
(2004) 03 P&H CK 0074
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 18847 of 2001

S. Sheokand

APPELLANT

Vs

Oriental Bank of Commerce and Others

RESPONDENT

Date of Decision : 16-03-2004

Acts Referred:

Oriental Bank of Commerce Officer Employees (Discipline and Appeal) Regulations, 1982 — Regulation 19, 3(1)

Citation : (2004) 3 LLJ 453 : (2004) 137 PLR 372

Hon'ble Judges : S.S. Nijjar, J;Kiran Anand Lall, J

Bench : Division Bench

Advocate : Bhoop Singh, for the Appellant; Kanwaljit Singh, for the Respondent

Final Decision : Allowed

Judgement

S.S. Nijjar, J.—On 16.3.2004, we have passed the following order:-

"With the consent of the counsel for the parties, the writ petition is taken up for final disposal.

We have heard learned counsel for the parties. The writ petition is allowed. The impugned orders are quashed. Detailed reasons to follows."

We now proceed to set out the reasons.

2. While posted as Senior Manager in the Narwana Branch of the Oriental Bank of Commerce, Bahadurgarh (hereinafter referred to as "the Bank") the petitioner received a show-cause notice dated 26.2.1997 (Annexure P-1). It was alleged that the petitioner had unauthorisedly purchased third party cheques/drafts of huge amount beyond the discretionary powers of lending, without completing pre-sanction formalities. Thereafter, certain details have been narrated about the unauthorised acts allegedly committed by the petitioner. He was called upon to submit his explanation within 15 days of the receipt of the show-cause notice (Annexure P-1). The petitioner submitted the reply dated 12.4.1997 (Annexure

P-2). The petitioner claims that without considering the reply, the disciplinary authority-respondent No. 4, the General Manager (Personnel) of the Bank issued a charge-sheet dated 1.12.1997 (Annexure P-3). One S.P.N. Singh, Commissioner of Departmental enquiries, Central Vigilance Commission, Delhi was appointed as the enquiry Officer to enquire into the charges levelled against the petitioner. After completion of the evidence adduced by the presenting Officer as well as the petitioner, the Enquiry Officer directed the petitioner to file written defence brief (written arguments). The petitioner duly filed the written arguments dated 20.4.1999 (Annexure P-5) which were received by the Enquiry Officer on 26.2.1999. The Enquiry Officer submitted the report dated 26.2.1999 (Annexure P-6). It was communicated to the petitioner by letter dated 17.4.1999. The petitioner was directed to make representations/submissions in regard to the findings of the Enquiry Officer within 15 days thereof. The petitioner duly submitted the representation with regard to the findings of the Enquiry Officer through letter dated 4.5.1999 (Annexure P-7). By letter dated 20.6.1999 (Annexure P-8), the petitioner requested the disciplinary authority to make available to him copies of the correspondence/recommendations meant for second stage advice, and the advice so received or likely to be received from the Chief Vigilance Commission (hereinafter referred to as "CVC"), so that the petitioner is able to effectively make a representation on the recommendations prior to the stage of final disposal under Regulation 7 of the Oriental Bank of Commerce Officer Employees (Discipline and Appeal) Regulations, 1982 (hereinafter referred to as "1982 the Regulation"). The petitioner specifically pointed out that the documents are necessary so that his defence is not jeopardised and that he should not remain unrepresented. The petitioner wanted to ensure that nothing was done at his back, detrimental to the interest of his defence and in breach of rules of natural justice. In support of the submission, the petitioner relied on the law laid down by the Supreme Court in Civil Appeal No. 4813 of 1992 (arising out of SLP (C) 10168 of 1991) State Bank of India and others Vs. D.C. Aggarwal and another, . Copy of this letter was sent to respondent No. 5, Chief Vigilance Officer of the Bank. This was necessary as the Chief Vigilance Commission corresponds with the Bank through the Chief Vigilance Officer of the Bank-respondent No. 5. By letter dated 10.8.1999 (Annexure P-9), respondent No. 4 declined to furnish the copies of correspondence exchanged with the CVC. On 27.10.1999 an order of punishment (Annexure P-10) was passed by the Disciplinary Authority under Regulation 4(f) of the aforesaid 1982 Regulations. The punishment imposed was as follows:-

"Reduction to two stages low in the time scale of pay in MMGS-III with cumulative effect."

