

**(2001) 09 DEL CK 0004**  
**In the Delhi High Court**  
**Case No : C.W. No. 5436 of 1998**

K.L. Chandana

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 19-09-2001

**Acts Referred:**

New Bank of India Officer Employees (Discipline and Appeal) Regulations, 1982 —  
Regulation 17, 4, 7, 7(2), 8

**Citation :** (2001) 09 DEL CK 0004

**Hon'ble Judges :** Dr. M.K. Sharma, J

**Bench :** Single Bench

**Advocate :** Chetan Sharma and Ashok Bhalla, for the Appellant; Piyush Sharma and V.K. Rao, for the Respondent

**Final Decision :** Allowed

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## Judgement

Mukundakam Sharma, J.—Challenge is made in the present writ petition by the petitioner to the order of penalty passed against him by the respondents ordering his compulsory retirement.

2. A charge sheet was issued to the petitioner under Memorandum dated 31.7.1990 listing certain charges which pertain to allegation of committing misconduct while sanctioning credit facilities in various accounts during the tenure of the petitioner as Regional Manager, Regional Office, Delhi. The petitioner submitted his statement of defense dated 14.11.1990. On perusal of the same the Disciplinary Authority was not satisfied and accordingly a departmental enquiry was ordered to be conducted against the petitioner. The Disciplinary Authority appointed the Commissioner for Departmental Enquiry as the Enquiring Authority in terms of regulation No. 6 of New Bank of India Officers Employees (Discipline and Appeal) Regulations, 1982. Upon conclusion of the enquiry, the Enquiry Officer submitted his findings on the allegations vide his report dated 31.10.1991. The Disciplinary Authority, after going through the same ordered for remitting back the report of the Enquiry Officer directing him to

give his findings on articles of charge also. The Enquiry Officer, thereafter sent an additional report giving his findings on articles of charge by his letter dated 30.3.1992.

3. Copies of the aforesaid reports were sent to the petitioner under letter of the Bank dated 11.5.1992 advising the petitioner to submit his representations. It is to be indicated herein that except for charges No. 1 & 2 the petitioner was not found guilty in respect of the remaining charges by the enquiry officer. Accordingly, the petitioner submitted his representation as against the findings of the Enquiry Officer relating to the charges No. 1 & 2 only, in view of the fact that the petitioner was absolved by the Enquiry Officer in respect of the remaining charges. The Disciplinary Authority, however, agreed partly with the findings of the Enquiry Officer namely - in respect of charges No. 1 & 2, but so far remaining charges are concerned the Disciplinary Authority disagreed with the findings and by an order dated 11.8.1992 held that all the charges against the petitioner stand proved and ordered for awarding major penalty of compulsory retirement. It was also ordered that the petitioner would not be entitled to any benefits for the period of suspension except the subsistence allowance paid/payable to him.

4. Aggrieved by the aforesaid order dated 11.9.1992 passed by the Disciplinary Authority the petitioner preferred an appeal on 24.9.1992 under regulation 17 of the New Bank of India Officers Employees" (Disciplinary and Appeal) Regulations, 1982. The aforesaid appeal was considered by the appellate authority and was dismissed by order dated 9.2.1993. The petitioner thereafter filed a review petition. But the same was not disposed of by the respondent and accordingly the present petition was filed in this court challenging the order of punishment of compulsory retirement passed against the petitioner as also the order passed by the appellate authority.

5. During the course of arguments a preliminary objection to the maintainability of the writ petition was raised by Mr. Piyush Sharma, counsel appearing for the respondents contending that this writ petition is liable to be dismissed on the ground of delay and laches. He submitted that the order of punishment against the petitioner was passed on 11.8.1992 and the appeal filed by the petitioner was disposed of by the appellate authority on 9.2.1993 and the present writ petition was filed in this court on 20.7.1998 and Therefore there is unexplained delay of 5 years in instituting the present proceedings and the writ petition is liable to be dismissed on the ground of un-explained delay and laches.

