

(2010) 07 DEL CK 0065

In the Delhi High Court

Case No : Regular Second Appeal No. 121 of 2001

Ram Narain Sharma

APPELLANT

Vs

Canara Bank

RESPONDENT

Date of Decision : 05-07-2010

Acts Referred:

Banking Regulation Act, 1949 — Section 10(1), 10(1)B
Canara Bank Service Regulations — Regulation 10, 11, 12, 13, 14
Constitution of India, 1950 — Article 311, 311(2)
Delhi Petty Offences (Trial by Special Metropolitan Magistrates) Rules, 1998 — Rule 11(2), 12, 2, 3
Penal Code, 1860 (IPC) — Section 147, 308, 323, 325, 34
Probation of Offenders Act, 1958 — Section 12, 3, 4, 6, 9
Punjab Excise Act, 1914 — Section 61(1)

Citation : (2010) 07 DEL CK 0065

Hon'ble Judges : Aruna Suresh, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant; Jagat Arora and Rajat Arora, for the Respondent

Final Decision : Dismissed

Judgement

Aruna Suresh, J.—Impugned in this appeal is the judgment dated 7th July, 2001 and decree dated 31st July, 2001 of the First Appellate Court passed in appeal being RCA No. 8/2000 against the appellant and also the judgment and decree dated 14th January, 2000 of the Civil Judge passed in the original Suit No. 321/83 titled as "Ram Narain Sharma v. Canara Bank" whereby the suit filed by the appellant was dismissed. However, the Civil Judge modified the penalty of dismissal from service into one of removal from service.

2. Concisely, case of the appellant is that he was appointed as a Clerk in the Canara Bank on 19th May, 1973 and terms and conditions of his service were regulated by the Canara Bank Service Code. He was lastly appointed at Kamla Nagar Branch, Delhi. During his posting at Kamla Nagar Branch, relations

between him and the Manager of the Branch, namely, Mr. B.P. Rao became strained and the Manager wanted his transfer but, when he failed in his efforts, he lodged a false complaint against the appellant with police on 4th July 1978, making allegations of assault on him. Appellant was accordingly charge sheeted in departmental enquiry but later on the enquiry was not proceeded with. Criminal proceedings were lodged against the appellant for an offence punishable u/s 308 of the Indian Penal Code (hereinafter referred to as "IPC"). However, appellant suffered conviction u/s 323 IPC and he was released on probation u/s 4 of the Probation of Offenders Act (hereinafter referred to as "Act").

3. Succinctly, case of the respondent Bank in defence is that victim Mr. B.P. Rao, the then Manager of the Branch was not happy with the working of the appellant and he had demanded appellant's explanation for not doing his duties satisfactorily and carefully. Appellant was also served with a memo demanding his explanation and thereafter Manager had sent the report to his seniors about the callous work and conduct of the appellant. On 4th July, 1978 in between 11:00 AM to 12:00 Noon, appellant entered the office of the Manager, abused him and asked him as to why he was harassing him. Appellant thereafter lifted an iron rod and hit it on the head of the victim few times. The victim got two bleeding injuries which were got stitched by a medical practitioner in the said area. An information was also sent to the police.

4. After conviction of the appellant, Assistant Deputy General Manager, Staff Section, Delhi Circle passed an order dated 4th June, 1980 dismissing the appellant from the service of the Bank under Chapter XI, Regulation 21, Clause (3), Sub-clause (a) and Clause (4) of the Code. Appellant represented against his dismissal to the higher authorities but his representations were rejected on the ground that since he had been convicted by a criminal court, hence, his dismissal was proper. This resulted into filing of the present suit by the appellant.

5. Appellant challenged the dismissal order on various grounds contending inter alia that procedure laid down in Chapter XI Regulations 7 to 20 of the Code, before awarding punishment, was not followed and the offence for which he was convicted did not involve any moral turpitude. The Executing Committee had a discretion under Regulation 21(3) either to dismiss the employee or to give him lesser punishment, as mentioned in Regulation 4 and such discretion has to be exercised in a fair and impartial manner. Appellant also raised a plea that after he was released on probation, the disqualification of conviction attached to him was released and the Bank could not have dismissed him from the service.

6. Trial Court formulated following two issues vide order dated 22nd March, 1984:

1. Whether the pltf. is stopped from raising dispute before the Civil court as alleged in Objection No. 2 of the WS? OPD.

2. Whether the dismissal of the pltf. vide order dt.4.6.90 is illegal, unjustified on account of grounds stated in the plaint? OPP

Vide detailed judgment dated 14th January, 2000, Civil Judge dismissed the suit.

7. Challenging the order of the Civil Judge, Appellant filed the first appeal bearing RCA No. 8/2000 before the Additional District Judge, Delhi. While concurring with the findings of the Civil Judge, First Appellate Court dismissed the appeal. Hence, this appeal.

8. Following substantial questions of law were formulated on 29th October, 2004:

1. Whether the offence said to have been committed by the Appellant u/s 323 of the IPC would amount to an offence of moral turpitude and if so, whether the Respondent was entitled to dispense with the inquiry in terms of Regulation 21 of Chapter XI of the Canara Bank Service Code?

2. Whether placing the Appellant on probation under the provisions of the Probation of Offenders Act would amount to conviction for an offence under the IPC?

3. Whether the order dated 4th June, 1980 dismissing the Appellant from service, as modified into an order of removal from service, was validly passed in accordance with law?

Substantial Question No. 1

9. Appellant has represented his case in person. It is submitted by him that he was found guilty for an offence punishable u/s 323 IPC only and holding him not of a bad character, he was released on probation under the Probation of Offenders Act. He also deposited the amount of Rs. 250/- as compensation payable to the injured and Rs. 100/- as cost of the proceedings and also executed the personal bond and surety bond as was directed. He submitted that the Board mechanically granted approval of dismissal and after getting the approval, Deputy General Manager dismissed the appellant from services vide order dated 4th June, 1980 without giving any show cause notice or any opportunity of hearing as representations were dismissed. He has further submitted that he could not have been dismissed from services without any enquiry having been held as per Canara Bank Service Code (for short "CBSC"). According to him, Appellate Court, therefore, failed to consider that an offence u/s 323 IPC falling under Delhi Petty Offence Rules is a summary trial case and did not involve any moral turpitude and indiscipline cannot be equated to immorality and therefore, it went wrong in dismissing the suit and changing the punishment from dismissal to removal from services. The court also failed to consider that the disciplinary authority had the power to inflict lesser punishment as per Regulation 21(3) (a) provided in Regulation 4 of CBSC.