3. The existing pay of the petitioner was reduced from Rs. 9700/- to Rs. 9200/-. The petitioner complains that on the basis of the aforesaid punishment till date no increment has been released and he is still drawing basic pay of Rs. 9200/- only. The petitioner filed an appeal on 10.12.1999 (Annexure P-11) under Regulation 17 of the aforesaid 1982 Regulations. By letter dated 2.6.2000

(Annexure P-12), the petitioner was informed that the appeal filed by the petitioner has been considered by the appellate authority and rejected. Aggrieved against the aforesaid decision, the petitioner again wrote a letter on 12.8.2000 (Annexure P-13) to the disciplinary authority. It was requested that a copy of the order passed by the appellate authority be supplied to him so that he is in a position to seek his remedies, according to law. By letter dated 23.11.2000 (Annexure P-15), the petitioner was sent a copy of the order passed by the appellate authority on 2.6.2000. The appellate authority passed the order rejecting the appeal of the petitioner on 2.6.2000 which reads as under:-

"ORDER: I do not wish to interfere.

Sd/- 2.6.2000 Chairman & Managing Director Appellate Authority."

4. Under Regulation 18, the petitioner was entitled to the remedy of review. The powers of review are to be exercised by the Chairman and Managing Director. The Appellate Authority was the Executive Director. In spite of the fact that the order on the appeal of the petitioner had been passed by the reviewing authority, he still filed a review petition (Annexure P-16) to the Board of Directors on 27.1.2001. It was requested that since the process of promotion from MMGS-III to SMGS-IV was likely to set in motion in near future, the review petition be decided within 15 days. The petitioner was senior most MMGS-III Officer in Rohtak Region, but he was not called for interview due to the order of punishment in view of paragraph 1(1.2)(ii) of the promotion policy which provides as under:-

"1. Eligibility for promotion.

1.1 --

1.2 Notwithstanding anything stated above:

i) --

ii) Any Officer employees in respect of whom a major penalty is awarded shall not be considered eligible for promotion for a period of three years from the date of punishment."

5. During the pendency of the enquiry proceedings, the petitioner was called for interview for promotion to SMGS-IV on 26.6.1999, but he was ignored due to the pendency of enquiry proceedings against him. It is provided in the promotion policy that the officers against whom enquiry proceedings are pending shall be permitted to participate in the promotion exercise. The course of action in this respect, of such Officer shall be decided as per sealed cover procedure. Ignoring the aforesaid provision, the petitioner was ignored for promotion and about 20 persons junior to him, namely, Hardeep Singh, Mohan Prashad, Prem Parkash Katyal, Amarjit Singh Gill, K.K. Wadhawa etc. were promoted. Aggrieved against the orders (Annexures P-10 and P-15), the petitioner filed CWP No. 4116 of 2001. The aforesaid writ petition was disposed of on 28.3.2001 by a Division

Bench of this Court with a direction to the reviewing authority to consider and take action in accordance with law on the review petition filed by the petitioner within a period of three months of the receipt of a copy of the order from this Court or a certified copy thereof from the petitioner, whichever is earlier. Instead of deciding the review petition, the Board of Directors of the respondent-Bank filed an application for extension of time. This Court granted three weeks more time and the respondents were directed to pass the final order and communicate the same to the petitioner on or before 30.9.2001. The order passed by the Division Bench in the Civil Misc. Application is as follows:-

"Present: Mr. Bhoop Singh, Advocate for the writ petitioner. Mr. Kanwaljit Singh, Advocate for the Respondent-applicants. Counsel appearing on behalf of the Oriental Bank of Commerce has brought to our notice that a decision has already been taken to reduce the punishment afflicted upon the petitioner to a minor punishment. However, in view of certain formalities to be undertaken by the competent authority, it is not possible at this stage to pass a final order. Accordingly, three weeks time is sought to enable the respondents to pass the final order. Accordingly, Civil Misc. Application is allowed. The respondents are directed to pass the final order and to communicate the same to the petitioner on or before 30.9.2001.