6. Counsel appearing for the petitioner however, submitted that subsequent to the disposal of the appeal the petitioner submitted a review application and the same was kept pending by the respondents and Therefore, there is proper and reasonable Explanation for the delay if any in filing the present writ petition. He submitted that even in case the aforesaid review petition was not maintainable it was necessary for the respondents to intimate the petitioner about non-maintainability of the same and that the petitioner was all along under the impression that the same is being considered by the respondents and Therefore, the present

petition should not be dismissed on the ground of delay and laches as there is reasonable Explanation for approaching this court after five years. it was also submitted by him that the Enquiry Officer found the petitioner guilty of only two charges and absolved him from the remaining charges and Therefore, the petitioner could submit representation and was given an opportunity of hearing only in respect of the said two charges where the Enquiry Officer found him guilty and such opportunity was denied to him in respect of the remaining charges where he was absolved by the Enquiry Officer, but held guilty by the disciplinary authority and Therefore, the impugned order is liable to be set aside on the ground of violation of the principles of natural justice with a further direction to the respondents to give the said opportunity to the petitioner. In support of his contention the learned counsel relied upon the decision of the Supreme Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra,

7. During the course of his arguments, the counsel for the respondents reiterated the plea of delay and laches and also submitted that there is no right provided to the Officers under the New Bank of India Officers Employees" (Discipline and Appeal) Regulations for filing a review. it was stated by him that under regulation 18 power of review is a suo motu power given to the Disciplinary Authority to review the order passed by the Enquiring Authority within six months from the date of passing of the order and Therefore, no review petition could be filed by the petitioner which was not maintainable and Therefore, the petitioner cannot get the benefit of the period subsequent to the filing of the review petition.

8. In support of his contention that the petition is barred by delay and laches the respondent relied upon the decision of the Supreme Court in State Bank of Indore Vs. Govindrao, and in Life Insurance Corporation of India and Others Vs. Jyotish Chandra Biswas, It was also submitted by him that the decision of the Supreme Court in Kunj Behari Mishra's case (supra) has no application to the facts and circumstances of the present case as the said judgment was delivered in the year 1998 and the order of penalty of compulsory retirement was passed by the Disciplinary Authority in the present case as far back as 1992. It was submitted that the said judgment could not have any retrospective effect and cannot be applied to the cases which were finalised prior to 1998. In support of the said contention the counsel relied upon the decision in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., . it was also submitted that the orders of punishment have long since become final and to reopen the said disciplinary proceedings now would result in grave prejudice to the respondents. It was also submitted that assuming that the decision of Kunj Behari Mishra's case (supra) is applicable to the facts of the present case even then the petitioner cannot get any relief from this court inasmuch as the Enquiry Officer had held the petitioner guilty of two charges which findings and conclusions were agreed to by the Disciplinary Authority and based on the same the impugned order of punishment of compulsory retirement could be passed against the petitioner.

9. In the light of the aforesaid submissions of the counsel appearing for the

parties I have looked into the relevant records and also the decisions relied upon by the parties.

10. When the impugned order of punishment of compulsory retirement was passed against the petitioner, the petitioner was working with the New Bank of India. The said bank was however, amalgamated with Punjab national Bank w.e.f. 4.9.1993 i.e. after the appeal filed by the petitioner was disposed of by the appellate authority on 9.2.1993. The petitioner filed the review petition on 30.2.1993. There was however, a change in the establishment w.e.f. 4.9.1993 when the Bank was amalgamated with Punjab National Bank. new Bank of India had its regulations called New Bank of India Officers Employees" (Discipline & Appeal) Regulations 1982. Regulation 7 thereof lays down the procedure for taking action by the disciplinary authority on the enquiry report submitted by the Enquiry Officer. It is provided that the Disciplinary Authority, if it is not itself the enquiring authority, may, for reasons to be recorded by it in writing, remit the case to the enquiring authority for fresh or further enquiry and report and the enquiring authority shall there upon proceed to hold the further enquiry according to the provisions of regulation 6 as far as may be. Sub-regulation (2) of regulation 7 further provides that the Disciplinary Authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose. Sub-regulation (3) thereof provides that if the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that nay of the penalties specified in regulation 4 should be imposed on the officer/employee it shall, notwithstanding anything contained in regulation 8, make an order, imposing such penalty.

11. Almost similar provisions came up for consideration before the Supreme Court in the case of Punjab National Bank and Ors. v. Kunj Behari Misra (Supra). In the said decision, on consideration of similar provisions, it was held by the Supreme Court that on furnishing of the charge sheet full opportunity is required to be given to the delinquent officer to prove his innocence. The controversy in the said case also pertained to a case where the Disciplinary Authority disagreed with the findings of the Enquiring Authority and acted under regulation 7(2). The said sub-regulation also like the present sub-regulation did not specifically provide for giving an opportunity of hearing to the delinquent person when the Disciplinary Authority disagrees with the findings of the enquiring authority and is required to record its own reasons for such disagreement and also to record its findings on such charges. The Supreme Court in the said case considered various earlier decisions of the Supreme Court and then held that the principles of natural justice would demand tat the authority which proposes to decide against the delinquent officer must give him a hearing and that the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. The Supreme Court observed as follows:

"The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved, then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favor of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority."

In paragraph 18 it was further observed as follows:-

"When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar case."

