

(2025) 01 AHC CK 1666
In the Allahabad High Court
Case No : Special Appeal No. 614 Of 2024

Manish Kumar

APPELLANT

Vs

General Manager Personnel Human Resource Management
And 4 Others

RESPONDENT

Date of Decision : 16-01-2025

Acts Referred:

Code of Criminal Procedure Act, 1973 — Section 313, 222, 460
Indian Penal Code, 1860 — Section 34, 302, 394, 397, 460

Citation : (2025) 01 AHC CK 1666

Hon'ble Judges : Vivek Kumar Birla, J; Syed Qamar Hasan Rizvi, J

Bench : Division Bench

Advocate : Kundan Singh, A.K.Dikshit, Harish Chandra Tiwari, Sudhir Mehrotra

Final Decision : Dismissed

Judgement

Vivek Kumar Birla, J

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Siddharth Khare, learned counsel for the appellant-petitioner and Sri K.M. Asthana, learned counsel appearing for the respondent-Bank.

2. Present appeal has been filed challenging the impugned judgement and order dated 5.6.2024 passed by the learned Single Judge in Writ-A No. 7405 of 2021 (Manish Kumar vs. Human Resource Management & others).

3. The case of the appellant-petitioner, as narrated in the order impugned herein, is that the appellant-petitioner was appointed on 17.11.2008 on the post of a Probationary Officer (Assistant Manager) MMGS I with the Syndicate Bank at Chennai. He got promotion on 26.06.2014 to the post of MMGS II. It is his case that on account of promotion, he joined the City Center Branch, Gwalior. He worked upto 19.03.2016 without any break in service. He was transferred from time to time from one city to another and across states. He performed his duties honestly and with devotion. He was last transferred to District Etawah Branch on

16.09.2017, where he was posted as an Assistant Manager. He has worked for a total of 13 years without any break in service. During this period of time, his work and conduct have been well regarded amongst the higher officials of the Bank. He was transferred to the Syndicate Branch, Etawah from Ahmedabad Main Branch in the year 2017, but unfortunately, due to what the appellant-petitioner described as serious illness resulting from his Diabetes etc., he was unable to perform his duties regularly with effect from 22.11.2018. Due to his ailment, he did not perform his duties and members of his family gave medical certificates, along with relevant documents of his treatment from time to time to the Bank establishment. He stated that after he was fit and discharged from hospital, he produced a medical certificate dated 05.06.2020 before the Bank. It is then pointed out that on 05.06.2020, some dispute relating to property between one Bhure Singh and the appellant-petitioner erupted, which made the appellant-petitioner lodge a First Information Report against Bhurey Singh. Bhurey Singh, as a measure of counterblast, lodged an FIR against the appellant-petitioner. In connection with Bhure Singh's the appellant-petitioner was arrested on 12.06.2020. He was granted bail by this Court on 10.11.2020 in the said crime. While the appellant-petitioner was in custody, he was suspended from service due to the long period of his absence and detention in custody. After release on bail, the appellant-petitioner requested the respondents to revoke his suspension and pay his salary. Instead, he was given a charge-sheet dated 10.03.2021. After service of the charge-sheet, he was deputed as an Assistant Manager, Baghpat Regional Office on 12.03.2021. He submitted a reply to the charge-sheet on 14.03.2021. He denied receipt of letters dated 16.03.2019 and 21.04.2019. The defence taken about his absence from 22.11.2018 till 12.06.2020, while posted at the Etawah branch of the Bank, was that he was seriously ill and admitted to the Sir Ganga Ram Hospital, Delhi. The Disciplinary Authority appointed an Inquiry Officer to hold inquiry. At the end of the inquiry, the Inquiry Officer submitted a report, on the basis of which, after issue of a show cause notice to the appellant-petitioner, he was removed from service by the Assistant General Manager, Human Resources Management Section, Canara Bank, Lucknow. The appellant-petitioner preferred an appeal to the Appellate Authority on 10.04.2021. The appeal was dismissed by the Appellate Authority, the Deputy General Manager, Human Resources Management, Canara Bank, Head Office, Bangalore, affirming the Disciplinary Authority.

4. Aggrieved by the same, appellant-petitioner preferred a writ petition being Writ-A No. 7405 of 2021 (Manish Kumar vs. Human Resource Management & others), which was dismissed by the learned Single Judge vide impugned order dated 5. 6.2024. Hence the present appeal.

