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**(1990) 02 CAL CK 0032**  
**In the Calcutta High Court**  
**Case No : Matter No. 1276 of 1989**

Mithilesh Kumar Jha

APPELLANT

Vs

Allahabad Bank and Others

RESPONDENT

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**Date of Decision :** 02-02-1990

**Acts Referred:**

Allahabad Bank Officer Employees (Discipline and Appeal) Regulations, 1976 — Regulation 6(10)  
Constitution of India, 1950 — Article 226, 226(1), 226(2)

**Citation :** (1990) 2 CALLT 182

**Hon'ble Judges :** Monoranjan Mallick, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Monoranjan Mallick, J.—The writ petitioner being aggrieved by the order passed by the Assistant General Manager, Allahabad Bank dated 28th October 1988 passing the order of removal from service against him has moved this Court under Article 226 of the Constitution.

2. The writ petitioner is the Ex-Manager of Pachtaki Yadu Branch and Mahingoari Branch of the Allahabad Bank. The charge-sheet No. BZ/Vig./ 56/162 dated 13.4.1988 was issued on him and an enquiry was initiated and Sri S. L. Tewari was appointed the Enquiry Authority to hold the enquiry against the petitioner in terms of the Regulation 6(2) of the Allahabad Bank Officer Employees (Discipline and Appeal) Regulation, 1976. The enquiry authority has completed the enquiry on 16.9.1988 and submitted his report on 25.10.1988. The Respondent No. 3, Assistant General Manager and Disciplinary Authority, Allahabad Bank, having its office at Zonal Office, Patna has accepted the said report and findings of the Enquiry Authority and passed the impugned order of removal of the petitioner from service.

3. The writ petitioner has moved this writ petition challenging the charge-sheet as illegal and void and also the enquiry proceeding alleging that the enquiry is

vitiated as the Enquiring Authority did not afford the petitioner reasonable opportunity of defence and principle of natural justice has thus been violated in several stages of the enquiry proceedings. The Respondents contest the writ petition by filing an affidavit-in-opposition to which an affidavit-in-reply has been filed.

4. The Respondents challenge the maintainability of the writ petition firstly on the ground that no part of the cause of action arose within jurisdiction of this Court, that the disciplinary proceeding was initiated in respect of the alleged misconduct committed by the petitioner while posted outside the State of West Bengal, that enquiry authority held enquiry outside the State of West Bengal and the disciplinary authority also passed the order at Patna and the petitioner being a resident at Sitamarhi, in the State of Bihar received it outside the State of West Bengal.

5. The Second preliminary objection is that the writ petitioner has moved this Court without exhausting the remedy of appeal provided in the Regulations.

6. On merits also all the allegations in the writ petition have been refuted.

7. I. would first take up the question of jurisdiction. It is an admitted position that the allegations of misconduct on which the disciplinary proceeding were initiated took place outside the State of West Bengal, that the enquiry was also held outside the State of West Bengal and the Respondent No. 3 the disciplinary authority also passed the order of removal of service at Patna and communicated it to the petitioner who was also a resident of the State of Bihar.

8. On behalf of the petitioner it is urged that relevant service records of the petitioner who was an officer of the Allahabad Bank are lying within the jurisdiction of this Court as Calcutta is the Head Office of the Bank and in support the decision of Calcutta High Court in 1987 (1) CLJ 354 has been referred to.

9. It is true that the writ petitioner was charge-sheeted because of some alleged misconduct while he was posted in Branch of the Allahabad Bank situated outside the State of West Bengal. The enquiries were also held outside the jurisdiction of this Court. The disciplinary authority being the Assistant General Manager was posted at Patna, the Regional Office of the Allahabad Bank from where he issued the impugned order of removal from service. Therefore, I agree with the contention raised by the learned Advocate for the Respondents that the cause of action for moving this writ petition arose wholly outside the jurisdiction of this Court.

10. But under Article 226 of the Constitution, the territorial jurisdiction under clause (1) arises in the High Court within whose territorial jurisdiction the Government or its authority against whom relief is sought resides or is situated. Under clause (2) of Article 226 of the Constitution even if the person or authority against whom relief is sought does not reside or is not situate within the territorial jurisdiction of the High Court, the jurisdiction of the High Court can be

invoked within whose jurisdiction, the cause of action in respect of which the relief is sought under Article 226 of the Constitution has arisen wholly or in part.