10. Mr. Jagat Arora assisted by Mr. Rajat Arora counsel for the respondent has submitted that appellant had assaulted the Manager during banking hours causing him serious injuries and therefore, his act is an offence involving moral turpitude for which he has been convicted and sentenced by the Sessions Court. Therefore, his dismissal from services was in accordance with the Rules. He

further argued that as per Regulation 21 of Chapter XI of CBSC, the employee if convicted can be dismissed with effect from the date of his conviction, though he can also be given any lesser punishment mentioned in Regulation 4 of the Chapter. He has further submitted that no departmental enquiry was required to be conducted as per the Rules, once the appellant was prosecuted and convicted for an offence involving moral turpitude and therefore, respondent Bank rightly dismissed him from services without holding any departmental enquiry keeping in mind the conviction of the appellant.

11. Moral Turpitude is not defined in any Statute but this term frequently occurs in various Statutes. In legal concept, this is a conduct which is considered contrary to community standards of justice, honesty or good morals. It has been described as an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to the accepted and customary rule of right and duty between man and man. It is an act or behaviour that gravely violates moral sentiment or accepted moral standards of community and is of a morally culpable quality held to be present in some criminal offences as distinguished from others. Turpitude means a corrupt or depraved or degenerate act or practice. Moral turpitude refers generally to conduct that shocks the public conscience. Offences such as murder, voluntary manslaughter, kidnapping, robbery, aggravated assaults, breach of peace and disorderly conduct etc. involve moral turpitude. Conviction of crimes on moral turpitude may also disqualify someone from an employment opportunity. The precise definition of a crime that involves Moral Turpitude is not always clear.

12. In Pawan Kumar Vs. State of Haryana and another, Supreme Court interpreted moral turpitude as an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity. In the said judgment, Supreme Court referred to policy decision of Government of Haryana dated 2nd February 1973, accepting the recommendations of Government of India that ex-convicts who were convicted for offences involving moral turpitude should not be taken in Government service and its subsequent decision dated 17th /26th March, 1975 explaining the policy decision of 2nd February 1973, and modifying the earlier decision by streamlining determination of moral turpitude as follows:

...The following terms should ordinarily be applied in judging whether a certain offence involves moral turpitude or not:

(1) whether the act leading to a conviction was such as could shock the moral conscience of society in general.

(2) Whether the motive which led to the act was a base one.

(3) Whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society.

13. In *Bank of Maharashtra and Anr. v. Om Prakash Malvaliya* ILR 1997 II Del this Court discussed the dictionary meaning of the word "moral turpitude" i.e. word "moral" stands for "right and wrong conduct, virtues, moral lessons or principles", and "turpitude" stands for "wickedness". It referred to *Durga Singh v. The State of Punjab* (1) AIR 1957 Punjab wherein considering the facts the court defined "moral turpitude", it observed that:

The term "moral turpitude" is rather vague one and it may have different meanings in different contexts. The term has generally been taken to mean to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellow-man or to Society in general. It has never been held that gravity of punishment is to be considered in determining whether the misconduct involves moral turpitude or not.

14. This Court further observed in para 11 and 12 of the judgment as below:

(11) The test which can be applied for judging whether an offence does or does not involve "moral turpitude" can be summarised as follows:

(1) Whether the act leading to a conviction was such as could shock the moral conscience of society in general;

(2) Whether the motive which led to the act was a base one ;and

(3) Whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society.

(12) It is not possible to lay down any abstract standard which constitutes moral turpitude. There are certain criminal offences like theft, robbery, criminal breach of trust, misappropriation of property, which directly involve moral turpitude. In such cases, no elaborate investigation is required to find out the depraved conduct of the delinquent employee. If the offence does not show any element of vileness, depravity and weakness of character of the offender, the disciplinary authority is required to consider the facts and circumstances of the case to find out whether the motive which led to the conviction was deprave. It is a settled law that "moral turpitude" cannot be applied in its widest term. However, the ratio decidendi of the various cases indicate that the question whether a certain offence involves "moral turpitude" or not will necessarily depend on the circumstances in which the offence is committed. It is not in every punishable act that can be considered to be an offence involving moral turpitude. Any criminal conviction per se does not amount to "moral turpitude". So it follows that when an employee is convicted on criminal charge his dismissal cannot be automatic, unless, there is specific rule in that regard.

15. Now, it is to be seen if an offence u/s 323 IPC for which appellant was convicted involved moral turpitude, within the ambit of Regulation 21 of CBSC, for initiation of departmental enquiry against the appellant employee and for taking steps to prosecute him.

16. It is argued by the appellant that his conviction u/s 323 IPC does not involve moral turpitude because indiscipline cannot be equated to immorality. He has referred to Delhi Petty Offences Rules 1998, Rule 2, 3 (a), 11(2) and 12. True that an offence u/s 323 IPC falls in the definition of petty offence under this Rule. These Rules are applicable to petty offences triable by Special Metropolitan Magistrates. Special Magistrate is empowered to exercise same powers as conferred by the Criminal Procedure Code on Metropolitan Magistrates.

17. For the purposes of present appeal, it is irrelevant that conviction of the appellant u/s 323 IPC was for a petty offence. The fact remains he was convicted in a trial conducted by the Additional Sessions Judge for an offence u/s 308 IPC and finding him guilty of lesser offence, he convicted him accordingly. What is relevant is whether an offence u/s 323 IPC involves moral turpitude.

18. In its legal sense, everything done contrary to justice, honesty, modesty, or good morals is moral turpitude. Although a vague term, it implies something immoral in itself, regardless of its being punishable by law. (Reference is made to Black's Law Dictionary, Fifth Edition). "Moral turpitude" cannot be applied in its widest term. Whether a certain offence involves "moral turpitude" or not will necessarily depend on the circumstances in which the offence is committed. Any criminal conviction per se does not amount to "moral turpitude" so, when an employee is convicted on criminal charge, his dismissal cannot be automatic, unless, there is a specific rule in that regard.

