thereunder constitute a self-contained code providing for the appointment of police officers and prescribing the procedure for their removal. It follows that where the appropriate authority takes disciplinary action under the Police Act or the rules made thereunder, it must conform to the provisions of the statute or the rules which have conferred upon it the power to take the said action. If there is any violation of the said provisions, subject to the question which we will presently consider whether the rules are directory or mandatory, the public servant would have a right to challenge the decision of that authority".

26. In view of the judgments of the Apex Court referred to above, it cannot be said that merely because the petitioner has not protested at the time of marking of the documents during the course of conduct of enquiry with reference to the statements produced by the Management it does not amount to proof of the contents of the documents produced and marked as exhibits in the evidence on behalf of the respondent-Bank. The Enquiry Officer was entrusted with the job of conduct of domestic enquiry in accordance with the regulations and also in compliance with the principles of natural justice. The regulation contemplates the procedure required to be followed by the Disciplinary Authority. Without following the procedure contemplated under the Regulations and submitting an enquiry report holding that the charges are proved against the petitioner on the basis of unproved statements of the witnesses which have been taken on record which documents are not proved, therefore it cannot be said that the conduct of domestic enquiry is in compliance with the Regulations and the principles of natural justice. If it is not in accordance with the Regulations, in view of the law declared by the Supreme Court in the cases referred to above, it cannot be stated that the findings of the Enquiry Officer are legal and valid, based on the findings the order of removal passed by the Disciplinary Authority against the petitioner is in accordance with law. The conduct of enquiry is not an empty formality as law declared by the Apex Court. The enquiry should be conducted by the Disciplinary Authority strictly in accordance with the regulations and in compliance with the principles of natural justice before imposing penalty as contemplated under the Regulations. In my view, the way in which the enquiry proceedings were conducted by the Enquiry Officer are not in accordance with the Regulations, in compliance with the principles of natural justice and law laid down by the Apex Court in this regard. I am not satisfied that the Disciplinary Authority has conducted an enquiry against the petitioner in accordance with the Regulations and in compliance with the principles of natural justice. Therefore, the submission of the learned Counsel appearing for the petitioner that the order of removal is not preceded by a legal and valid enquiry as required in law is tenable. Therefore, the submission of the learned Counsel for the petitioner is

well founded and the said submission is based on the law enunciated by the Supreme Court in the cases referred to above. Therefore the submission of the learned Counsel appearing for the petitioner that the enquiry was not conducted in accordance with the Regulations and compliance of principles of natural justice must be accepted. In view of the law declared in the S.K. Sharma's case, referred to above, this is a fit case for this Court to exercise its extraordinary and supervisory discretionary power to quash the impugned orders as the petitioner has established the fact that prejudice has been caused to him in not conducting a fair and legal enquiry for the reasons stated in the preceding paragraphs of this judgment.

27. For the reasons stated above, the order of removal and the order passed by the Appellate Authority were not preceded by a legal and valid enquiry. This vital aspect of the case of the petitioner was not considered both by the Disciplinary Authority as well as by the Appellate Authority. Therefore, the impugned orders challenged in the writ petition are liable to be quashed.

28. Then the next question for consideration for this Court is what relief this Court has to grant in favour of petitioner has to be considered. Taking into consideration the facts of the case, the time taken by the Disciplinary Authority in conducting enquiry and time taken by this Court in disposing this matter in view of large number of similar cases are pending, considering the above said relevant factors this Court has granted the appropriate reliefs as indicated in the operative portion of the judgment.

29. The learned Counsel appearing for the petitioner has submitted taking into consideration of the longevity of the case, it would not be proper for this Court to give any opportunity to the respondent-Management to conduct de novo enquiry in accordance with the Regulations and in compliance with the principles of natural justice. The said submission of the learned Counsel for the petitioner is not tenable in law, therefore the submission in that regard is rejected. Taking into consideration of the nature of charges levelled against the petitioner and keeping in view the fact that the order of removal was not preceded by a legal and valid enquiry in accordance with law, this court has considered and has come to the conclusion that this is a fit case for grant of the consequential relief of awarding back wages and further to give an opportunity to the Disciplinary Authority to prove the charges against the petitioner in accordance with law by conducting de novo enquiry, if the respondent-Bank desirous to do so.

30. Taking into consideration of the nature of the charges and the grounds on which the order of removal and the order of the Appellate Authority are required to be quashed, I think it would be proper for this Court in the interest of justice, further in view of the order of removal, rendered the petitioner unemployed from the date of removal till this date and in the absence of any material placed on record by the respondent-Bank before this Court to show that the petitioner was employed from the date of removal till this date, it would be appropriate and proper for this Court at this stage to award 50% of back salary. The remaining

50% back salary has to be considered by the Disciplinary Authority after the order which has to be passed by it in accordance with law after conducting a de novo enquiry. Hence, I pass the following order.

31. The writ petition is allowed. Rule made absolute. Impugned orders at Annexures are hereby quashed. The respondent-Bank is hereby directed to reinstate the petitioner in his post. However, liberty is given to the respondent to conduct an enquiry in accordance with the Regulations and in compliance with the principle of natural justice. The respondent should pay 50% back salary to the petitioner from the date of removal till this date within two months from the date of receipt of this order. Further, the liberty is given to the respondent to conduct de novo enquiry, if availed by it, such enquiry should be concluded within six months from the date of receipt of this order.

As regards the remaining 50% of the back wages, the Disciplinary Authority shall pass appropriate orders after conducting the enquiry and based on the findings of the enquiry report, in accordance with law.