
(1996) 11 KAR CK 0018
In the Karnataka High Court
Case No : Writ Petition No. 1858 of 1986

R. Shamanna

APPELLANT

Vs

The State Bank of Mysore

RESPONDENT

Date of Decision : 25-11-1996

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 227

Citation : (2003) ILR (Kar) 4467

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : P.S. Rajagopal, for the Appellant; Shantha Raju, for the Respondent

Final Decision : Allowed

Judgement

Dattu, J.—Man as a human being is mixture of animal and divinity. Man cannot live on bread only. He prefers dignity, honour and justice, to starvation, dishonour and even death. Justice is the substantive nourishment not for stomach but for human soul. This justice is clearly eluding an officer of a nationalised Bank from last two decades. Now he is retired, retired from service only, with accumulated frustration and with desire of a quick disposal of his case. He is waiting and waiting with a fond hope and human hope has its limits and waiting too long in the current life style is extremely difficult.

2. A second match by the aggrieved person on an unaltered pitch. Same set of players but before a different umpire.

3. Circumstances which forced a lowly placed officer to play a second match also is as under:

While working as a Manager in the respondent - Bank at its Head Office at Kempegowda Road, Bangalore, petitioner received a letter dated 28.5.1972 from the Bank, by which he was called upon to explain certain alleged lapse and irregularities pointed out during an audit conducted earlier. Petitioner sought for a copy of the report, which was not furnished, but the Bank, to hold a private

enquiry kept petitioner away from service temporarily by its order dated 26.5.1972. Nothing transpired nearly for two years. It is only on 2.3.1974, a show cause notice came to be issued directing the petitioner to offer his explanation why disciplinary proceeding should not be instituted against him in respect of certain alleged lapses and irregularities. A suitable reply came to be furnished by the petitioner by his reply letter dated 15.5.1974. Not being satisfied with the explanation offered, Bank proceeded to issue a charge memo. It did not have just eleven charges but two more to make a full team containing charges of misconduct as Manager of Kudalgi Branch of the respondent - Bank. Allegations made in the charge memo was denied by the petitioner. The disciplinary authority appointed one Sri Veerabhadraswamy as the enquiry officer and the manager of Kudalgi Branch as the Presenting Officer in the domestic enquiry instituted against the petitioner to enquiry into the charges of misconduct. After completion of the enquiry, the enquiry officer submitted his report together with the records of the enquiry proceedings and other documents to the disciplinary authority. That after considering the report of the enquiry officer and record of the proceedings, the disciplinary authority issued a second show cause notice but without a copy of the report of the enquiry officer, proposing to impose a penalty. As usual, petitioner furnished his reply and requested the competent authority to drop the proceedings. The disciplinary authority after considering the reply of the delinquent passed an order dated 8.12.1977, dismissing the petitioner from the services of the Bank and he says the player of the team is out and out for ever.

4. Disturbed by this order, the delinquent had come before this Court in W.P. 6240/1978. This Court finding fault with the decisions of the umpire in the private enquiry, allowed the Writ Petition, quashed the order of dismissal and remitted the matter to the disciplinary authority for a fresh disposal in accordance with law and thereby he was asked to continue his batting from the stage it was left. This order was confirmed by a bench of this Court in the appeal preferred by the Bank. This resulted in Bank issuing a show cause notice dated 15.10.1984. This notice was like a second show cause notice, to show cause against the proposed punishment. Once again petitioner filed his reply by his letter dated 12.12.1984. The disciplinary authority after considering the report of the enquiry officer and the reply filed by the delinquent to the second show cause notice, has reproduced his earlier order since the umpire continued to be the same, dismissing the petitioner from services of the Bank by his order dated 25.9.1985. It is the aforesaid order which has brought the petitioner to this Court once over again, being aggrieved by the same.

5. First of all, it may be stated that the jurisdiction of this Court under Article 226 of the Constitution of India to interfere with the orders of punishment passed in departmental proceedings is very limited. It is settled law that unless the order is perverse or has been passed on no evidence or conclusion which a reasonable person would not come to on the same set of facts, this Court cannot interfere with the conclusions arrived at by the disciplinary authority with regard to

punishments imposed in a domestic enquiry proceedings. Keeping this well settled legal position in view, let me now notice the contentions advanced by the learned Counsel appearing for the parties to this lis.

6. Sri P.S. Rajagopal, learned Counsel appearing for petitioner in his usual articulate manner strongly contends that the disciplinary authority seriously erred in holding that the non-summoning of witnesses cited by the petitioner, the non-supply of copies of documents, sought for by the petitioner and the fact that the petitioner had not been intimated of his right to be defended by a lawyer with the Bank's permission had adversely affected the interest of the petitioner. Further, he submits that disciplinary authority was wholly wrong when he states in his order that non-furnishing of necessary information with regard to the procedure that the management intends to adopt for the purpose of domestic enquiry has not caused any prejudice to the petitioner. According to the learned Counsel, the disciplinary authority erred in not holding that the enquiry conducted by the enquiry officer was in transgression of the rules prescribed in this behalf and adopted by the Bank itself. The learned Counsel vehemently submits that the procedure adopted by the inquiry office in the enquiry proceedings is totally opposed to principles of natural justice and therefore the proceedings are vitiated and based on such a finding, the disciplinary authority could not have passed the impugned order. Ultimately, the learned Counsel contends that the findings of the enquiry officer and the reasoning of the disciplinary authority are wholly perverse and in that view of the matter, the learned Counsel contends that the order framed by the disciplinary authority requires to be set aside. In support of his contention, the learned Counsel has referred to plethora of decisions which I will notice while dealing with each issue canvassed by learned Counsel.