19. In the instant case, appellant was convicted for an offence u/s 323 IPC. Charges against the appellant were that on 4th July, 1978 during banking hours, while working as Clerk in Kamla Nagar Branch of the Bank, being dissatisfied with his work, Manager Mr. B.P.Rao, called him and advised him to improve his work, lest he would report the matter to the Circle Office. On hearing this, appellant got angry and lost his temper, he shouted at the Manager. It seems that he left the office of the Manager and came back to his cabin and slapped him on his face. Not only this, appellant hit him on his head with a wooden board/ iron rod and caused him head injuries. He was charged with an offence u/s 308 IPC. After trial, court convicted him for an offence u/s 323 IPC. Therefore, appellant was convicted for voluntarily causing simple hurt on the person of the Bank Manager, Mr. B.P.Rao.

20. Thus, it is clear that appellant while on duty as a Clerk of the Bank, which is a public institution, not only misbehaved with the Manager but also caused him injuries on his person by slapping him and hitting him on his head, resulting into two bleeding injuries on his head. This indecent behaviour of the appellant in the Bank premises during office hours, whereby he not only shouted at the Manager but also caused him physical injuries on his head, slapped him in presence of the customers and other employees involve moral turpitude. Other employees of the Bank, under the circumstances, would have no respect for such a Manager whose Clerk could misbehave with him and assault him in their presence and in the presence of the customers. There was no provocation except that appellant was

counselled by the Manager to do his official duties carefully. His indecent behaviour must have been looked down upon by his colleagues and other employees of the Bank in particular and by public who visited the Bank to transact business in general.

21. As discussed above, "moral" stands for "right and wrong conduct". Conduct of the appellant, in this case, was not only wrong but was such which everyone would look down upon. He had no right to go back to the cabin of the Manager after coming out of it and then slapping and assaulting him. His behaviour, therefore, was a case of perversity and has to be called "moral turpitude." It is not material that he was convicted for an offence u/s 323 IPC. It is his behaviour as a subordinate towards his senior which constitutes "moral turpitude". No subordinate can be allowed to behave in an indecent manner and physically assault his senior in violation of office decorum and discipline. If appellant had any grievance against counselling or alleged reprimand by his Manager, he could have taken recourse to the Rule and procedure permissible as per Banking Regulations. Appellant was on public duty at the relevant time when he caused head injuries on the person of the Manager. His conduct obviously is inherently base, vile and depraved and his conviction based on such an act was such that could shock the moral conscience of society in general and his fellowmen in particular. There was no motive for the appellant to commit an offence. There was nothing left to be proved before the enquiring authority. Under the circumstances, Bank was not required to hold an enquiry.

22. Trial Court as well as the Appellate Court were, therefore, right in holding that moral turpitude was involved in the offence committed by the appellant u/s 323 IPC for voluntary causing injuries on the person of the Manager within the meaning of Regulation 21(1) of CBSC.

23. In *Bhagwati Prasad Tiwari v. Regional Manager Bank of Baroda and Ors.* MANU UP 1743/2004 where appellant was appointed as Chowkidar in the respondent Bank. During Holi festival, he had some altercation with his neighbour, who later on filed a criminal complaint and he was convicted u/s 325 IPC, it was held that conviction of the appellant u/s 325 IPC involved moral turpitude and therefore, he was rightly dismissed from service.

24. In *Omprakash Malviya's* case (supra), appellant was appointed as a Peon in the respondent Bank and was promoted as Daftri. He was arrested in a case under Sections 110 and 112 and convicted u/s 117 of the Bombay Police Act and the Bank, on the basis of his conviction, dismissed him from services. It was held by this Court that conduct of the appellant in office premises where he came in a drunken condition and used abusive and threatening language against his superiors amounted to moral turpitude.

25. Appellant has referred to *Dr. Naresh Agarwal and Ors. v. State of Rajasthan* 2001 (7) SLR 131 to emphasize that offence u/s 323 IPC being not an offence of moral turpitude, his services could not be terminated. In the said case, petitioner

was a student when certain disputes arose between the students' union during elections and some hot deliberations amongst the students took place, and it resulted into registration of an FIR u/s 323 IPC, which was compromised. However, petitioner was convicted u/s 147 IPC and was released under Probation of Offenders Act. He was selected to the post of Medical Officer on temporary adhoc basis. He was found suitable and was given appointment against regular vacancy. Subsequently, his services were terminated on the plea that on character verification it was found that he had been released on probation. Under the circumstances, this judgment is of no help to the appellant for the simple reason that the offence under Sections 323/147 IPC was committed by the petitioner as a student and not after his appointment as Medical Officer. Petitioner had furnished the character certificate from the Principle relating to period of six months prior to filing of the application as per Rule 12 of Rajasthan Medical Health Services Rules, 1963. It was, under those circumstances, that it was held that no moral turpitude was involved. Pawan Kumar's case (supra) was referred to and considered by the High Court of Rajasthan while allowing writ petition of the petitioner.

26. He has also referred to Jamil Ahmed Qureshi v. Municipal Council Katangi and Ors., 1991 Supp (I) SCC 302. It is not applicable to the facts and circumstances of the case as in the said case, under the Rules, if such a person was convicted of moral turpitude, his new employment in the company was barred and the said Rule was held valid. Here, in this case, this Court is not concerned with the vires of Regulation 21(a) of CBSC.

27. Another judgment referred to by the appellant is Haryana State Cooperative Supply & Marketing Federation Ltd. v. N.K. Sharma and Anr. 1997 SCC (L&S) 1766 in which the Apex Court held that where termination of service of an employee convicted by the competent court for an offence involving moral turpitude, the removal from service was valid. Thus judgment rather goes against the appellant. In this case, the Rules provided for termination of the appellant convicted by the Additional Sessions Judge for an offence involving moral turpitude and he was accordingly dismissed from services. Similarly, Allahabad Bank and Anr. v. Deepak Kumar Bhola 1997 (76) FLR 98 rather goes against the appellant. It was held that respondent had committed an offence involving moral turpitude and simply because ten years had elapsed was not sufficient to allow him to come back to the sensitive post.