11. In this particular case, the petitioner being an Officer of the Allahabad Bank, the Head Office of which bank being situated in Calcutta within the territorial jurisdiction of this Court, the petitioner has impleaded the Respondent Bank as Respondent No. 1. In paragraph 30 of the writ petition it is stated that the records and/or documents of the instant case are now lying within the jurisdiction of this Court i.e. in the Head Office of the Bank at Calcutta.

12. In the affidavit-in-opposition, the Respondents have not specifically denied the fact that all the records of the against the present petitioner are within the jurisdiction of this Court where the Head Office of the Respondent Allahabad Bank is situated. The writ petitioner is an officer of the Allahabad Bank. Even if the Assistant General Manager of Zonal Office at Patna passed the impugned order of removal of the petitioner from service, such act of the officer is for and on behalf of the Allahabad Bank of which the petitioner was an officer. In that view of the matter when the petitioner was an officer of Allahabad Bank and the Head Office of such bank is situated in Calcutta within the Original Side Jurisdiction of this Court and when all the records in connection with this case are lying in the Head Office of the Respondent Bank then the territorial jurisdiction of the Calcutta High Court is very much there to entertain the writ petition in view of the clause (1) of Article 226 of the Constitution.

13. I am therefore unable to hold that this Court has no territorial jurisdiction to entertain the present writ petition.

14. The Second preliminary objection raised against the writ petition is that the writ petitioner has moved this Court without exhausting the remedy provided in the Regulation. Under Regulation 17 of Allahabad Bank Officers Employees (Discipline and Appeal) Regulation, 1976, the petitioner being an officer employee is entitled to prefer an appeal against the order imposed against him within 45 days from the date of receipt of the order. Admittedly the petitioner has not availed of the said statutory remedy before approaching this Court. On behalf of the Respondents, it is urged that in view of the decision of the Supreme Court in *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another*, the discretionary relief under Article 226 of the Constitution should not be granted to him.

15. But the Supreme Court has clearly held that this Rule of exhaustion of statutory remedies before a writ will be granted is a rule of policy, convenience and discretion, rather than a rule of law. This is the view expressed even in *Venkateswaran's* case. It has also been held in *The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others*, and *Joharmal Murlidhar and Co. Vs. Agricultural Income Tax Officer, Assam and Others*, that the High Court may in exceptional cases issue a discretionary writ notwithstanding the fact that the statutory remedy has not been exhausted. On behalf of the petitioner it is also

urged that in this writ petition, the writ petitioner has challenged the departmental enquiry held against the petitioner as invalid on the ground of denial of the principles of natural justice. In such a case, the alternative statutory remedy of appeal even if not availed of could not stand in the way of the petitioner invoking the writ jurisdiction of the High Court. The decisions of the Supreme Court in Ram and Shyam Company Vs. State of Haryana and Others, and 1982(1) SLJ 763 support the above contention of the writ petitioner.

16. On perusal of the writ petition there is no doubt that the petitioner has challenged the order of removal from service mainly on the ground that the impugned order has been made in violation of the principles of natural justice. In that view of the matter regard being had to the above decisions cited and also regard being had to the decision of the Supreme Court in Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, and Carl Still G.M.B.H. and Another Vs. The State of Bihar and Others, , I am of the view that this Court should not dismiss the writ petition in limine without entering into the merits of the petitioner's case.

17. The petitioner has challenged the charge-sheet itself in this writ, petition on the ground that the purported charge-sheet dated 13th April, 1988 was per se illegal, incomplete and invalid in view of the fact that the statement of Articles of charges against the petitioner suffered from pre-judgments and bias of the concerned authorities as at the stage of the issuance of the charge-sheet the concerned disciplinary authority purportedly held that the petitioner failed to discharge his duties with utmost integrity and honesty and devotion and also misused his official position which amounted to misconduct in terms of the Regulation 3(1) read with Regulation 24 of the Allahabad Bank Officers Employees (Conduct) Regulation 1976. It is therefore urged that the concerned authority purportedly foreclosed the adjudicatory proceeding by their pre-judged opinion. It was also urged that the charge-sheet was bad by reason of non-application of mind to the relevant facts and circumstances of the case and. non-consideration of the relevant facts.

18. The above contention of the writ petitioner has been seriously challenged by the respondents and it is urged that the charge-sheet has been drawn in accordance with the Rules and Regulations of the Bank and there is no pre-judgment whatsoever which can be presumed from the language used in the impugned charge-sheet. My attention has been drawn to the relevant portion of the charge-sheet which is annexure "A" to the writ petition which opens with the following sentence. "That the undersigned proposes to hold an enquiry against Sri Mithilesh Kumar Jha etc.. under Regulation 6.....The said substance of the imputation of the misconduct in respect of which the enquiry is proposed to be held is set out in the enclosed statement of articles of charge....."