In paragraph 19 the court summed up the result of the discussion holding that the principles of natural justice have to be read into regulation 8(2) and that as a result thereof whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. It was held that the report of the enquiry officer containing its findings would have to be conveyed and the delinquent officer would have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the enquiry officer. It is thus settled law that the principles of natural justice, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its final findings on the charges framed against the officer after disagreeing with the findings of the Enquiry Officer.

12. In the present case the Enquiry Officer found the petitioner guilty of two charges and absolved him from the remaining charges. On submission of the enquiry report with the additional report the Disciplinary Authority agreed with the findings of the Enquiry Officer in respect of two charges where the Enquiry Officer found the petitioner guilty. But so far the remaining charges are concerned in which the petitioner was absolved by the Enquiry Officer the

Disciplinary Authority thought it fit to disagree with the said findings and immediately proceeded to impose punishment on the petitioner on the basis of findings on all the charges by ordering for his compulsory retirement. Although the enquiry report with the additional report was sent to the petitioner, the petitioner filed his representation only as against the two charges in respect of which he was found guilty by the Enquiry Officer and with which the Disciplinary Authority agreed to. But so far the remaining charges are concerned in respect of which the Disciplinary Authority disagreed with the findings of the Enquiry Officer the petitioner did not get any opportunity of hearing. Therefore, the question that arises for my consideration is: was or was it not necessary to give the petitioner an opportunity of hearing in respect of the remaining charges where the Disciplinary Authority disagreed with the findings of the Enquiry Officer.

13. The contention of the counsel appearing for the respondent is that no such opportunity was required to be given to the petitioner at all. It was contended by him that since the petitioner was found guilty in respect of 2 charges even by the enquiry officer with which the disciplinary authority agreed an order of punishment of compulsory retirement could have been passed by the Disciplinary Authority on the said two charges. In my consideration opinion, the said contention cannot be accepted for the reason cited hereinafter. I am of the considered opinion that the decision of the Supreme Court in Kunj Behari Misra (supra) is applicable to the facts of the present case because the petitioner was denied the opportunity of hearing in respect of the remaining articles of charge in which the Enquiry Officer found him not guilty but the Disciplinary Authority found him guilty by disagreeing with the findings of the Enquiry Officer. Therefore, the petitioner was entitled to get a hearing in respect of the said remaining charges also in the light of the decision of Kunj Behari Misra (supra). The said right was denied to the petitioner as the Disciplinary Authority immediately after disagreeing with the findings of the Enquiry Officer in respect of the said charges proceeded to impose upon the petitioner a punishment of compulsory retirement.

14. Counsel for the respondent submitted that the said decision was rendered in 1998 whereas the impugned order of punishment was passed in the year 1992 and Therefore, the said judgment could not have any retrospective effect. I have given my anxious consideration to the aforesaid submissions of the counsel appearing for the petitioner and also read the passages of the decision in Karunakar's case (supra) relied upon by the counsel appearing for the respondents in support of the said contention. In Karunakar's case it was held by the Supreme Court that the decision in Union of India and others Vs. Mohd. Ramzan Khan, would be prospective in operation in view of the unsettled position of law on the subject particularly in view of the fact that the authorities/ management all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the Enquiry Officer to the delinquent employee and innumerable employees have been punished without giving them the copies of the reports. It was further held in Karunakar's case that both

administrative reality and public interests do not, Therefore, require that the order of punishment passed prior to the decision in Mohd. Ramzan Khan case without furnishing the report of the enquiry officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account.

15. Although it is true that the decision of the Supreme Court in Kunj Behari Misra (supra) was rendered in 1998 but in the said decision the Supreme Court held that the principles of natural justice have to be read into regulation 7(2). In the said case the Disciplinary Authority passed the order of punishment on 12.12.1983 which was set aside by the Supreme Court by the said judgment. While recording its conclusion the Supreme Court also took notice of Karunakar's case and quoted certain passages from the said decision. Therefore, when even after noticing the legal proposition laid down in the Karunakar's case, in the case of Kunj Behari Misra (supra) the Supreme Court did not specifically state that the law laid down in Kunj Behari Misra's case would only be prospective and that the same would not apply to the cases where disciplinary authorities had already passed orders of punishment. Since the Karunakar's decision was specifically noticed by the Supreme Court in this decision and in spite of the same did not make the judgment only prospective clearly proves and establishes that the Supreme Court did not intend to restrict the law to be only prospective. Similar issue as decided by the Supreme Court in Kunj Behari (supra) again came up for consideration before the Supreme Court in Yoginath D. Bagde Vs. State of Maharashtra and Another, . In the said decision also the Supreme Court held that since the disciplinary Committee did not give any opportunity of hearing to the appellant before taking a final decision in the matter relating to the findings on the two charges framed against him the principles of natural justice were violated. In paragraph 37 of the judgment it was held thus:-