28. To appreciate the question raised by the appellant in this appeal, whether respondent Bank could dismiss him from services without holding domestic enquiry merely on his being punished for an offence, it is necessary to look into CBSC. Chapter XI of the Code speaks of disciplinary action. Regulation 21 lays down in case of offences. So far as Regulation 21 is relevant, it reads:

21. PROCEDURE IN CASE OF OFFENCES.

(1) For the purpose of this Regulation the expression "offence" shall mean any

offence involving moral turpitude for which an employee is liable to conviction and sentence under any provision of law.

(2) (a) If in the opinion of the General Manager, any employee of the Bank has committed an offence, unless the employee be otherwise prosecuted, the General Manager may either himself take steps to prosecute the employee or get him prosecuted or direct any officer of the Bank competent to enquire into any misconduct of the said employee to take steps to prosecute the employee or get him prosecuted.

(b) If in the opinion of a Branch Manager any employee working under him in his branch, office or department, as the case may be, has committed an offence, he shall at once report the matter to the General Manager with full particulars. If it appears to the General Manager that there are prima facie grounds for the Branch Manager's opinion, he may, unless the employee be otherwise prosecuted, direct the Branch Manager to take steps to prosecute the employee or get him prosecuted.

(3) If on a prosecution instituted against an employee under Clause (2) of this Regulation (a) the employee is convicted, he may be dismissed with effect from the date of his conviction or be given any lesser punishment mentioned in Regulation 4 of this Chapter or be discharged as provided in Regulation 11 of this Chapter,

(b) ----

(4) For awarding punishment under Sub-clause (1) of Clause (3) of this Regulation no enquiry as prescribed by Regulation 7 and 9 of this Chapter shall be necessary. Any punishment under Clause (3) of this Regulation shall be imposed only by the Executive Committee. If no punishment is proposed to be imposed, the Committee shall pass an order to that effect.

(5) ----

(6) ----

Provided that if during the pendency of the enquiry the employee is put on trial the enquiry shall be stayed after which the provisions of Clause (3) of this Regulation shall apply.

Provided further that if the employee is put on trial after the conclusion of the enquiry but before the passing of the order thereon, the passing of the order shall be stayed after which the provisions of Clause (3) of this Regulation shall apply.

29. Thus, it is clear that General Manager has the power to take steps to prosecute an employee or get him prosecuted if an employee of the Bank has committed an offence, unless employee be, otherwise, prosecuted. In fact, if a prosecution is instituted against an employee and he is convicted, he can be dismissed from services with effect from the date of his conviction. Regulation 4

does permit the General Manager to impose lesser punishment on the delinquent official or discharge him as provided in Regulation 11. Fact remains that for awarding punishment under Sub-clause (a) of Clause 3 of this Regulation, no enquiry, as prescribed by Regulations 7 and 9 would be necessary. In case any enquiry is initiated against an employee, it has to be stayed if the employee is put on trial. After conclusion of the trial, provisions of Clause 3 of the Regulation would apply. Not only this, even if enquiry is complete and thereafter employee is put on trial, the department cannot pass an order on the enquiry and has to wait for the decision of the trial, after which, provisions of Clause 3 of this Regulation would apply.

30. Respondent Bank was within its right to stay the enquiry and wait for the result of the trial after appellant was put on trial for an offence u/s 308 IPC, though he was convicted for an offence u/s 323 IPC only. It was only after his conviction that, the Deputy General Manager for and on behalf of the General Manager sent a copy of the proceedings of the General Manager dated 4th June 1980, signed by him based on his conviction awarded punishment under Chapter XI Regulation 21 Clause 3 Sub-clause (a) read with Clause 4 of the said Regulations. Vide its meeting held on 27th May 1980, Board of Directors had permitted the dismissal of the appellant with effect from the date of his conviction by the Additional Sessions Judge. It is pertinent that after the charges were framed, charge sheet was submitted against the appellant but, no enquiry was conducted against him in view of the prosecution having been filed against him.

31. Appellant's appeal against dismissal order was also dismissed by the Appellate Authority. It is not in dispute that appellant, being an employee of the Canara Bank was governed by CBSC.

32. Thus, it is clear that respondent Bank followed the Regulations in its true sense and spirit while dealing with the case of the appellant. Bank was within its right to initiate an enquiry independent of the FIR having been registered against the appellant. It was only after a charge sheet was issued to the appellant that prosecution was lodged against him hence, pending prosecution, respondent stayed the enquiry proceedings as per Rules discussed above. The act on the part of the respondent, therefore, cannot be termed as violation of principles of natural justice. No show cause notice was required to be served upon the appellant and respondent Bank was entitled to dispense with the enquiry in term of Regulation No. 21. The dismissal was approved by the Executive Committee as per Regulation 21 Clauses 4 and 19 of CBSC.

33. Section 10(1)(b)(i) of the Banking Regulation Act says that if the conviction of an employee is based on an offence involving moral turpitude, such a person should be debarred from being engaged or allowed to continue in service of the Bank. This provision when read with Clauses 19.2, 19.3(a) and 19.3(b) of Bipartite Settlement read with Section 10(1)(b) of the Banking Regulation Act makes it further clear that when the opinion of the Manager an Employee has

committed an offence unless he be otherwise prosecuted, the Bank may take steps and prosecute him or get him prosecuted and in such a case he may also be suspended. If he is convicted, he may be dismissed with effect from the date of his conviction or be given any lesser form of punishment as mentioned in Clause 19.6 of the said settlement. It is pertinent that Regulation 21(1) of CBSC is identical in nature to clauses 19.2, 19.3(1) and 19.3(b) contained in the Bipartite Settlement as well as Section 10(1)(b) of the Banking Regulation Act. It has already been observed that appellant was convicted for an offence involving moral turpitude by abusing, slapping and hitting by a wooden board on the head of the Manager.

34. It is made clear that Article 311 of the Constitution is not applicable to the employees of a Bank and therefore, a Bank employee cannot take protection under the said Article because he is governed by the Bank's Regulations. Reference is made to *Kailash Nath Gupta Vs. Enquiry Officer, Allahabad Bank and Others*, . Article 311 of the Constitution gives protection to a civil servant from dismissal, removal or reduction in rank employed under the Union or a State, except, after an enquiry, in which he has been informed of the charges leveled against him and given a reasonable opportunity of being heard in respect of those charges. If such a person is found guilty after such enquiry, it is not necessary to give him any opportunity for making representation on the penalty imposed.