19. It is also urged that the relevant paragraphs in which the statement of Articles of charge have been set out indicate that there is no conclusion reached by the authority and for ascertaining the truth, the said charge-sheet was issued.

It is also urged that it is only in course of the disciplinary proceeding all the matters stated in the Articles of charge were gone into and the whole purpose of the enquiry was for ascertaining the correctness or otherwise of the charges levelled against the petitioner.

20. It is true that in *Surendra Nath Das v. State of West Bengal and Ors.* 1982 LIC 574 it has been held that if from the attending circumstances as well as from the language of the charge-sheet, it appears that the disciplinary authority has really drawn a positive conclusion against the delinquent officer and thereafter has started a disciplinary proceeding by issuing a charge-sheet only to afford him an opportunity to dispel the conclusion drawn against him, then such disciplinary proceeding must be held to be bad being vitiated by bias and a closed mind and having been in all intent and purpose, started to complete formality in law.

21. However, on perusal of the charge-sheet along with the statement of articles of charge annexed, herewith, I am unable to hold that the disciplinary authority has drawn any positive conclusion against the petitioner committing the alleged misconduct. The statement of articles of charge contain the substance of imputation of the misconduct in respect of which the enquiry is proposed to be held. I am of the view that there is no substance in the allegation of the writ petitioner that the charge-sheet is invalid or illegal on the grounds stated in the writ petition. Moreover, if the petitioner's allegation is really genuine the petitioner ought to have come up before this Court immediately on receiving the said charge-sheet. It is also the case of the respondents that the enquiry authority examined witnesses and it is only on the conclusion of the enquiry, the findings were arrived at. I am unable to accept the contention that the disciplinary authority issued the charge-sheet foreclosing the adjudicatory proceeding by any pre-judged opinion. I am also unable to hold that the chargesheet was in any way invalid because of the non-application of mind to the relevant facts and circumstances of the case, or for non-consideration of the relevant facts.

22. The enquiry proceeding has also been challenged by the writ petitioner on the ground that there was violation of the principles of natural justice. The several allegations in this respect have been made.

23. The first such allegation is that the petitioner was not furnished with the relevant bundles of vouchers dated 23rd March, 1986 and the Original Day Books which were essential for effective defence of the case of the petitioner even though by his representation dated 12th August, 1988 annexed to the writ petition, the writ petitioner asked for furnishing those copies.

24. On behalf of the respondents, it is contended that the petitioner is not entitled to the copies of the documents. My attention has been drawn to Regulation 6(10)(b)(i) of the Allahabad Bank officers Employees (Discipline and Appeal) Regulations, 1976 where it has only been provided that the delinquent officer employee is entitled to inspection of documents. My attention has been

drawn to the petitioner's own letter of confirmation dated 12.8.88, copy of which has been annexed as annexure "A" to the affidavit-in-opposition where the petitioner has clearly indicated that he took inspection of the documents enlisted by the present officer on 8.8.88 at Regional Office at Bhagalpur and issued a certificate as desired by the Presenting Officer. However, he complained that the Presenting Officer did not supply him the copy of all the documents enlisted by him and also did not show the Original Day Book dated 5.2.87. He therefore prayed for supply of the xerox copy of all those documents. But I have already indicated that under the Regulation referred to in the above, the petitioner was entitled only to inspect and not to be furnished with all the copies. Even though the Day Book was not given for inspection, he did not ask for inspection at any further time, he only asked for xerox copy. He is entitled under the Regulation to get copy of the evidence only and when he did not ask for further inspection of the documents then I am of the view that in this respect the enquiry authority did not violate any principles of natural justice by not furnishing him the xerox copy of the documents on which the enquiry authority wanted to rely. When he was given an inspection of those documents and when after such inspection he issued a certificate and did not intend to inspect any other documents then there can not be any allegation of violation of natural justice in this respect.

25. The Second ground alleged by the petitioner regarding denial of natural justice is that he had not been allowed to present himself as witness to rebut the allegations levelled against him. On behalf of the Respondents, it is submitted that the Minutes dated September 16, 1988 the extract of which has been annexed in paragraph 6 of the written notes of the Respondents clearly shows that the enquiry authority asked him to state his defence orally or in writing, but he replied that whatever he has to say shall be incorporated in his written brief. On being asked to produce his witness and lead evidence, the petitioner stated that he did not have any witness to be examined. The Enquiry authority also asked him as to whether he would like to examine himself as a witness but he declined to examine as a witness and stated that his examination-in-chief would be incorporated in his written brief and on that day the petitioner closed his case.