Sd/- J.S. Khehar, Judge. Sd/- Adarah Kumar Goel, Judge. August 30, 2001.

6. The petitioner thereafter received letter dated 29.9.2001 (Annexure P-20) that the reviewing authority i.e. the Board of Directors of the Bank have considered the case of the petitioner in their meetings held on 20.7.2001 and 29.9.2001 and the review petition has been declined. By letter dated 17.10.2001 (Annexure P-21), the petitioner requested the Bank to supply him the copy of the order passed by the reviewing authority. The petitioner received a communication from the Bank dated 25.10.2001 (Annexure P-22) which is as follows:-

"With reference to your letter dated 17.10.2001, we append below the observations made by the Board of Directors of the Bank i.e. Reviewing Authority on the review petition filed by you for your information.

"Noted. The Board desired that the advice of the CVC be implemented."

7. The petitioner has filed the present writ petition under Articles 226/227 of the Constitution of India seeking the issuance of a writ in the nature of Certiorari for quashing the impugned orders (Annexures P-10, P-15, P-20 and P-22) by respondents No. 4, 3 and 2 respectively. The petitioner also seeks the issuance of a writ in the nature of Mandamus directing the respondents to promote the petitioner from MMGS-III to SMGS-IV from the date when his juniors were promoted in June 1999 with all consequential benefits.

8. The respondents have filed written statement. It has been stated that the petitioner had not only admitted the allegations made against him but also offered his explanation for the lapses. Due to these unauthorised acts, the Bank

was exposed to risks running into crores of rupees. The norms of the Bank were not followed by the petitioner as he went beyond the powers to accommodate the parties, whose names were specifically mentioned. Therefore, to say that the Bank has not suffered any loss, does not show that the petitioner has not committed lapses for which he has been punished. It is further stated that the articles of charge clearly show that the petitioner had accommodated number of parties beyond his discretionary powers of lending and without complete pre-sanction formalities in violation of the guidelines. An independent Enquiry Officer was appointed who was not a Bank employee, to enquire into the charges levelled against the petitioner as provided under Regulation 6(2). The petitioner was given full opportunity to defend himself and even to make the written submissions. The petitioner had addressed a letter to the Bank in which he accepted unauthorised purchases with an assurance not to repeat the same in the future. According to the respondents, the charges levelled against the petitioner were very serious as he violated the guidelines and entered into unauthorised acts which were not legal and not as per the circulars issued by the Head Officer which were exhibited as S-27 and S-28. These circulars laid down the discretionary powers of the Branch incumbent, according to which, the Branch Manager could purchase branch profits upto Rs. 30.00 lacs and for third party cheques he could purchase only upto Rs. 1.5 lacs. Even the Regional Officer could not condone these procedural lapses and misconduct. In the letter dated 19.12.1996, the Regional Manager has categorically stated that the acts of the branch in purchasing cheques/drafts involving a very large amount has exposed the bank to risk. It has further been mentioned that the Branch incumbent has now understood the gravity of such acts and has henceforth stopped indulgence in transgressing his powers. It is further stated that the Regional Manager has requested the General Manager to confirm the action "as a special case" by issuing a warning letter for the lapses committed and for its non-recurrence. It is denied that the disciplinary authority had disagreed with the findings of the Enquiry Officer as pleaded by the petitioner in paragraph 11 of the writ petition, without giving any notice to the petitioner. It is also stated that the order of punishment has been passed by the competent authority in accordance with law. Similarly, the Chairman and Managing Director has looked into the matter in appeal and after going through the same has passed the order (Annexure P-15) dismissing the appeal. Since the appeal was decided by the Chairman-cum-Managing Director, the review has been considered by the Board. With regard to the promotion, it is stated that sealed cover procedure was followed in the case of the petitioner. It is further stated that as per the banking procedure, there being "a vigilance angle" involved in the case and petitioner being a scale-III Officer, the CVC had to be consulted by the Bank. However, the Board of Directors formed their opinion upon the advice of CVC and accordingly looked into the same in an impartial manner, which is proved by the majority of the Board members.