7. Sri Shanta Raju, learned Senior Counsel ably supports the order made by the disciplinary authority and resists the relief sought for in the Writ Petition and further contends that the entire enquiry proceedings were conducted in accordance with the procedure prescribed under Bipartite Settlement and further by fully adhering to rules of natural justice and he would add in a most subtle manner that if for any reason this Court were come to the conclusion that there is some deviation from the normal procedure and if for some reason, there is some defect in the enquiry proceedings, the same has not caused any prejudice to the delinquent and if there is any violation of only facet of principles of natural justice, the test of prejudice should be applied and if no prejudice is caused, no interference with the orders made by disciplinary authority is called for. To reinforce his submission, the learned Counsel strongly relies upon the observations made by Apex Court in the case of STATE BANK OF PATIALA AND ORS. v. S.K. SHARMA, (1996) 3 . Lastly, the learned Counsel submits that the concept of principles of natural justice should not be read in isolation. If there is any violation of rules of natural justice and thereby if it has caused any prejudice, it need not only be pleaded but also to be demonstrated. While summing up his arguments, the learned Counsel repeatedly reminds this court

the scope of judicial review in cases arising from departmental enquiry proceedings. To buttress his submission the learned Counsel relies upon certain observations made by Supreme court in the case State Bank of India and Others Vs. Samarendra Kishore Endow and Another, and in the case of B.C. Chaturvedi Vs. Union of India and others, .

8. Having considered carefully the rival contentions of the learned Counsel for the parties to the lis and having given my anxious consideration to the issues involved, in my view, petition requires to be allowed and the rule to be made absolute for the following reasons.

9. On an earlier occasion, when the petitioner had approached this Court questioning the correctness or otherwise of the orders framed by the disciplinary authority dated 8.12.1977, this Court by its order dated 16.10.1981 had allowed the petition and was further pleased to observe as under:

"In view of my conclusions on 6th and 7th grounds urged for the petitioner, I consider it unnecessary to deal with the first five grounds urged for the petitioner as they are matters which are in the first instance required to be considered by the disciplinary authority.

For the reasons aforesaid, I make the following order -

(i) Rule made absolute;

(ii) The impugned order of dismissal dated 8.12.1977 (Annexure R) is quashed;

(iii) The bank shall be at liberty to issue a fresh show cause notice to the petitioner enclosing thereto a copy of the enquiry report to pass fresh order after considering the reply, if any, submitted by the petitioner in reply to the show cause notice;

(iv) The petitioner shall be entitled to all the consequential benefits flowing from the quashing of the order; and

(v) The petitioner shall be entitled to costs. Advocate's fee Rs. 250/-."

10. Respondent -Bank challenged the aforesaid order by filing a Writ Appeal in No. 1905/81. In the said Writ Appeal, various contentions had been raised. One of the contentions raised by respondent - Bank was that there was no obligation on the disciplinary authority to supply copy of the enquiry report of the enquiry officer along with the second show cause notice. The Bench took the view that non-furnishing of the enquiry report to the delinquent before passing the order of penalty would vitiate the proceedings. On this ground alone, Writ Appeal came to be dismissed and thereby the order of the learned Single Judge was affirmed.

11. Subsequent to the orders passed in W.A. No. 1905/1981, the respondent-Bank once again issued a second show cause notice proposing to accept the findings of the enquiry officer and further proposing to impose a major penalty. While issuing the present notice, respondent - Bank took care to cure all the

defects pointed out by this Court in its earlier order made in W.P. 6240/1978. Petitioner filed his reply by his letter dated 12.12.1984. In the said reply, apart from urging various other contentions, raised the following specific issues which his learned Counsel had canvassed before this Court in W.P. 6240/1978. The issues/defects pointed out by he delinquent officer reads as under:

"(i) A copy of the audit report of one Laxman Rao, which was the cause for initiation of the disciplinary enquiry was not furnished;

(ii) The documents required for the defence of the petitioner were not furnished;

(iii) The witnesses whom the petitioner wanted to examine in his defence, were not summoned though they were officers of the Bank working at different places.

(iv) The finding recorded was perverse and based on no evidence.

(v) The petitioner was denied the opportunity of taking the assistance of a Lawyer to defend him as the rules governing the disciplinary proceedings were not made known before holding the enquiry.

(vi) The report of the enquiry officer was not furnished when the petitioner was called upon to show cause against the proposed penalty.

(vii) The final order not being a speaking order, is invalid."

12. Ultimately, the petitioner requested the respondent-Bank authorities to drop the entire domestic enquiry proceedings by taking into consideration that the alleged charges levelled against the petitioner had not caused any pecuniary loss to the respondent -Bank and also by taking into consideration the past blemishes service record of the petitioner. A reading of the plea of the petitioner which he has filed before the disciplinary authority by way of objection to the second show cause notice should have touched the human heart of the disciplinary authority and should have made him to invoke some sympathy towards the delinquent officer who was harassed to a point which ordinary human being with a weak heart and mind would have succumbed with mental agony anxiety and humiliation. Disciplinary authorities are not Robots but they are human beings. Milk of kindness in them should not be dried and they should not plug their ears with modern equipments so that they need not have to hear the cries of harassed officers and their large families. They should not only behave like human beings, act like human beings, think like human beings, decide like human beings, taking into consideration the plight of an officer, taking into consideration the pressures and pulls under which he would be serving with his higher officers who make these subordinates, these lowly placed officers to achieve their goals, ambition targets and higher positions in the hierarchy of the officers. Their higher ups believe only in giving oral orders to their sub-ordinates and when their subordinates are in deep trouble, they would not even bother to come to their rescue, they would not even extend moral support and lowly placed officer would be left in lurch and wilderness. In my view, the present case is the best example which demonstrates the apathy of the higher ups to their subordinates. Be that

as it may, since things would not change even if we write volumes after volumes about the sad state of affairs that the lower wing of officers suffering in the hands of higher ups except those subordinate officials who are prepared to play a second fiddle to the commands of their bosses. With these deep anguish in me, let me now look at what this disciplinary authority has done after receiving the reply furnished by the delinquent to the second notice, Do I say "as usual" that the disciplinary authority after considering the report of the enquiry officer, record of the proceedings and the detailed reply furnished by the delinquent to the second show cause notice proceeded to pass the order dated 25.9.1985, dismissing the petitioner from services of respondent - Bank. Since no authority has been specified to hear the appeals against the orders framed by the disciplinary authority, the delinquent officer was constrained to approach this Court in a petition filed under Article 226/227 of the Constitution of India.