35. *Gurcharan Singh v. State of Punjab* 158 AISLJ VIII 1990 (2) is not applicable as the appellant was removed from services for being absent from duty without affording him an opportunity of being heard and he, being a civil servant, was not paid for the removal period.

36. In *Lady Dinbai Dinshaw Petit and Others Vs. The Dominion of India and Another*, the requisitioning authority passed an order without forming the opinion required by the Rules or acquired it for purpose other than mentioned in the Rule, it was held that such an order being without jurisdiction was invalid.

37. In *Baldev Krishan Sharma v. The State of Haryana* 1969 SLR (P&H) 249 appellant, who was governed under Punjab Civil Services Rules, was dismissed from services by Government of Haryana. Whereas Rules provided that he was to be dismissed by the Chief Engineer, it was held that the termination was in violation of Rule 14 of the said Rules and accordingly, the dismissal was set aside. Similarly in *Kasturi Rangachary v. Chairman, Food Corporation of India and Ors.* II L.L.J. AP 1980 under consideration were the questions whether the Appointing Committee is the Executive Committee, whether the Managing Director could impose a major penalty and also whether the Board of Directors did not have the power to order suspension and whether it could delegate the power to the Managing Committee, it was held that as per the Regulations governing the Corporation, Managing Director was neither competent to suspend the official nor competent to issue charge-memos or impose penalties so far as Category-I officers were concerned. However, in the instant case, appellant was a

Clerk and as per the Rules, General Manager had the power to impose major penalty upon the appellant. Hence, the above said rulings relied upon by the appellant have no relevance whatsoever to the circumstances of the case under consideration.

38. Amar Nath Sur v. General Manager, Northeast Frontier Railway and Ors. AIR 1969 A& N 112 also dealt with similar equation where an order of dismissal was passed by the General Manager with the approval of the Railway Board i.e. authority passing the order was the General Manager and the Railway Board was the appellate authority, it was held that authority passing the order could not be the approving authority. Similar were the observations in V.P.Gupta v. Union of India and Ors. 2005 (6) SLR 483 (P&H) .

39. Under the circumstances, Chandra Sen Sharma v. Superintending Engineer, Hydel (Ganga) Circle, Aligarh and Ors. II L.L.J. HC All 1965; T.C.Jose v. Chief Engineer, Kerala State Electricity Board 220 SLR 1989 (5); Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, ; The Punjab National Bank v. Their Workmen II L.L.J. 1953 and Union of India (UOI) and Others Vs. R. Reddappa and Another, relied upon by the appellant, are not applicable to the facts and circumstances of the case in hand as in none of these cases, employee faced criminal prosecution and therefore, it was found necessary that a proper opportunity of being heard was required to be given to the employee and enquiry was required to be conducted in accordance with procedure and rules governing the delinquent official.

40. Another judgment relied upon by the appellant is Sirsi Municipality by its Sirsi Municipality by its President Sirsi Vs. Cecelia Kom Francis Tellis, therein public employment was distinguished from private employment and it was observed that courts are required to keep the State and Public Authorities within the limits of their statutory powers. Where a State of a Public Authority dismisses an employee in violation of the mandatory procedural requirements or on grounds which are not sanctioned or supported by the Statute, the court has the power and jurisdiction to declare the act of dismissal to be a nullity. Whereas in private employment, cases are purely of master and servant relationship.

41. Reliance is placed by the appellant on Gulzar Vs. State of M.P., it has no relevance to the facts and circumstances of this case as in that case release of the convict, an individual on probation was considered under the provisions contained in Sections 3 and 4 of the Act and Section 360 IPC. Convict was neither an employee of the Government nor of the Bank or any other authority.

42. Appellant has also referred to State of Kerala v. Mohanan 2002 (2) SLR 368 where respondent stood dismissed from services in view of his conviction in a criminal offence without holding a departmental enquiry or providing him a reasonable opportunity, it was observed that dismissal was bad. This judgment is of no consequence as respondent was entitled to protection under Article 311 of the Constitution of India and accordingly was entitled to a departmental enquiry

before his dismissal from services.

43. Appellant has referred to Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others, therein an order for dismissal was passed by an authority higher than the disciplinary authority i.e. the appellate authority, it was held that the employee concerned was deprived of the remedy of appeal, which was a substantive right given to him by the Rules and Regulations. This is not the case of the appellant in the present case.

44. D.P. Bambah v. Union of India and Ors. 1998 (4) AD (Del) 240 relied upon by the appellant equally has no application to the present case as in the said case, there was substantial delay in issuing the charge sheet in initiating action against the employee. It was observed that since there was no valid reason for the delay, the charge sheet was liable to be quashed. In this case there was no delay in initiating action against the appellant.

45. In the instant case, appellant was dismissed by the disciplinary authority and he filed an appeal against the dismissal order before the appellate authority which was also dismissed. While dismissing him from services, there was no violation of the Rules governing the appellant by the Bank. Therefore, none of the aforesaid cases are applicable to the present case

46. Appellant has referred to Moman Singh v. State of Haryana and Ors. 1989 (7) SLR 524 where accused was convicted of offence under Sections 323 and 325 IPC, he was dismissed from services after conviction and subsequently released on probation. Since Moman Singh's case was entitled to an enquiry being a State employee, his dismissal was set aside as he was not granted any opportunity of being heard. In the said case, it was also held that conviction for offence under Sections 323/325 IPC did not involve any moral turpitude and therefore, he should have been given an opportunity of being heard. Allegations against Moman Singh in the criminal case do not find mention in the order. It has already been observed that the offence committed by the appellant involves moral turpitude, therefore, this judgment is distinguishable in the facts and circumstances of this case.

47. In The Scheduled Caste and Weaker Section Welfare Association (Regd.) and others Vs. State of Karnataka and others, it was observed that where there is nothing in the Statute to actually prohibit the giving of an opportunity to be heard, but on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding, that the audi alteram partem rule could be imported. It was also observed that what particular rule of natural justice should apply to a given case must depend to an extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the body of person appointed for that purpose. In the case in hand, respondent Bank proceeded in accordance with CBSC and dismissal of the appellant was based on his conviction in a criminal case.