5. The grounds taken in the appeal is that there exists no justification for conducting the entire proceedings only on 22. 3.2021 in a haste manner and the same have been conducted in violation of principles of Article 14 of the Constitution in contravention of the 1976 Conduct and Appeal Rule. It is submitted that sufficient opportunity of hearing was not afforded to the appellant

for leading evidence in his defence. It is further submitted that appellant was neither given any information with regard to enquiry report nor copy of same was supplied to the appellant-petitioner. It is submitted that the Presenting Officer himself led documentary evidence and testified as a witness on behalf of the Management (M.W.1) to prove the documents. It is submitted that the learned Single Judge while passing the impugned order has misconstrued the grounds taken by the appellant-petitioner and failed to appreciate that the Presenting Officer was, in no manner, acquainted with the documents which were sought to be proved on his behalf. By drawing attention to the attendance register, it was further submitted that the attendance register clearly reflects that the appellant-petitioner was marked on leave by the Bank upto 6.6.2019 and was absent from 7.6.2019 and therefore, the charge against the appellant-petitioner that he was unauthorizedly absent from duties from 22.11.2018 to 12.6.2020 is incorrect.

6. Crux of the arguments of learned Senior Counsel appearing for the appellant-petitioner is threefold: firstly, preliminary enquiry was conducted before lunch and on the same day regular enquiry was also conducted after noon, therefore, no opportunity of hearing in the enquiry proceedings was afforded to the appellant-petitioner, which is clear violation of principles of natural justice and causes serious prejudice to the appellant-petitioner; secondly, the appellant-petitioner was never supplied copy of the enquiry report. Attention was drawn to the order of punishment dated 31.3.2021 annexed as Annexure-1 of the paper book wherein it has been written that the enquiry report was submitted on 25.3.2021 holding the employee guilty of charges and the employee has submitted his submissions on the findings of the enquiry report vide letter dated 23.3.2021, which is not possible, although the same was received by the authority concerned on 30.3.2021. Submission is that it, is, therefore, proved that the appellant-petitioner was in fact, never supplied copy of the enquiry report and therefore, the enquiry proceedings stands vitiated. Third argument of learned Senior Counsel, by drawing attention to the attendance register annexed at page 163 of the paper book, is that the appellant-petitioner was marked on leave by the Bank upto 6. 6.2019 and was shown absent only from 7.6.2019 and therefore, absence of the appellant-petitioner for a period of one and half years is not proved, hence, the charge is not proved.

7. Per contra, Sri K.M. Asthana, learned counsel appearing for the Bank submits that appellant-petitioner was initially appointed as Assistant Manager in the then Syndicate Bank in the year 2008. Subsequently, when the Syndicate Bank was amalgamated into Canara Bank w.e.f. 1.4.2020, services of the appellant-petitioner stood absorbed in the transferee Canara Bank and w.e.f. 1.4.2020 the employees of Syndicate Bank including the appellant-petitioner became the employee of the Canara Bank. It is submitted that the charge levelled against the appellant-petitioner is proved to the effect that he was unauthorizedly absent from 22.11.2018 to 12.6.2020. It was pointed out that several letters being letters dated 16.3.2019, 21.4.2019 and 19.11.2019 were issued to the appellant-