13. The first issue which requires to be considered is, whether the non-supply of the audit report which the petitioner was demanding right from the day the petitioner was asked to offer his explanation to the letter received by him from respondent-Bank dated 28.5.1972, which request he repeated during domestic enquiry proceedings would vitiate the enquiry and the orders made based on such enquiry requires interference by this Court. The respondent-Bank by their letter dated 26.5.1972 had intimated the petitioner several irregularities and lapses said to have been committed by him while working as a Manager of the respondent's branch at a place known as Kudalgi. Petitioner by his reply requested the authorities to furnish a copy of the audit report of the auditing wing of the department. Thereafter, the respondent-Bank placed petitioner under suspension and issued one more show cause notice once again alleging certain lapses and irregularities committed by him as the manager of Kudalgi branch. Petitioner replied to this show cause notice by his reply dated 15.5.1974. Then there was some criminal proceedings were instituted by the Bank against the petitioner and in that, the learned Special Judge by his order dated 30.11.1974 acquitted the petitioner and it is only thereafter, Bank issued a charge memo containing 13 charges of misconduct. Charge memo gave details of the lapses and irregularities said to have been committed by the petitioner, and this was dated 9.5.1975. An enquiry officer was appointed to enquire into the charges alleged against the petitioner. During the enquiry, the delinquent officer requested the enquiry officer to direct the respondent to furnish him certain documents including the audit report which was the foundation and the basis for issuing the show cause notice as well as charge memo. The enquiry officer directed the Presenting Officer, who happened to be the Branch Manager of Kudalgi Branch to permit the petitioner to inspect the documents at Kudalgi branch and also give him true copies of the documents which the petitioner had sought for before the enquiry officer through his letter dated 13.4.1976. Since the petitioner was not furnished with the copies of certain documents and also copy of the audit report. Petitioner made a complaint to the enquiry officer, to which he was informed by the enquiry officer as under:

"Mr. Shamanna, copies of letters, etc required by you in Kudalgi Branch as stated by you in your letter dated 13.4.1976 are getting ready and after they are made available to you, you can submit your exhibits and the list of witnesses."

14. This was only a promise and was never fulfilled either by the Presenting Officer or by the enquiry officer. Petitioner was deprived of the assistance of material documents which are available in Kudalgi Branch which the petitioner had inspected with the permission of the enquiry officer. Throughout the enquiry proceedings, neither the Presenting Officer nor the management did not take the stand that the copies of the documents which the petitioner is seeking is either irrelevant or has no bearing for the purpose of enquiry, thereby depriving the petitioner a valuable opportunity to disprove the charges levelled against him when it was complained to the enquiry officer about the non-supply of the required important and vital documents, the enquiry officer who is none other than the subordinate official of the management brushed aside the complaint stating that the documents which petitioner had sought for irrelevant and the enquiry was completed without even supplying the documents sought for by the petitioner to substantiate his cases and disprove the charges. It is not the case of the management that the documents sought for were confidential and it is not even their case that the documents are not available with them and it is not even their further case that the show cause notice and the charge memo that was prepared and served on the delinquent was not based on the report of the audit wing of the department. In fact a reading of the charge memo gives an indication that the same is not only based on the observations made in the audit report but also the cause for initiation of private enquiry proceedings. This report was repeatedly asked for by the delinquent not only to reply show cause letter but also at the time of enquiry proceedings. The management and the enquiry officer did not inform the delinquent that he is not entitled to a copy of the audit report nor they refused to give it. In fact they went to the extent of promising him that the copies of the documents are getting ready and it should be supplied to him. With this background can this Court still say that the non-supply of documents which were in possession of the management to the delinquent at the time of replying the charge memo and at the time of defending him before the enquiry officer has not caused any prejudice to the petitioner. Can it be still said that the petitioner was not prevented from disproving the charges levelled against him in the charge memo? Can it be still said that the domestic enquiry proceedings were conducted in accordance with rules of natural justice? Can it be said that it does not vitiate the enquiry proceedings? When this was posed to the disciplinary authority as one of the issues for considerations, the disciplinary authority without even scrutinising the records of the proceedings of the enquiry officer has observed as under:

"We find that even the course of the enquiry Sri Shamanna did not ask for copy of auditor's report. To complain about the auditor's report at this stage would not be right. In any case, when employee has been issued a detailed show cause notice followed by a charge sheet listing out all the charges in detail, we are

unable to understand how the employee can complain that prejudice has been caused to him not furnishing the copy of the auditor's report. Even the management is not depending upon a copy of the auditor's report, but placed other material, primarily, to substantiate the charges framed in the enquiry. As such, we find no substance in this contention."

15. In so far as non-supply of other documents for the defence, the disciplinary authority in its order has observed as under:

"(ii) The documents required for the defence of the petitioner were not furnished.

As regards, this complaint we find that the Enquiry Officer has clearly observed (page 72 of the enquiry report) that the employee has been informed that all required information could be secured by a perusal of files at the branch. Sri Shamanna has also been permitted access to the same. He was also permitted to peruse the documents available at the Head Office. After such visits, Sri Shamanna himself has submitted that the document he had in mind could not be traced and he was proceeding with the defence. After making this statement, Sri Shamanna has submitted a list of 18 documents he had secured from the branch. In view of this, we cannot accept his contention that documents required by him were not furnished to him."