48. Another case relied upon by the appellant is Prasanta Kumar Ghose v. The

State of Bihar and Ors. 1971 Lab. I.C. 1584 (V 4 C 388) wherein appellant was discharged from service on the ground of moral turpitude on the basis of a report of the Enquiry Officer without giving him an opportunity of defending himself, it was observed that the proposed action suffered from inherent defect and must be quashed as appellant was entitled to enquiry as per Article 311 of the Constitution. Appellant in the said case did not face any criminal prosecution.

49. Management of Aurofood Pvt. Ltd. Vs. S. Rajulu, relates to dismissal of a workman under the Industrial Disputes Act. In Delhi Transport Corporation v. DTC Mazdoor Congress 1991 L.L.J. (1) 395 (SC); Delhi Road Transport Authorities Rules were under consideration and the dispute related to Industrial Disputes Act. None of the respondents were involved in any criminal prosecution. Therefore, these cases have no bearing to the facts and circumstances of the case in hand.

50. Similarly, S.L. Kapoor Vs. Jagmohan and Others, ; Chinthanuru Sivaiah v. Southern Power Distributions Company of A.P. Ltd. Tenali and Anr. 2003 (99) FLR 357; Gammon India Limited Vs. Niranjan Dass, relied upon by the appellant are not relevant as they relate to retrenchment of an employee under the Industrial Disputes Act.

51. Similarly under these circumstances, Krishna Gopal Pandey v. Food Corporation of India 1990 II LLN 26; Sudhir Ranjan Halder v. State of West Bengal and Anr. AIR 1961 Cal 626 (V 48 V121); Bhaskar Patra v. Chairman-cum-Managing Director, Punjab & Sind Bank and Ors. Orissa 2000 (I) LLJ 262; Dr. Dattatraya Mahadev Nadkarni (since deceased by his L. Rs.) Vs. Municipal Corporation of Greater Bombay, ; Harbans Singh Iqbal Singh v. State of Punjab AIR 1962 Punjab 289 (V 49 C 77) and Srinivasari (R.) v. President, District Board, Coimbatore L.L.J. HC Mad 1958 referred to by the appellant have no bearing on this case.

52. Appellant has submitted that respondent Bank should have continued with the disciplinary proceedings pending the criminal proceedings and afforded him a fair opportunity to meet the charges levelled against him. He has referred to Indian Overseas Bank, Anna Salai and Anr. v. P. Ganesan and Ors. ; Mohammad Kamil Sindglkar v. Divisional Controller, NWKETC, Bijapur and Anr. 2001 LLR 228 Kar HC; Sitaram Kewat and Another Vs. Coal India Ltd. and Others, and Anupama Naik Vs. The Standard Chartered Bank, Mr. Francis Alphonso, Advocate and Ms. Rita Joshi, Advocate, .

53. In A. Sundaram v. Pallavan Transport Corporation Ltd. I L.L.J. 1987 it was held that if the subject matter of the charge levelled against the appellant in the departmental enquiry and the subject matter of the enquiry before the Criminal Court relate to the same subject matter, then the conviction by the Criminal Court can be taken as the basis for holding the appellant guilty of the charge levelled against him without an enquiry on the charge. It is only if the charge levelled against the employee in the departmental enquiry and conviction by the

criminal court related to two different matters, the employee cannot be held to be guilty of the charge levelled against him and therefore, punishment of removal from service cannot be imposed on him on the basis of criminal prosecution.

54. In the instant case, charges in the departmental enquiry and the subject matter of the enquiry before the criminal court related to the same subject matter and therefore, respondent was within its right to stay the departmental proceedings awaiting the result of the criminal prosecution in terms of Regulation 21.

55. In P. Ganesan's case (supra), official continued to take adjournments in the departmental enquiry and failed to produce his evidence and at the same time sought stay of the departmental enquiry pending criminal case. Noting the conduct of the respondent, it was held that the departmental proceedings should not have been stayed. In the instant case, after the charge sheet was issued to the appellant, departmental enquiry was not further continued in view of criminal case having been filed against the appellant. Equally, Mohammad Kamil Sindglkar, Sitaram Kewat and Anupama Naik's (supra), in view of specific provisions contained in CBSC are of no assistance to the appellant.

56. It is concluded that offence committed by the appellant u/s 323 IPC amounted to an offence of moral turpitude and the respondent Bank was entitled to dispense with the enquiry in terms of Regulation 21 of Chapter XI of CBSC.

Substantial Question No. 2

57. Appellant has submitted that after he was convicted u/s 323 IPC, he was granted benefit of Section 4 of the Probation of Offenders Act (hereinafter referred to as the "Act") and therefore, by virtue of Section 12 of the Act, disqualification of Regulation 21 Clause (1) of CBSC read with Section 10(1)(b) of the Banking Regulation Act, attached to the conviction was removed. Respondent Bank, therefore, erred in dismissing him from services on the basis of his conviction u/s 323 IPC unmindful of his release on probation.

58. Appellant emphasized that the Appellate Court failed in appreciating that he was released on probation u/s 4 of the Act and therefore, by virtue of Section 12 of the Act his conviction could not have been considered as a disqualification by the respondent Bank to remove him from services.

59. It is argued on behalf of the Respondent Bank that provisions of Section 12 of the Act are not applicable in every case where a convict is released on probation. The words "shall not suffer disqualification" would apply only in respect of a disqualification that goes with a conviction under law which provides for the offence and its punishment. Under the facts and circumstances of this case, dismissal of the appellant from services consequent upon a conviction is not a disqualification within the meaning of Section 12 of the Act and therefore, Bank was within its right to award the penalty of dismissal upon the appellant

from the date of his conviction.

60. Section 12 of the Act reads:

12. Removal of disqualification attaching to conviction.-

Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who, after his release u/s 4, is subsequently sentenced for the original offence.