petitioner directing him to report for duties immediately, failing which necessary disciplinary action would be initiated. It was pointed out that a chargesheet dated 10.3.2021 was issued to the appellant-petitioner, to which he submitted his reply dated 14.3.2021 wherein he has not denied the charges levelled against him and only admission was that he was not absent from duty consciously w.e.f. 22.11.2018 till 12.6.2020 due to his illness for which he pleaded that he was extremely sorry for this unpredicted absence and assured that such mistake will not be repeated in future. He also pointed out that in fact preliminary hearing had taken place before noon and regular hearing had taken place after noon on 22.3.2021 and enquiry report dated 25.3.2021 was duly supplied to the appellant-petitioner, to which he submitted his reply on 30.3.2021 although he had deliberately mentioned wrong date of 23.3.2021 in his reply. It is also pointed out that appellant-petitioner never denied his unauthorized absence from 22.11.2018 while posted at Etawah Branch till 12.6.2020 and no proof to the contrary was placed by him. He also pointed out that during course of enquiry he produced neither any documentary evidence nor any witness in his support. It is submitted that order dated 31.3.2021 removing the appellant-petitioner from service passed by the disciplinary authority, which shall not be a disqualification for future employment under Regulation 4 (I) of Canara Bank, officer employee (Discipline and Appeal) Regulation 1976 was put to challenge under Regulation 17 of Regulation 1976 wherein also he had not denied his unauthorized absence and on the contrary, only pleaded 'circumstances under which it was not possible to wait for sanction of leave, such absence cannot be held to be wilful' and Enquiry Officer held that the absence was wilful. He pointed out that in any case, even before the appellate authority he only submitted that taking a lenient view a lesser punishment be awarded and thus, he has admitted his unauthorized absence from duty. It was also pointed out that he never claimed non-service of enquiry report even before the disciplinary authority or the appellate authority. It was submitted that although re-appreciation of evidence is not permissible under Article 226 of the Constitution of India as per settled law, however, as learned Senior Counsel appearing for the appellant-petitioner has placed much emphasis on the attendance register, it was pointed out that even if it is assumed for the sake of argument that the appellant-petitioner was not absent in the entire dates even after reducing the period from 22.11.2018 to 6.6.2019 (6 months and 14 days), during which appellant-petitioner is claiming that he was on leave, out of the total period of unauthorized absence of one and half years, the balance period during which the appellant-petitioner was admittedly unauthorizedly absent comes to 12 months and 5 days and thus, unauthorized absence is admitted.

8. We have perused the record and proceeded to consider the rival contentions on merits.

9. It is the settled law that this Court cannot sit in appeal and cannot re-appreciate the evidence. The scope of judicial review by this Court is very limited when the appellant-petitioner is in special appeal against the judgement of

learned Single Judge by which the writ petition was dismissed while exercising the powers under Article 226 of the Constitution of India. We need not burden our judgement by citing various judgements of Hon'ble Apex Court as the law is too well settled.

10. However, as the arguments have been raised on the grounds of flaw in conducting the enquiry and non-supply of enquiry report, we have gone through the documents carefully. Admitted position as emerges from the record is that the charge against the appellant-petitioner is that he was unauthorizedly absent from duty from 22.11.2018 to 12.6.2020. Charge against the appellant-petitioner as quoted in the impugned judgement clearly reflects that the appellant-petitioner was detained in jail on 13.6.2020 on account of impersonation as Police and Raw Officer and was suspended vide order dated 16. 6.2020. Although the charge of impersonation as Police and Raw Officer is not the charge levelled against the appellant-petitioner and is not the subject of matter of the writ petition, the same clearly reflects on the character of the appellant-petitioner coupled with the fact that the record reflects that on the earlier occasion also the appellant-petitioner was awarded punishment during service by the authority concerned. Further admitted position is that the appellant-petitioner was served with a copy of the chargesheet and he submitted his reply to the chargesheet. This fact is also admitted to the appellant-petitioner that in fact in the year 2019 he had attended the preliminary departmental enquiry at Lucknow syndicate bank, zonal office Halwasia Hazratganj on 24.2.2019, therefore, preliminary enquiry had taken place.

11. We find that the learned Single Judge has rightly observed that in fact it was not the preliminary enquiry, but it was the preliminary hearing that had taken place on 22.3.2021 before lunch and regular enquiry was conducted after lunch. There is nothing on record which reflects that regular enquiry was not conducted by the authority concerned and admittedly, no such objection was taken even before the appellate authority. Further admitted fact remains that during enquiry proceedings the employee had never claimed either before the Enquiry Officer or in his reply or before the disciplinary authority or even in the departmental appeal that he was on leave for a certain period out of the total period mentioned in the charge levelled against him and only submission made by the appellant-petitioner was that he could not join duty due to his illness. It is also admitted fact that without disputing his unauthorized absence he had only pleaded before the appellate authority that he may be given lesser punishment. It is also not in dispute that in the writ petition also before this court except alleging his illness as a reason of absence, it is nowhere asserted that he was on leave. It is only by means of filing supplementary affidavit by supplementing his claim, assertion has been made that for a certain period from 22.11.2018 to 6.6.2019 he was on leave.

12. In this background, we find that the first argument that has been raised by the learned Senior Counsel for the appellant-petitioner is not sustainable.