16. Sri P.S. Rajagopal, while critically commenting on the above reasoning of the disciplinary authority would contend that the approach of the enquiry officer in proceedings with domestic enquiry proceedings without directing the management to furnish certain documents including the copy of the auditor's report has vitiated the entire enquiry proceeding since the same is in violation of principles of natural justice and further the reasoning of the disciplinary authority is not only arbitrary but without proper application of mind. To substantiate his contention, the learned Counsel relies upon the observation of Calcutta High Court in the case of *DAL GOBINDA DAS v. UNION OF INDIA AND ORS.* 1981 (2) SLR 185. In the said case, the Court was pleased to observe as under:

"The preliminary investigation's report should have been furnished to the petitioner to give him reasonable opportunity to defend himself. It is true that if the preliminary investigation report is not relied on either by the Enquiry Officer or by the punishing authority, such report is not required to be disclosed to the delinquent Officer as a matter of course. But reasonable opportunity of being heard cannot be defined precisely and such opportunity depends in the facts and circumstances of each case. I respectfully agree with the view expressed by the Delhi High Court in the case of *Jograj Singh* (supra) wherein the Delhi High Court has observed that there are certain documents whichever if they are not relied by the Enquiring Officer to support the charges against the delinquent, such documents are nevertheless required by the petitioner to defend his case. It should be noted in this connection that the charges were framed on the basis of the investigation report and the calculation made by the Investigating Officer if the said report was referred to in the charge sheet. In my view, in the aforesaid

circumstances, it was only desirable to furnish the said report to the delinquent officer to give him proper and reasonable opportunity to defend himself."

17. The statement of the disciplinary authority that the petitioner did not demand for auditor's report is totally a wrong statement. In fact, right from the day the petitioner was asked to explain certain lapses and irregularities said to have been committed by him while working as a Branch Manager of Kudalgi branch by issuing a letter dated 28.5.1972, petitioner was repeatedly demanding the management to furnish him the copies of the auditor's report. This request, petitioner repeated before the enquiry officer also by his letter dated 13.4.1976, with all this, disciplinary authority says that Sri Shamanna - Petitioner did not ask for copy of the auditor's report. What a way to reject an important issue raised by the petitioner in his objection statement! The disciplinary authority who has been vested with such vast powers in domestic enquiry proceedings cannot do a mockery of the proceedings to deprive life and liberty of a person except in accordance with law and a fair procedure. It is worth while at this stage to recall the observation made by learned Chief Justice of Apex Court in the case of A.K. Roy and Others Vs. Union of India (UOI) and Others, . The learned Chief Justice was pleased to observe as under:

".....And this view was taken as flowing from Article 21 which mandates that no one shall be deprived of his life or liberty except in accordance with the procedure prescribed by law. The expression "Life" does not merely cannot animal existence or a continued drudgery through life. The expression "life" has a wider meaning. Where therefore the outcome of a departmental enquiry is likely to adversely affect reputation or livelihood of a person. Some of the finer graces of human civilization which makes life worth living would be jeopardised and the same can be put to jeopardy only by law which inheres fair procedure".

18. Then the other reason assigned by the disciplinary authority to hold the proceedings are not vitiated by the non-supply of auditor's report to the delinquent is that the authority has issued a detailed show cause notice followed by a charge sheet listing out all the charges and in that view of the matter, even in the absence of supplying the auditor's report, petitioner cannot complain of any prejudice. It is at this very stage it is relevant to mention that the letter of the Bank dated 28.5.1972 asking the petitioner to explain certain alleged lapses and irregularities mentioned in the letter was based on the report of the Auditing of the department. The show cause notice that was issued was again based on audit report and the allegation levelled against the petitioner was also based on the irregularities pointed out by the audit report and at no point of time, respondent - Bank claimed that the document is either confidential or a privileged document and the same cannot be supplied. In fact, enquiry officer during the course of enquiry would inform the delinquent that copies of the letters etc., sought for by the petitioner in his letter dated 13.4.1976 are getting ready and the same would be supplied to him. Having said all that, then, it is not proper of the part of the disciplinary authority that non-supply of the documents

including copy of the audit report has not caused any prejudice to the delinquent, cannot be accepted. In my view, since the entire foundation for instituting the proceedings for private enquiry is the audit report and in my view, copy of the said important material and crucial document should have been supplied to the delinquent by respondent -Bank. The non-supply of the aforesaid document has deprived the petitioner from effectively disproving the charges alleged in the charge memo before the enquiry officer. If the respondent -Bank had furnished the audit report and other documents sought for by the petitioner, it would have made a world of difference to the delinquent and he would have been in a better position to take not only proper defence but also would have been in a better position to cross-examine the management witnesses. Further he would have been in a position to demonstrate before the enquiry officer that certain lapses alleged against him was not due to his mistake and on his own volition but at the instance of higher ups in the respondent-Bank. In my view, non-furnishing of the auditor's report and other documents sought for by the petitioner has caused prejudice to the petitioner to defend himself properly before the enquiry officer. In my view, the action of the Management is not mere technical violation of principles of natural justice but a substantial violation which has caused prejudice to the petitioner in the private enquiry held against him.

19. Coming to the next issue raised by the petitioner before the disciplinary authority in reply to the show cause notice and reasoning of the disciplinary authority while rejecting the said issue reads as under:

iii) The witness whom the petitioner wanted to examine in his defence, were not summoned though they were officers of the Bank working at different places.

When the official wanted to summon certain witnesses, some of them are officers of the Bank, although the enquiry officer admittedly, does not have power to compel the presence of the witnesses, the enquiry officer has suggested to the official concerned that he could write to these officers and examine them if they come for giving evidence. The witnesses were requested to come for evidence. It is also on record of the enquiry where the management of the Bank has taken a decision to grant permission to such of those officers who would wish to be present and examine themselves on the suggestion of the official. If these officials have not come for one reason or the other for being examined, we cannot compel them to give evidence. Further, the charged official has not made any reference to the relevancy of the evidence of these witnesses nor the facts which he proposed to elicit from them. In any case, all witnesses of the Bank who were examined have also been cross-examined by the official. As such, we do not find any error or irregularity in the procedure adopted by the enquiry officer or violation of the principles of natural justice."