61. A person who is found guilty of an offence and is dealt with under the provisions of Probation of Offenders Act is not subject to any disqualification or disability flowing from conviction of an offence under any enactment. The Section, however, does not preclude departmental proceedings. In the departmental proceedings, delinquent could be dismissed or removed or reduced in rank on the ground of conduct which led to his conviction on a criminal charge. Section 12 removes a disqualification attached to a conviction, neither liability to be departmentally punished for misconduct is a disqualification, nor it attaches to the conviction. This Section does not wash away the misconduct of the Government servant nor it is intended to exonerate a Government servant of his liability to departmental punishment. This provision does not afford immunity against disciplinary proceedings for the original misconduct. What forms basis of the punishment is the misconduct and not the conviction. In a criminal trial, conviction for an offence is one thing and sentence is another. Therefore, release of an offender on probation under Sections 3 or 4 of the Act does not wash away his act of misconduct leading to the offence or his conviction thereon as per law.

62. In Union of India and others Vs. Bakshi Ram, scope of Section 12 of the Act has been considered by Supreme Court:

8. It will be clear from these provisions that the release of the offender on probation does not obliterate the stigma of conviction. Dealing with the scope of Sections 3, 4 and 9 of the Probation of Offenders Act, Fazal Ali, J. in The Divisional Personnel Officer, Southern Railway and Anr. v. T.R. Chellappan etc. (1975) 25 LR 587 speaking for the court observed:

These provisions would clearly show that an order of release on probation comes into existence only after the accused is found guilty and is convicted of the offence. Thus the conviction of the accused or the finding of the Court that he is guilty cannot be washed out at all because that is the sine qua non for the order of release on probation of the offender. The order of release on probation is merely in substitution of the sentence to be imposed by the Court. This has been made permissible by the Statute with a humanist point of view in order to reform youthful offenders and to prevent them from becoming hardened criminals. The provisions of Section 9(3) of the Act extracted above would clearly show that the

control of the offender is retained by the criminal court and where it is satisfied that the conditions of the bond have been broken by the offender who has been released on probation, the Court can sentence the offender for the original offence. This clearly shows that the factum of guilt on the criminal charge is not swept away merely by passing the order releasing the offender on probation. Under Sections 3, 4 or 6 of the Act, the stigma continues and the finding of the misconduct resulting in conviction must be treated to be a conclusive proof. In these circumstances, therefore, we are unable to accept the argument of the respondents that the order of the Magistrate releasing the offender on probation obliterates the stigma of conviction.

As to the scope of Section 12, learned Judge went on (at 596):

It was suggested that Section 12 of the Act completely obliterates the effect of any conviction and wipes out the disqualification attached to a conviction of an offence under such law. This argument, in our opinion, is based on a gross misreading of the provisions of Section 12 of the Act, the words "attaching to a conviction of an offence under such law" refer to two contingencies: (i) that there must be a disqualification resulting from a conviction and (ii) that such disqualification must be provided by some law other than the Probation of Offenders Act. The Penal Code does not contain any such disqualification. Therefore, it cannot be said that Section 12 of the Act contemplates an automatic disqualification attaching to a conviction and obliteration of the criminal misconduct of the accused. It is also manifest the disqualification is essentially different in its connotation from the word "misconduct".

9. In criminal trial the conviction is one thing and sentence is another. The departmental punishment for misconduct is yet a third one. The Court while invoking the provisions of Section 3 or 4 of the Act does not deal with the conviction; it only deals with the sentence which the offender has to undergo. Instead of sentencing the offender, the Court releases him on probation of good conduct. The conviction however, remains untouched and the stigma of conviction is not obliterated. In the departmental proceedings the delinquent could be dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; See Article 311(2)(b) of the Constitution and *Tulsiram Patel case* 1985 (1) Supp. 2 SCR 131.

10. Section 12 of the Act does not preclude the department from taking action for misconduct leading to the offence or to his conviction thereon as per law. The section was not intended to exonerate the person from departmental punishment. The question of reinstatement into service from which he was removed in view of his conviction does not therefore, arise. That seems obvious from the terminology of Section 12. On this aspect, the High Court speak with one voice. The Madras High Court in *R.Kumaraswami Aiyer v. The Commissioner, Municipal Council Tiruvannamalai and Anr.* (1957) CrL. L.J. 225 and *Embaru (P) v. Chairman Madras Port Trust* (1963) 1 LLJ 59. the Andhra Pradesh High Court in *Akella Satyanarayana Murthy Vs. Zonal Manager, Life Insurance Corporation of*

India, Madras, ; the Madhya Pradesh High Court in Prem Kumar v. Union of India and Ors. (1971) Lab IC 823; the Punjab & Haryana High Court in Om Prakash v. The Director Postal Services (Post and Telegraphs Deptt.) Punjab Circle, Ambala and Ors. (1971) 1 SLR 643. The Delhi High Court in Director of Postal Services Vs. Daya Nand, have expressed the same view. This view of the High Courts in the aforesaid cases has been approved by this Courting T.R. Challappan's case (1975) 2 SLR 587.

63. The order of release on probation is, therefore, merely a substitute of the sentence to be imposed by the Court which has been made permissible by the Statute with a view to reform youthful offenders and to prevent them from becoming hardened criminals. Under Sections 3, 4 and 6 of the Act, stigma continues and the finding of misconduct resulting in conviction has to be treated as a conclusive proof and therefore, release of the offender on probation does not obliterate the stigma of conviction. Section 12 of the Act, thus, is clear and it only directs that the offender "shall, not suffer disqualification, if any, attaching to a conviction of an offence under such law". Such law in the context is the other law providing for disqualification on account of conviction. For example, if a law provides for disqualification of a person for being appointed in any office or for seeking election to any authority or body in view of his conviction, that disqualification by virtue of Section 12 of the Act stands removed. That in effect is the scope and effect of Section 12 of the Act. However, it is not the same thing to state that the person who has been dismissed from service in view of his conviction is entitled to reinstatement upon getting the benefit of probation of good conduct. Apparently, such a view has no support by the terms of Section 12 of the Act.