Learned Single Judge has rightly observed that preliminary hearing has taken place on 22.3.2021 before lunch and regular enquiry was conducted after noon and this finding requires no interference.

13. Insofar as the non-supply of enquiry report is concerned, this prejudice was never alleged before the appellate authority and the same has also not been alleged in categorical terms before the writ court. This argument has been subsequently developed only on the basis of date mentioned in his reply submitted by the appellant-petitioner by putting the date of 23. 3.2021 and it was sought to be argued that it was not possible to be a reply to the enquiry report, which was submitted on 25.3.2021. It is not in dispute that this reply allegedly dated 23.3.2021 was actually received in the office on 30.3.2021. A bare glance over the reply allegedly dated 23.3.2021 received by the office on 30.3.2021 at page 281 of the paper book clearly reflects that assertion so made is incorrect. In fact the appellant-petitioner was supplied with enquiry report. A perusal of the documents at page 281 of the paper book annexed as annexure 1 to the supplementary filed by the appellant-petitioner clearly reflects that the same is addressed to the Disciplinary Authority & Chief Manager/Senior Manager, CO Lucknow Canara Bank with the subject 'My written submission on inquiry dated 22.3.2021 in terms Chargesheet No. LC HRM DP CHO CS 06 2021 dated 10.3.2021'. It is clear that he was in receipt of chargesheet enquiry report dated 10.3.2021 and regular enquiry held on 22.3.2021 at Lucknow Canara Bank Circle Office. The relevant extract is quoted as under:

"The

Disciplinary Authority & Chief Manager/Senior Manager

CO Lucknow Canara Bank

Respected Sir

SUB: MY WRITTEN SUBMISSIONS ON INQUIRY Dated: 22.03.2021 IN TERMS CHARGESHEET No. LC HRM DP CHO CS 06 2021 DTD. 10.03.2021

I am in receipt of your Chargesheet Inquiry Report No. LC HRM DP CHO CS 06 2021 DTD. 10.03.2021 and Regular Enquiry Held on 22.03.2021 at Lucknow Canara Bank Circle Office.

I humbly submit my submissions as under:

Proving myself innocent I have submitted my reply to the Chargesheet.

I have faced the Inquiry and during inquiry it has come on record before the Inquiry Forum that:"

(emphasis supplied)

14. In the same reply, on the next page he has accepted that he attended the preliminary departmental inquiry at Lucknow syndicate bank zonal office halwasia Hazratganj on 24.2.2019 and has admitted that he had made reference

to the medical documents and submitted that he was extremely sorry for this unpredicted absence and assured that there will be no such mistake in the future. Clear case of the Bank authority is that in fact the appellant-petitioner was supplied enquiry report along with letter dated 26.3.2021 and receiving of the aforesaid letter is admittedly dated 30.3.2021. Therefore, we do not find any good ground to interfere with the finding recorded by the learned Single Judge on this issue.

15. That apart, it is nowhere stated either in the writ petition or even in the grounds taken in special appeal as to what prejudice was caused to the appellant-petitioner due to non-supply of enquiry report. The law on this issue was settled by by a Five-Judge Bench of Hon'ble Apex Court in Managing Director, ECIL vs. B. Karunakar, (1993) 4 SCC 727, paragraph 2 whereof is quoted as under:

"2. The basic question of law which arises in these matters is whether the report of the Inquiry Officer/authority who/which is appointed by the disciplinary authority to hold an inquiry into the charges against the delinquent employee is required to be furnished to the employee to enable him to make proper representation to the disciplinary authority before such authority arrives at its own finding with regard to the guilt or otherwise of the employee and the punishment, if any, to be awarded to him. This question in turn gives rise to the following incidental questions:

(i) Whether the report should be furnished to the employee even when the statutory rules laying down the procedure for holding the disciplinary inquiry are silent on the subject or are against it?

(ii) Whether the report of the Inquiry Officer is required to be furnished to the delinquent employee even when the punishment imposed is other than the major punishment of dismissal, removal or reduction in rank?

(iii) Whether the obligation to furnish the report is only when the employee asks for the same or whether it exists even otherwise?

(iv) Whether the law laid down in Mohd. Ramzan Khan, AIR 1991 SC 471 will apply to all establishments-Government and non-Government, public and private sector undertakings?