20. To appreciate the grievance of the petitioner and the contentions raised by his learned Counsel, it is appropriate to notice certain facts pleaded in the petition.

21. Management of the respondent-Bank in order to prove the charges levelled against the petitioner examined five witnesses and got marked nearly 17 documents. After closing of the case by the Presenting Officer for the Bank, the delinquent sought the assistance of the enquiry officer to summon eight witnesses, whose names he had already furnished to the enquiry officer along with his letter dated 13.4.1976 of the eight witnesses, seven were officials of the Bank and the other lone witness was the Sub-Registrar of the area. On such a request made by the delinquent, the enquiry officer pleaded his inability to secure the presence of the officials of the Bank to be witnesses for the delinquent, however directed the delinquent to write to the Head Office of the Bank to direct the officials to participate in the enquiry proceedings held against him. Being left with no other alternative, petitioner by his letter dated 17.7.1976, requested the Managing Director of the Bank to make available seven officials of the Bank as defence witnesses as their depositions are relevant and important for him to prove his innocence. The letter of the petitioner to the Managing Director of the respondent-Bank is extracted and the same reads as under:

"During the proceedings held on 8th July, 1976, I requested the Enquiry Officer to make available the presence of the following officials of the Bank as their depositions are very relevant and important for Sri R.Shamanna to prove his innocence:-

Sarvashrees:-

- 1) R.Vaidhianathan, A.G.M. (Dev.) H.O.
- 2) S. Jagannathan, Manager, S.B.M. Madras Branch.
- 3) H.R. Radhakrishna, Manager, S.B.M. Channapatna.
- 4) T.Lakshmana Rao, Manager, Kudligi Branch.
- 5) B. Ranganatha Rao, Technical Officer, Dev. Manager's Dept. Agricultural Finances, H.O.
- 6) S.Sridhar , Officer, Dev. Manager, Manager's Dept. Agricultural finances, H.O.
- 7) T.G. Ramachandran S.B.M. Fort Branch.

The enquiry officer has stated during the proceedings, that if the witnesses are under control of the Management of the Bank, that Sri. R.Shamanna should request the Bank for securing their presence.

In view of this I would now request you kindly to notify the abovesaid witnesses to appear before the enquiry officer on the 26th July, 1976 at 10-30 a.m. at Head Office, where the enquiry will be held."

22. Petitioner with a fond hope that the officials of the Bank may respond to his request and with a determination to prove his innocence through the Bank's official witnesses, wrote identical letter to all the seven officers of the Bank requesting them to make it convenient in the name of justice and fair play to be

present at the enquiry proceedings for being examined as defence witnesses. A copy of this letter was also marked by the enquiry officer. The letters so written by the delinquent gives a clear indication why the petitioner wanted the assistance of the Bank officials as his witnesses in the enquiry proceedings. In response to this request, one officer of the Bank declined to attend the enquiry as a witness and other gave an excuse by saying he is other-wise pre-occupied, while the others may be because they were never wanted to be in bad books of Bank-management declined even to respond petitioner"s request. As none of the officials could come as defence witnesses, petitioner was obliged to close his case without even examining anyone person as a defence witness, but not giving up his fond hope, petitioner once again requested the officer to use his good office / power to summon the witnesses. As usual, the petitioner received negative reply. With this factual back ground as the basis, Sri P.S. Rajagopal, learned Counsel after a graphic description of the entire episode would submit before the Court that whether the proceedings of this nature, can still be held that the proceedings of the enquiry are conducted in accordance with principles of natural justice. An intelligent counsel like him, leaves it to the imagination of the Court to visualize and draw inference about the agony and the acute pain that the delinquent official must have experienced at the helplessness of him, to prove his innocence before the enquiry officer and then while dropping the curtain to the happenings before the enquiry officer, submits that the enquiry officer who is supposed to be the fact finding authority behaved only like sub-ordinate official of the Bank and then submits that the entire approach of the enquiry officer and the attitude of the Bank was not only highly repressive but opposed to rules of natural justice.

23. With this back ground, now let me advert to reasoning of the disciplinary authority in respect of the third issue raised by the petitioner is his objection statement. First and foremost assertion of the disciplinary authority is that pursuant to the request made by the delinquent, the management requested the officials to give evidence in the domestic proceedings is nothing but travesty of truth. Never they made any attempt to secure the presence of the officials, whom the petitioner wanted as his witnesses. Further, the respondent has not produced the records of the enquiry proceedings before the Court to verify whether any decision was taken by the management to grant permission to such of those officials who wish to be present and examined themselves in support of the official who is already out of service temporarily. It is no doubt true that the enquiry officer has no power to summon the witnesses but that does not prevent him to request his superior official to take necessary steps to send officials as witness, when a delinquent specifically requests for it. One thing is well settled in domestic enquiry proceedings that when an employee makes a specific request to the enquiry officer for summoning the witness, it is not only duty but an obligation on the part of the enquiry officer to consider his request and in case, he refuses to summon them, he should give reasons for such refusal. The enquiry officer can definitely decline to ask the management to produce its

officer as witnesses on the ground of irrelevancy but he cannot merely say that he is powerless and helpless to summon the management witnesses. The enquiry officer may not have any power to summon the witnesses but to justify the requirements of rules of natural justice atleast an attempt must be made by him to secure the attendance of the witnesses, even if the attempt is likely to fail, if a request is made from one charge sheeted workman to summon the witnesses. The Andhra Pradesh High Court in Thakoorjee's case was pleased to observe that the enquiry officer cannot refuse to call a witness on the ground that it was not his duty to summon the witness to assist the accused and if it is done, it will be opposed to every principles of justice and good conscience.