9. Mr. Bhoop Singh, learned counsel appearing for the petitioner has submitted

that the action of the respondents is violative of the regulations, the rules of natural justice as well as the promotion policy of the respondent-Bank. Accordingly to the learned counsel, the proceedings have been deliberately dragged on by the respondents. Even though the action taken by the petitioner had been recommended to be confirmed as a special case by the Regional Manager by his letter dated 19.12.1996 (Annexure P-17), the respondents have arbitrarily imposed the punishment under Regulation 4(f). In the aforesaid letter, it was quite categorically proposed that a warning letter be issued to the petitioner for the lapses committed and for its non-occurrence. This advice was totally ignored by the respondents and the proceedings have been conducted with the biased mind, which commenced with the issuance of the show-cause notice dated 26.2.1997. Mr. Bhoop Singh has further submitted that since the recommendations made by the Regional Manager were never rejected, the same are deemed to be confirmed, under paragraph 21 of the guidelines contained in Vigilance Manual and Special Chapter on Vigilance Management in public sector banks vis-a-vis the role and function of the CVC. The articles of charge framed against the petitioner are as follows:-

"ARTICLES OF CHARGES FRAMED AGAINST SH. S.S. SHEOKAND; ARM IN RESPECT OF UNAUTHORISED ACTS COMMITTED AT B/O NARWANA.

Charge No. 1

Shri S.S. Sheokand, ARM while posted an Incumbent Incharge at B/o Narwana (December, 1992 to April, 1997) had unauthorisedly purchased 3rd party cheques/drafts of huge amount for a number of parties much beyond his discretionary powers of lending and without completing pre-sanction formalities in violation to Head Officer guidelines. During the period April 1995 to August 1996 he unauthorisedly purchased cheques/drafts aggregating to Rs. 45.23 crores as per details depicting at Annexure 1A.

By his above unauthorised acts Sh. Sheokand did not discharge his duties with integrity, devotion and diligence and acted in a manner which unbecoming a Bank Officer. Thus he Violated Regulation 3(1) Oriental Bank of Commerce Officer Employees (Conduct) Regulations, 1982 which read with Regulation 24 of the said Regulations constituted misconduct punishable under Oriental bank of Commerce Officer Employees (Discipline & Appeal) Regulations, 1982.

Charge No. 2

Shri S.S. Sheokand, ARM while posted as incumbent Incharge at B/o Narwana (December 1992 to April 1977) had released advances under Prime Minister Rojgar Yojna and unauthorised insisted such borrowers to provide collateral securities in the shape of immovable property and guarantee in violation of above scheme. The details of such borrowers is depicted at Annexure 1B.

By his above unauthorised acts Sh. Sheokand did not discharge his duties with integrity, devotion and diligence and acted in a manner which unbecoming a

Bank Officer. Thus he violated Regulation 3(1) Oriental Bank of Commerce Officer Employees (Conduct) Regulations, 1982 which read with Regulation 24 of the said Regulations constituted misconduct punishable under Oriental Bank of Commerce Officer Employees (Discipline & Appeal) Regulations, 1982."