"37. The contention apparently appears to be sound but a little attention would reveal that it sounds like the reverberations from an empty vessel. What is ignored by the learned counsel is that a final decision with regard to the charges leveled against the appellant had already been taken by the Disciplinary Committee without providing any opportunity of hearing to him. After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of Punjab National Bank in which it had been categorically provided, following earlier decisions, that if the disciplinary authority does not agree with the findings of the enquiry officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the disciplinary authority that the findings already recorded by the enquiry officer were just and proper. Post-decisional opportunity of hearing, though available in certain cases, will be of no avail, at least, in the circumstances of the present case."

In the said decision also it was held that since the disciplinary committee had taken a final decision without giving an opportunity of hearing to the appellant at the stage at which it proposed to differ with the findings of the enquiry officer the impugned order of punishment was bad and the same was set aside. In the said case also the Supreme Court did not state that the said law shall have only prospective application.

In this connection reference may be made to the decision of the Supreme Court in Steel Authority of India and Ors. v. National Union Water Front Workers and Ors. (Civil Appeal Nos. 60091/2001 and others) disposed of on 30.8.2001. It may also be indicated herein that where the Supreme Court feels that the principles of law laid down by its should be prospective only, specific orders in that regard is passed in the judgment itself as is done in the case of Steel Authority of India (supra) wherein the Supreme Court has specifically said that the said decision shall have only prospective effect. Therefore, it cannot be said that the ratio of the aforesaid decision laid down in the case of Kunj Behari Misra (Supra) would not be applicable to the facts and circumstances of the present case. Since the rules of natural justice is an embodied rule to regulation 7(2), any infraction thereof would vitiate the order wherever there is any such violation and the same is not dependent on the time factor.

16. Counsel appearing for the respondent also submitted that the decision of Kunj Behari Misra's case (supra) shall not be applicable to the facts of the present case as in the present case atleast in respect of two charges the Enquiry Officer found the petitioner guilty with which the Disciplinary Authority agreed and Therefore, on the basis thereof itself an order of punishment could have been passed. It is however, difficult to accept the said contention for it would be difficult to say in advance to what extent the findings in respect of only two charges would have influenced the Disciplinary Authority while draw in its conclusions. The same would be more relevant in respect of the quantum of punishment to be awarded to the petitioner. It cannot be deduced from the order of the Disciplinary Authority whether the quantum of punishment awarded i.e. the penalty of compulsory retirement from service has been awarded on the basis of findings on all the charges or on the basis of findings on only two charges. It is not clear from the order that even on the basis of the said two charges where the petitioner was found guilty both by the Enquiry Officer as also by the Disciplinary Authority the penalty of compulsory retirement was called for. it could also be said forcefully that the said order was passed upon taking into consideration of the findings on all the charges including those charges where the petitioner was found not guilty by the Enquiry Officer but was found guilty by the Disciplinary Authority. It could also be said that in case the petitioner would have got the opportunity of hearing in respect of the remaining charges he could have possibly influenced the mind of the Disciplinary Authority not to impose upon him the penalty of compulsory retirement.

17. Under these circumstances I am of the considered opinion that the impugned



order of punishment is required to be set aside, which I hereby do and remit the matter back to the Disciplinary Authority to proceed from the stage of giving opportunity of hearing to the petitioner in the light of the decision of Kunj Behari Misra's case (supra). The reasons recorded by the Disciplinary Authority for disagreeing with the findings shall be taken as the tentative opinion and the same shall be communicated to the petitioner directing him to show cause why the Disciplinary Authority should not disagree with the findings of the Enquiry Officer, in the light of the decision given by the Supreme Court in Kunj Behari Misra's case (supra). The petitioner is accordingly directed to be reinstated in service but would continue to be under suspension till an effective order is passed by the respondents.

18. This brings me to the next aspect as to whether the petitioner should be directed to be paid arrears of salary/subsistence allowance. Since the petitioner would continue to be under suspension he is only entitled to payment of subsistence allowance. But the petitioner did not approach this court for several years and Therefore, I consider it fit and proper to order that the petitioner shall not be entitled to any subsistence allowance for the period from the date of order of compulsory retirement till the date of filing of the writ petition. The petitioner shall be entitled to payment of subsistence allowance from 20.7.1998 and the same shall be paid to him at the appropriate rate in accordance with law till a final order is passed by the Disciplinary Authority in that regard. The petition stands allowed with the aforesaid observations and directions but without any costs.