26. The Minutes which has been extracted in paragraph 6 of the written notes has not been challenged as incorrect. But from what has been recorded in the minutes dated 16.9.1988, I have no doubt in my mind that the petitioner himself did not wish to examine himself as a witness nor did he wish to produce any defence witness or documents and in view of the above, submissions made by the petitioner on 16th September, 1988, the enquiry officer closed the enquiry as the petitioner closed his case. Therefore, the writ petitioner cannot urge before this Court that there was a violation of principles of natural justice as he was not given any opportunity to be examined him before the enquiry officer.

27. The third ground complaining about the violation of natural justice is that it is on the basis of the complaint of Paramanand Jalan the allegations forming the basis of the purported charge-sheet were based but Paramanand Jalan by the

affidavit sworn on 5.7.88 had withdrawn all the allegations forming the basis of the said complaint but even though the petitioner wanted to rely on the said affidavit of Sri Jalan, the petitioner was not allowed to rely upon the same.

28. I have already indicated in the above that even though the enquiry officer on 16th September, 1988 asked him to produce the evidence in respect of his defence, he declined to do so. There was no bar to the petitioner examining Sri Paramanand Jalan as a defence witness but he did not wish to examine him. The affidavit of Paramanand Jalan appears to have been considered by the enquiry officer but according to the enquiry officer the said affidavit was not found to be genuine. It was open to the enquiry officer to consider the genuineness or otherwise of the affidavit sworn by Paramanand Jalan in course of enquiry. But it is not the complaint of the petitioner that the said affidavit was rejected by the enquiry officer illegally. His complaint before this Court is that he was not given a liberty of examination of Sri Paramanand Jalan as a witness. But I have already indicated that he did not apply before the Enquiry authority for examining Sri Paramanand Jalan as his witness. ^Therefore, the petitioner's allegation of the denial of the principles of natural justice on the ground that Sri Paramanand Jalan was not permitted to be examined as his defence witness has no substance.

29. The fourth ground of the challenge of the enquiry proceeding on the ground of denial of natural justice is that on "16th September, 1988, the enquiry officer specifically directed that the presenting officer would submit his written brief with a copy to the petitioner within ten days from the said date i.e. 16th September, 1988 and the petitioner will submit his written brief within five days thereafter, after receipt of the written brief of the presenting officer but even though the written brief of the Presenting Officer dated 25th October, 1988 was in fact served upon the petitioner on 31st October, 1988, no opportunity was given by the Enquiry Officer to submit his written brief because the Enquiry Officer immediately after the alleged submission of the written brief by the Presenting Officer on 25th October, 1988 submitted his report on that very day without allowing the petitioner reasonable time to file his written brief and that in the circumstances, the denial of the said opportunity to file the written brief in the face of the specific direction of the enquiry officer stands out to be wholly in contravention of the principles of natural justice and in the circumstances the entire proceeding stands vitiated.

30. It appears that even though the Presenting Officer was directed by the Enquiry Officer to submit his written brief with a copy of the petitioner within ten days from this date i.e. 16th September, 1988, the Presenting Officer did not submit any such written brief within that period but only on 25th October, 1988. The copy of the same was, however, sent to the petitioner but the petitioner received it on 31st October, 1988 but by that time the enquiry officer had already submitted his report on 25th October, 1988. On behalf of the Respondents, it is urged that relevant Regulation does not contemplated the procedure adopted by the Enquiry Officer in the matter of submission of the written brief. My attention

has been drawn to Regulation 6(18) of the Allahabad Bank Officers Employees (Discipline and Appeal) Regulation 1976 which provides that after the completion of the production of the evidence the Officer employees and the Presenting Officer may file written briefs of their respective cases within fifteen days from the date of completion of the production of evidence. Therefore, the submission of written brief by the officer employee was at his discretion. It is submitted that even though the enquiry officer gave him the liberty to submit the written brief five days after the submission of the written brief of the Presenting Officer within a period of ten days from the date of 16th September, 1988, such a procedure not being in accordance with the Regulation, the petitioner cannot complain of the denial of the principles of natural justice because under the Regulation it was obligatory upon him to file written brief within a period of fifteen days from the conclusion of the departmental enquiry. Under the relevant Regulation the petitioner had the obligation to submit his written brief within fifteen days from the close of the enquiry. There is no such provision of the officer employee submitting the written brief on receiving the copy of the written brief of the presenting officer. The Enquiry Officer therefore ought not to have given the petitioner such an opportunity. However, neither the petitioner nor the presenting officer submitted the written brief in accordance with the relevant Regulation. But then it must have to be presumed that neither the party submitted the written brief in accordance with the Regulation and the enquiry officer had to arrive at his findings without such written brief.