24. In the present case, when the delinquent specifically requests the enquiry officer to summon the Bank Officers and its employees as defence witnesses, the enquiry officer without even making an attempt to summon the witnesses informs the delinquent to make a written request to the officer of the respondent-Bank and the Bank in turn informs him that they cannot instruct its own officials to act as witness and in any event, if he desires to have the Bank officials to give evidence on his behalf, it is for him to approach directly. At this stage, it is very relevant to state that the delinquent is not requesting the management to summon outside witness but is requesting them to request their own subordinates who are under their total control to participate in the enquiry proceeding, to expect the employee to produce those witnesses on his own is to reduce the opportunity offered to the delinquent as a mere farce and empty formality. Normally, it is for the delinquent to take effective steps to produce his witnesses, but where the witness is under the control of the management then at least an effort must be made by the management to allow the witnesses to come forward and testify before the enquiry officer. If after taking a possible and a positive effort and if still the management is not in a position to produce a particular witness, it cannot be said that prejudice has caused to the delinquent on account of non-production of a witness which the delinquent requested for and the proceedings cannot be said to have vitiated on account of such non-production of witnesses, but I hasten to add that the management may not have a responsibility to summon witnesses on behalf of the delinquent but atleast they have obligation to make an effort to request its officials who are cited as witnesses by the delinquent to participate in the enquiry proceedings and when such witnesses are under their control. In my view, atleast an effort must have been made by the management to assist the delinquent by extending all possible help in securing the presence of witnesses and a responsible management could not have just said that it is for the delinquent to secure the assistance of management employees as his defence witnesses by forgetting for a moment that which employee is prepared to incur the wrath of the management by assisting a charge sheeted officer who is already in the bad books of the management. After all the object of the enquiry is to find out the truth and all steps which are conducive to this end must be taken by management before depriving its employee officer the right to life. Any unjustified interference with

any of those steps would result in prejudice to the charge sheeted employee and would definitely result in denial of reasonable opportunity to the charge sheeted officer to show cause against the action proposed to be taken against him. Now the question would arise whether such a refusal has materially prejudiced the defence of the petitioner. In my view, this would depend upon careful review of the facts of each case. In the present case, the defence of the delinquent was, the loans and other facilities were granted to the customers of the Bank was only at the instance of Official Superiors and the petitioner requested the enquiry officer to summon those officials who were responsible in directing to disburse the loan amounts, overdraft facilities etc., to the customers. Enquiry Officer without an attempt to summon the witnesses abdicates its obligation by directing the petitioner to make request to the Head Officer of the Bank and the Head Office in turn refuse the request in a most uncharitable manner. In my view, the entire approach of the enquiry officer and the responsible respondent-Bank in not even attempting to assist the petitioner in directing the official of the Bank who were cited as witnesses to participate in the enquiry proceeding would definitely introduce an element of infirmity in the enquiry and in my view, the enquiry that is conducted is not in accordance with principles of natural justice.

25. Sri P.S. Rajagopal while submitting that the domestic enquiry proceedings are vitiated in view of contravention of rules of natural justice relies upon catena of decisions rendered by various High Courts. In my view, it is suffice to refer to a few decisions to drive home the point that the procedure adopted by the enquiry officer and the respondent-Bank is wholly unjustified and the same is not only bad but illegal.

26. In Nityananda Ghose Vs. Khanna (B.C.) and Others, Calcutta High Court was pleased to observe as under:

"The third grievance made by the petitioner however, succeeds. It appears that in the course of the enquiry the petitioner asked for examination of two witnesses, namely, the Superintendent of catering and the Chief catering inspector. Both these officers were under the control of the railway administration and they could be produced by the administration. Curiously enough, they were not called, because the enquiring officer was of the opinion that their evidence would be irrelevant. I do not know what questions the petitioner would have put to them and what fact he wanted to elicit from them. To deprive the petitioner of the opportunity to examine witnesses, in course of the enquiry, was a serious lacuna which had vitiated the enquiry itself."

27. In Shiv Datt Sharma Vs. State of Punjab and Others, learned Single Judge of Punjab High Court was pleased to observe as follows:

"The counsel then drew my attention to para 17 of the petition in which it has been alleged that on 4 January, 1959, the petitioner submitted a list of 125 defence witnesses with their full particulars, but the enquiry officer on 9, January 1959 arbitrarily selected only eight persons out of this list. A suggestion is

thrown in the petition that this was presumably done at the instance of the managing director. These eight witnesses were also ordered to be produced by the petitioner on his own initiative and responsibility and the enquiry officer declined to issue any summons for them. It is expressly asserted that almost all the eight witnesses were bank employees and it was impossible for the petitioner to produce them personally. This conduct on the part of the enquiry officer has been alleged to amount to denial of the right of defence to the petitioner. In reply in the written statement, it has been admitted that the number of the defence witnesses was cut down by the enquiry officer, but it has been pleaded that the petitioner was unable to show as to how the witnesses so deleted were necessary or were in a position to depose anything relevant. It is significant that no justification has been shown as to why the petitioner was asked himself to produce the witnesses, nor has it been denied that almost all these witnesses were bank employees.

In my opinion, the petitioner has a legitimate grievance against the enquiry officer in refusing to summon even the right witnesses on which the petitioner wanted to rely in defence. If the witnesses were actually employees of the bank, I do not see any cogent or convincing reason and none has been advanced before me for refusing to help the petitioner in the production of those witnesses for examination by the enquiry officer. This has certainly resulted, in denial to the petitioner of his right to adduce defence, and, therefore, in failure of justice.

The learned Advocate-General has submitted that the enquiry Officer, had no power to summon those witnesses. Sri Nehra has, on the other hand, submitted with equal force that the enquiry officer had full power to summon the employees of the bank to appear before him in those proceedings. In my opinion, in the present case, it was only fit and proper for the enquiry officer, even if he had no power himself, to summon the witnesses to ask the managing director to direct those eight witnesses to appear before him for the purpose of examination in the enquiry. To expect the petitioner to produce those witnesses on his own responsibility, was, in my opinion, not only highly improper but was perverse and unjustified on the facts and circumstances of the present case. It clearly tended to reduce the opportunity offered to the petitioner to produce the defence to a farce and an empty formality. The subsequent refusal by way of protest on the part of the petitioner to produce any defence cannot legalize or justify the refusal on the part of the enquiry officer to assist the petitioner in securing the appearance of the defence witnesses."