64. Appellant has placed reliance on State of Madhya Pradesh v. Hazari Lal LLJ (2) 715 SC to emphasize that since he has been convicted u/s 323 IPC and has been released on probation, he is entitled to benefit of Section 12 of the Act and consequent reinstatement in service. In the said case, respondent, who happened to be merely a contingency peon, was convicted for an offence u/s 323 IPC read with Section 34 IPC. He assaulted one Ram Singh, under the force of adverse circumstance as he had held back the money payable to Ram Singh. He was granted probation to protect him from being dismissed or otherwise dealt with by the Bank on the strength of the conviction. It was under that circumstance that Supreme Court upheld the order of the Tribunal setting aside the punishment of removal from services being grossly excessive because, the punishment was only u/s 323 IPC and the said offence did not involve any moral turpitude.

65. Another judgment relied upon by the appellant is Asutosh Kumar Manoj v. State of Bihar 2002 (1) JCC 148 (SC) wherein Supreme Court awarded benefit of Section 12 of the Act, keeping in mind that appellant had a handicapped son and for that purpose to protect him from being dismissed or otherwise dealt with by the Bank on the strength of the conviction.

66. Shankar Dass v. Union of India and Anr. has been dealt with by the Supreme Court in Karam Singh Vs. State of Punjab and another, . It was held:

2. ...It is true that this Court in Shankar Dass Vs. Union of India (UOI) and Another, SC had held that on acquittal and release on probation u/s 12 of the Probation of Offenders Act, 1958, the authorities are entitled to consider on the facts in each case whether the appellant therein could be reinstated into the service. It is to be remembered that conviction is one part of it and release on probation is another. Later part only enables the delinquent not to undergo the sentence on showing his good conduct during the period for which probation was granted. Suppose during the period of probation, he commits another offence, then his probation gets terminated and he would be liable to undergo the sentence. When a civil servant is convicted for an offence, it is his misconduct that led to the dismissal. The conviction in this case is on the ground of his participation in causing the death of and causing injury to one person. Though he was acquitted of the offence of murder, he being a constable at the relevant time and being a disciplined member of the force, he was not expected to participate in the commission of crime; instead, he was expected to prevent the commission. In Shankar Das's case (supra), it was held that since opportunity was not given before taking the decision, the removal from service was held not valid in law.

67. Relying upon Bakshi Ram's case (supra), it was observed that appellant being member of disciplined police force, authorities were justified in rejecting his reinstatement. However, penalty of dismissal was converted into one of removal from service.

68. In Additional D.I.G. of Police, Hyderabad v. P.R.K. Mohan, (1997) 11 SCC 571 respondent was convicted under Central Reserve Police Force Act and was dismissed from services. However, he was given benefit of probation u/s 4 of the Probation of Offenders Act. It was observed that Section 12 of the Act did not preclude the department from taking action for misconduct leading to the offence or to his conviction thereon as per law. The section was not intended to exonerate the person from departmental punishment. This Section only directed that offender shall not suffer disqualification, if any, attaching to conviction for an offence under such law. It was also observed that merely because a sentence of imprisonment has been substituted to an order passed u/s 12 of the Act, the effect of conviction is not obliterated altogether and it was open to the authority to take departmental proceedings thereof. The Court upheld the dismissal order.

69. In Swarn Singh v. State Bank of India, 1986 (Supp) SCC 566 it was observed that State Bank of India could take recourse to Section 10(1)(b) of the Banking Regulations Act, in directing the removal from service of the employee upon his conviction u/s 61(1)(a) of Punjab Excise Act, as he was guilty of conduct which led to his conviction by the criminal court involving moral turpitude.

70. Similarly, in Harichand Vs. The Director of School Education, wherein

appellant was convicted for an offence u/s 408 IPC but was released on probation, it was held that where the law provides for an offence and its punishment, also stipulates a disqualification, a person convicted of the offence but released on probation, does not by reason of Section 12 suffers disqualification. It was further held that therefore, it cannot be held that by reasons of Section 12, a conviction for an offence should not be taken into account for the purpose of dismissal of a person convicted from government service. Reference is also made to Union of India Vs. Kasturi Lal, .

71. In Zonal Mgr. & Disciplinary Authority, Indian Bank and Anr. v. Parupurreddy Satyanarayana II (1990) BC 308; Aitha ChanderRao v. State of Andhra Pradesh; The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, ; S. Manickam v. Superintendent of Nilgiris and Ors. AIR 1964 Mad 375 (V 51 Court 115); Amar Pal Singh v. State of U.P. 4 (1997) CCR 392 and Ranjit Paul v. The State of Punjab 1984 (3) (P.& H.) 327 relied upon by the appellant are no longer good law in view of subsequent judgments of the Supreme Court, as discussed above.

72. In Haryana State Cooperative Supply & Marketing Federation Ltd. v. N.K. Sharma and Anr. 1997 SCC (L&S) 1766 employee was convicted for an offence under Sections 406/468/420/471 IPC and accordingly he was dismissed from service, his termination was upheld.

73. In the case in hand, offence u/s 323 IPC did involve moral turpitude as discussed above and there was no compelling circumstance that appellant indulged into abusing, slapping and physically assaulting his superior during Bank hours. The disciplinary authority of the Bank, therefore, was justified in dismissing the appellant from services by invoking provisions of Section 10(1)(b) of the Banking Regulations Act read with Clause 19.3(b) of the Bipartite Settlement and Regulations of CBSC. Hence, benefit of Section 12 of the Act as such would not be available to the appellant under the facts and circumstances of the case because, stigma and disqualification attached to the conviction would continue.

Substantial Question No. 3

74. In view of my observations on substantial questions No. 1 and 2, I conclude that order dated 4th June 1980, dismissing the appellant from service from the date of his conviction as modified by the Trial Court into an order of removal from service is legal and valid as it is in conformity with the Rules and Regulations governing the service conditions and code of conduct of the appellant as well as the precedents of law, as discussed above.

75. Respondent Bank was within its power to dismiss the appellant on the basis of his conviction for an offence involving moral turpitude after he was released on probation u/s 4 of the Act, as benefit of Section 12 of the Act was not available to the appellant. Penalty of dismissal was modified into one of removal from service by the Trial Court. In Karam Singh's case, penalty of dismissal was

altered to one of removal from service, which was followed by this Court in Om Prakash Malviya's case.

76. Hence, I hereby dismiss the appeal, being without any merits. Under the circumstances of the case there are no orders as to costs.