(v) What is the effect of the non-furnishing of the report on the order of punishment and what relief should be granted to the employee in such cases?

(vi) From what date the law requiring furnishing of the report should come into operation?

(vii) Since the decision in Ramzan Khan case (AIR 1991 SC 471) has made the law laid down there prospective in operation, i.e., applicable to the orders of punishment passed after 20th November, 1990 on which day the said decision was delivered, this question in turn also raises another question, viz., what was the law prevailing prior to 20th November, 1990?

16. The questions so framed have been answered by Hon'ble Apex Court in paragraph 30 of the said judgement, which is quoted as under:

"30. Hence the incidental questions raised above may be answered as follows:

(i) Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and, therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit the furnishing of the report or are silent on the subject.

(ii) The relevant portion of Article 311(2) of the Constitution is as follows:

"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."

Thus the Article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The Article, however, cannot be construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all India service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry before a punishment is awarded, and when the Inquiry Officer is not the disciplinary authority the delinquent employee will have the right to receive the Inquiry Officer's report notwithstanding the nature of the punishment.

(iii) Since it is the right of the employee to, have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the, report or not, the report has to be furnished to him.

(iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded in the inquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan Khan's case (AIR 1991 SC 471) (supra) should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceeding or not and whether they expressly prohibit

the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non- furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to a "unnatural expansion of natural justice" which in itself is antithetical to justice."

17. Above quoted paragraph clearly indicates that employee must establish as to what prejudice has been caused due to non-supply of the enquiry report, which was not done in the present case. At the cost of repetition, he may point out that this point was not raised before the Writ court and as per settled law it cannot be permitted to be raised subsequently. Therefore, the same cannot be raised in special appeal. However, in the interest of justice, this question was considered by us and we find that once the unauthorized absence was accepted by the appellant and only explanation submitted was that it was due to serious illness, he was absent and the same will not be repeated in future and a prayer for awarding lesser punishment was made. Therefore, we find that in fact, no prejudice was caused to the appellant even it is assumed that enquiry report was not supplied to him although the discussion made hereinabove clearly reflects that the appellant has submitted his reply after the enquiry report.

18. In *S.K. Singh vs. Central Bank of India and others*, (1996) 6 SCC 415, similar argument was rejected on the ground that the employee has not suffered any prejudice due to non-supply of enquiry report. In the present case also, the fact

remains that this ground was never raised before the appellate authority and on the contrary unauthorized absence was accepted and only explanation was submitted that due to serious illness he was extremely sorry for this unpredicted absence and assured that this will not be repeated in future and a prayer for awarding lesser punishment was made. Therefore, in fact he had accepted the charge levelled against him and only prayed for lesser punishment. It is the settled law that admitted facts need not be proved whereas in the present case full-fledged enquiry had taken place in accordance with law. Therefore, second argument of learned Senior Counsel that due to non-supply of enquiry report the proceedings stood vitiated is not sustainable and is, accordingly, rejected.

19. Insofar as the third submission of learned Senior Counsel for the appellant-petitioner that he was in fact, on leave granted by the Bank from 22.11.2018 to 6.6.2019 is concerned, as already noticed, the appellant-petitioner has admitted during the departmental enquiry that he was unauthorizedly absent for this period due to his illness and only prayed for lesser punishment before the appellate authority. Still, even if for the sake of argument that period is excluded, undisputedly, the period of admitted unauthorized absence comes to 12 months and 5 days, for which absolutely no explanation has been offered by the appellant-petitioner.

20. That apart, it is the settled law that highest degree of devotion, integrity and discipline is required for those who are in bank service. A reference may be made to the judgement of Hon'ble Apex Court in *Canara Bank vs. V.K. Awasthy*, 2005 AIR SCW 2005. The appellant-petitioner has clearly admitted in his reply before the appellate authority at page 138 of the paper book that he was detained in jail on 13.6.2020 on account of impersonation as Police and Raw Officer. It has also come on record (paragraph 6 of the counter affidavit filed by the Bank) that earlier also he was punished and awarded punishment of reduction to a lower grade/scale 2 to 1 by the erstwhile syndicate bank.

21. Therefore, we do not find any legal infirmity in the order impugned herein.

22. Present special appeal is devoid of merit and is accordingly dismissed.