28. The High Court of Judicature at Calcutta in the case of Golam Rasul Vs. Public Service Commission and Others, was pleased to observe as follows:

"Mr. Roy lastly argued that the petitioner was denied natural justice in the sense that he was not allowed to examine Mr. Ghose, who had been cited by him as a witness. This is the most substantial of all the points argued in this rule. The law is quite clear that if a witness, cited by a person facing a disciplinary enquiry, is under the control of the disciplinary authority and if the evidence of the witness

is material for the purposes of the enquiry, then the authority should arrange for the production of that witness at the enquiry. In this case Mr. Ghose has been cited as a witness by the petitioner. Mr. Ghose was not unwilling of defence, if the enquiring officer found his examination necessary. Curiously enough, the enquiring officer did not come to any conclusion that the examination of Mr. Ghose should not be necessary because he was not a material witness. He, however, escaped examining Mr. Ghose on the untrue pretext that he had not been cited as a witness at all. The petitioner's grievance that at the enquiry he was not afforded proper opportunity to defend himself, in the sense that a witness cited by him was not examined, must succeed."

29. In *Mumtaz Hussain Ansari Vs. State of U.P. and Another*, while considering a case where the inquiry officer had directed the delinquent for payment of travelling allowance to defence witnesses, the Court was pleased to observe as under:

"This G.O. makes it clear that responsibility for payment of travelling allowance to defence witnesses produced in departmental enquiry conducted u/s 7 of the Police Act is of the Govt. and that if a witness has been permitted to be produced in defence, it is not open to the inquiry officer to lay down a condition that his traveling expenses should be first deposited by the delinquent officer before the witness is examined. In the present case, the Tribunal has considered the witnesses to be material but has insisted on the appellant depositing initially a sum of Rs. 900/- for the travelling expenses and daily allowance of the witnesses with an obligation to make good any shortfall in those allowances and loss of professional income of the witnesses. Mr. Prithvi Raj, Senior Counsel appearing for the respondent-State did not contend that this G.O. does not apply to the case of the appellant. More over, the appellant was under suspension from 11.12.1967 and there is nothing on record to show that he was, financially sound and in a position to deposit the sum of Rs. 900/- and pay any further amount which may be required to meet any shortfall to the travelling and daily allowances and the loss of professional income of the 5 more witnesses whom he wanted to be examined on his side. The failure to cause the production of those witnesses at the expense of the Govt. might have caused prejudice to the appellant for it cannot be predicated what conclusion the tribunal would have reached in regard to charges 1 to 3 if the evidence of those witnesses was available for its consideration. We are, therefore, of the opinion that there is no compliance with the principles of natural justice in this case. The appeal has to be allowed on the short ground and it is accordingly allowed."

(emphasis supplied by me)

30. Keeping in view the well established legal principle on this aspect of the matter, in my view, the entire approach of the enquiry officer as well as respondent-Bank is opposed to principles of natural justice. The action of the enquiry officer and the management in not assisting the delinquent in securing the Bank's official witnesses vitiates the entire enquiry proceedings.

31. The other issue that was canvassed by the delinquent before the disciplinary authority was with regard to denial of opportunity of taking the assistance of lawyer to defend him since the rules governing disciplinary proceedings were not made known to the delinquent before holding the domestic enquiry proceedings. The facts pleaded in this behalf is that the disciplinary authority till the completion of the proceedings did not inform the petitioner the rules or the statutory orders which governs the controversy between the parties. It is only when the delinquent addressed a letter dated 24th December, 1977 requesting the respondent-Bank to furnish him true copies of the rules or the standing orders of any other circulars that governed the conducting of the disciplinary domestic enquiries, provisions of appeal and other details and also to inform him, who is the appellate authority, disciplinary authority and reviewing authority in his case, the respondent- Bank by their letter dated 27th January, 1978, advised the petitioner that in the absence of specific rules of service for supervising staff in the Bank, the provisions laid down in Chapter 19 of the Bipartite Settlement (Clause 19.1 to 19.12) with slight modifications are being applied in conducting disciplinary proceedings against the supervising staff. The letter of the Bank to the delinquent dated 27.1.1978 is extracted and reads as under:

"Please refer to your letter dated 24th December, 1977.

2. In the absence of specific rules of service for the supervising staff in the Bank, the provisions laid down in Chapter 19 of the Bipartite Settlement (Clause 19.1 to 19.12) with slight modification, are being applied in conducting disciplinary proceedings against the supervising staff.

3. The Executive Committee of the Board of Directors is the disciplinary authority for the members of the supervising staff. No authority has been specified to hear appeals against the orders passed by the disciplinary authority. If any appeal is received, it is examined in detail and if there grounds justifying a review, it will be put up to the executive Committee for consideration. Extracts of Clauses 19.1 to 19.12 of the Bipartite Settlement are enclosed for your information."

32. Keeping this communication of the Bank as the foundation, Sri P.S. Rajagopal, the learned Counsel for petitioner submits that Bipartite Settlement "with slight modifications" provides for procedure for holding private enquiry proceeding, in that an employee against whom disciplinary action is proposed or likely to be taken shall be given a charge sheet clearly setting forth circumstances appearing against him and a date shall be fixed for the enquiry and he shall be permitted to appear before the Officer conducting the enquiry to cross examine any witnesses on whose evidence the charge rests and to examine witnesses and produce his evidence in his defence and he shall also be permitted to be defended:-

"(i) by a representative of registered trade union of bank employees of which he is a member on the date first notified for the commencement of the enquiry;

(ii) where the employee is not a member of any trade union of bank employees

on the aforesaid date, by a representative of a registered trade union of employees of the bank in which he is employed:

OR

At the request of the said union by a representative of State federation or All Indian Organisation to which Union is affiliated:

OR

(iii) With Bank's permission, by a lawyer."