31. From the report of the Enquiry Officer annexed in the writ petition, I am of the view that he arrived at the findings on the basis of the evidence disclosed and not merely on the basis of the written brief submitted by the Presenting Officer. When the petitioner found that within ten days from the close of the Enquiry, the Presenting Officer did not furnish the written brief then it was obligatory upon him to submit his own written brief in terms of the Regulation but neither the Presenting Officer nor the petitioner took any steps to submit any written brief within a period as provided in the relevant Regulation. Therefore, the Enquiry Officer had to submit his report without such written brief in his report the enquiry officer has mentioned that the writ petitioner did not submit the written brief and that is why the same could not be enclosed in the report but the enquiry officer has indicated that while writing the report and drawing the conclusion of the various articles of charge, the various points brought by the writ petitioner during enquiry has been taken into consideration. So, even though no written brief was submitted by the petitioner, the Enquiry Officer considered all the points raised by the writ petitioner in his defence during enquiry while submitting the report. I am of the view that when the enquiry officer arrived at the findings on the basis of the evidence disclosed and not merely on the basis of the written brief of the Presenting Officer, then such report can be justified as a report in which the Enquiry Officer arrived at the findings as regards the statement of allegations against the present writ petitioner on the basis of the material evidence alone. Therefore, only because the petitioner could not file the

written brief within five days from the date of the receipt of the written brief of the Presenting Officer as in the meantime the report has been submitted by the Enquiry Officer then the petitioner cannot complain that there was any violation of principles of natural justice. The submission of written brief is entirely with the discretion of the petitioner and under the regulation, the same has to be furnished to the Enquiry Officer within fifteen days from the close of the enquiry. The petitioner not having done that cannot complain that the Enquiry Officer who submitted the report on 25th October, 1988 that is, more than one month after the conclusion of the enquiry committed any violation of the principles of natural justice by not waiting for the petitioner furnishing the written brief. In that view of the matter the petitioner cannot complain that there is any denial of principles of natural justice in this respect.

32. It is also contended that both the enquiry report as well as the impugned order of the Disciplinary authority is bad as it is based on surmises, conjecture and not on legal evidence.

33. I have carefully considered the enquiry report of the Enquiry Officer. There is a discussion of evidence by the Enquiry officer in respect of each individual charges and he has given his finding in respect of each of the article of charges separately. As regards the Article VIII, IX and X the Enquiry Officer found the charges to be partially proved and as regards the Articles XI, XII and XIII his clear finding is that the same had not been proved. If the Enquiry Officer did not consider all the aspects of the case including the defence of the petitioner then he would not have arrived at such finding separately in respect of all the 13 charges. I am unable to hold that the findings of the Enquiry officer is based on surmises and conjecture. The order of the disciplinary authority dated 28th October, 1988 annexed as annexure "K" to the writ petition also shows that the Assistant General Manager and the Disciplinary Authority of the petitioner applied his mind to the articles of charge and independently assessed the evidence produced in respect of each of the Article of charges and have thereafter accepted the findings of the Enquiry Officer. He has found that the aforesaid unauthorised and irregular acts of the petitioner constituted breach of Regulation 3(1) and 3(3) of the Allahabad Bank Officers Employees (Conduct) Regulation 1976 and amount to misconduct, in terms of Clause 24 of the said Regulation. He has also found that the Writ petitioner was also guilty of the charges of misconduct in the earlier charge-sheet dated 13.1.1987 by the D.A. Order dated 20.2.1988 and was placed two stages lower in the time scale. Regard being had to the nature of charges and the past conduct of the officer, the disciplinary authority thought fit to impose the punishment of removing him from service for his acts of misconduct. Regards being had to the above facts and circumstances, I am unable to hold that the impugned order of removal of service suffers from any illegally or irregularity for this Court to interfere.

34. The writ petition is therefore dismissed.

All interim orders if any, are vacated.

There is no order as to costs.