33. The learned Counsel for petitioner submits the Bipartite Settlement provides for an employee against whom disciplinary action is initiated be defended by a representative of a registered trade Union of Bank employees of which he is member or with Bank's permission by a lawyer. In spite of it, the petitioner was informed by the disciplinary authority that he can be defended by a representative of Officers' Association of which he is a member, this action, the learned Counsel characterises as one which is contrary to principles of natural justice and also opposed to Bipartite Settlement and in view of that, the entire proceedings are vitiated is the plea of the learned Counsel. That apart, it is contended that refusal to give the assistance of legally trained person to defend a chargesheeted officer is opposed to law laid down by Apex Court and in that view of the matter, the imposition of penalty requires to be set aside since it is based on an invalid and illegal domestic enquiry proceedings. To reinforce his contention, the learned Counsel relies upon the observations made by Supreme Court in the case of Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, and CRESENT DYES AND CHEMICALS LTD., v. RAM NARESH TRIPATHI 1993 SCC 360.

34. Per contra, Sri Shantha Raju, the learned Senior Counsel would submit that the plea of the petitioner that he was not informed about the rules governing the disciplinary proceedings is only an after thought and nothing prevented the charge sheeted officer in requesting the disciplinary authority or the Head Officer of the Bank before the commencement of the enquiry about the rules/standing or regulations which would govern the enquiry proceedings. That apart the learned Counsel would submit that just because Bank did not inform the delinquent under which rules or regulations the enquiry proceedings are going to be held, it cannot be said that the entire enquiry proceedings are vitiated. Further the learned Counsel would submit that the delinquent had effectively participated in the enquiry proceedings held against him with the assistance of a defence representative. In that view of the matter, learned Counsel contends that no prejudice much less serious prejudice is caused to the delinquent and at any rate, he would submit that non-intimation of the rules/regulation governing the disciplinary proceedings would in no way contravenes the rules of natural justice.

35. This issue need not detain me for a long. In all fairness, the respondent-Bank should have intimated the petitioner - charge sheeted officer before the

commencement on enquiry proceedings about rules/regulations/standing orders which would govern the proposed disciplinary enquiry proceeding. When they did not inform him nothing prevented a responsible officer like the delinquent to have requested the Bank or the Head Officer about the rules/ regulations which would govern the enquiry proceedings contemplated against him. The charge sheeted officer without even a whisper had participated in the enquiry proceeding ably assisted by his defence representative for sometime during the proceedings. Petitioner had effectively cross-examined all the management witnesses, and had filed a detail defense reply before the enquiry officer after the completion of enquiry proceeding. Even otherwise it is not the case of the petitioner before this Court that the Presenting Officer was a legally trained person and as he was pitted against such a person, he was deprived of an opportunity to defend himself properly and if he was made known the procedure before the commencement of the proceedings he could have also taken the assistance of legally trained person.

36. The Rules and Regulations of various organization, departments etc., have their own procedure to be followed in departmental enquires / proceedings. In the absence of such rules/ regulations/standing orders, the enquires officer is expected to observe the rules of natural justice. There is no doubt if the principles of natural justice are violated and because of that if prejudice has been caused to the charge-sheeted officer, this Court would certainly interfere by striking down the order of dismissal but facts and circumstances of each case should be looked into before an order of disciplinary authority is held to be violation of principles of natural justice. This Court has to look at what actual prejudice has been caused to the charge-sheeted Officer by the supposed denial to him a particular right. Here the question is simple, viz., whether non-intimation of the rules/regulations which governs the proposed enquiry proceedings before the commencement of the same either by the disciplinary authority or the management has caused any prejudice to the delinquent. The facts would clearly disclose that the petitioner had effectively participated in the enquiry proceedings with the assistance of co-officer for some time and thereafter, on his own. The delinquent had cross-examined all the management witnesses as effectively as any legally trained person could do under the circumstances. The delinquent had filed detailed defence before the enquiry officer immediately after closing of the evidence. Taking all these into considerations, I do not think any prejudice was caused to the delinquent by not informing him the rules/regulations which govern the enquiry proceedings by the disciplinary authority. In that view of the matter, the contention of the learned Counsel for petitioner is difficult to accept. Accordingly, it is rejected.

37. Since I have already come to the conclusion that the procedure adopted by the enquiry officer, is opposed to principles of natural justice, it is unnecessary for me to consider whether the finding of the enquiry officer is perverse and whether the orders made by the disciplinary authority is a non-speaking order.

38. In the result, therefore, the present order of dismissal suffers from inherent defect and as such, requires to be set aside. In the normal course, matter requires to be remitted to the enquiry officer to hold a fresh enquiry or continue the enquiry from the stage, the enquiry proceedings are held by this Court as bad, in accordance with law and in accordance with the observations made by this Court in its order. Pending enquiry the delinquent must be deemed to be under suspension. The consequential benefits would depend on the result of the enquiry. But in the present case, the petitioner has retired from service in the month of March, 1986. At this stage, no useful purpose will be served in directing a fresh enquiry. Keeping in view, the pendency of this lis between the parties for more than two decades, I feel that the ends of justice would be met if a direction is issued to the Bank to drop the enquiry proceedings and thereafter reinstate the petitioner into service of the Bank. Accordingly, I make the following order-

(i) Writ petition is allowed. Rule made absolute.

(ii) The impugned order dated 25.9.1985 of the Disciplinary Authority is quashed without expressing any opinion on the merits of the charges alleged against the petitioner.

(iii) A direction is issued to the respondent Bank to drop the enquiry proceedings and then reinstate the petitioner notionally into service of the Bank. Further, a direction is issued to respondents-Bank to pay all the backwages to the petitioner from the date of dismissal till the date of retirement. It is further declared that the petitioner in view of this order would be entitled to all the service benefits including retirement benefits.

(iv) In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.