10. Accordingly to Mr. Bhoop Singh, the misconduct alleged in charge-sheet stood ratified by the issuance of the letter dated 19.12.1996 (Annexure P17). Therefore, the whole action of the respondents-Bank thereafter was without jurisdiction, arbitrary and violative of article 14 of the Constitution of India. The learned counsel has also argued that even the Enquiry Officer in his report has held that there was no loss to the Bank and therefore, the unauthorised acts of the petitioner deserve to be treated as procedural lapses only. The Enquiry Officer also came to the conclusion that the charge of lack of integrity has not been substantiated. According to the learned counsel, procedural lapses do not fall within the definition of "misconduct" as defined under Oriental Bank of Commerce Officer Employees (Conduct) Regulations, 1982. Regulation 3(1) of the aforesaid Regulations, on the basis of which the charge-sheet has been issued reads as under:-

"3(1) Every Officer employee shall, at all times take all possible steps to ensure and protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank officer."

11. The actions of the petitioner, according to the learned counsel, were not actuated by malice. In fact, the effort of the petitioner was to exceed the targets set for the Officers, for earning revenue for the Bank. Mr. Bhoop Singh has pointed out that at the time when the petitioner joined the Branch at Narwana, it had earned an annual profit as on 31.3.1993 of Rs. 28.00 lacs and by March 31.3.1996, the profit earned by the Branch had reached at Rs. 133.00 lacs. This, according to the learned counsel for the petitioner, was due to the working of the petitioner with utmost devotion, diligence, honesty, integrity and dedication for protecting the interest of the bank. Instead of appreciating the efforts of the petitioner, he has been charge-sheeted, punished and humiliated. The Enquiry Officer having held that the petitioner had only committed procedural lapses, the respondents had referred the matter to the Central Vigilance Commission, without any justification. He refers to Regulation 19 of the 1982 Regulations which reads as under:-

"19. Consultation with Central Vigilance Commission: The bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle."

12. Learned counsel for the petitioner has further submitted that the order of punishment is vitiated as it is based on the recommendations of the Central Vigilance Commission and the petitioner has been condemned unheard. No opportunity of hearing was given by the CVC to the petitioner to put forward his

case, even though the findings recorded by the disciplinary authority, the appellate authority and the reviewing authority are based entirely on the recommendations of the CVC. Learned counsel has further submitted that a bare perusal of the order passed by the Board shows that the advice of the CVC has been implemented. The procedure adopted by the respondents is not fair. According to the learned counsel, the matter is squarely covered by a decision of the Supreme Court rendered in the case of D.C. Aggarwal (supra). Learned counsel has further submitted that the influence of the advice rendered by the CVC is also reflected in the punishment imposed which does not exist in the regulations. Learned counsel also refers to letters (Annexures P-18 and P-19) to show that the respondent-Bank has merely accepted the punishment proposed by the CVC. Learned counsel has further submitted that the order (Annexure P-15) passed by the Appellate Authority is liable to be quashed on the short ground that it is not a speaking order and suffers from the vice of non-application of mind. The learned counsel has also relied on a judgment of the Supreme Court rendered in the case of Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another, wherein the orders of punishment passed on the dictate of the central Vigilance Commission (CVC), were held to be vitiated.

13. On the other hand, learned counsel for the respondents-Bank has argued that the participation of the CVC is provided under the Regulations. He has also submitted that the petitioner was not exonerated by the Enquiry Officer. Merely because no financial loss has been caused to the Bank would not have the result of exonerating the petitioner. The penalty imposed on the petitioner is permissible under Regulation 4(f). Since the entire disciplinary proceedings have been conducted in accordance with the statutory regulations, the petitioner cannot complain of any breach of rules of natural justice. Merely because the matter has been referred to the CVC, cannot lead to the conclusion that the proceedings are vitiated by extraneous considerations. At all stages, the appropriate authority has considered the entire defence of the petitioner and only then punishment has been imposed upon him. Learned counsel has further submitted that since the petitioner was facing a departmental enquiry in the year 1999 when persons junior to him were promoted, the result with regard to his interview was kept in sealed cover. Since the petitioner was subsequently punished, the promotion order was not released. Learned counsel has, therefore, vehemently argued that the writ petition deserves to be dismissed.

14. We have considered the submissions made by the learned counsel for the petitioners.

15. We are of the considered opinion that the points of law raised by the petitioner in the present writ petition are no longer res integra.

16. The law with regard to the role of the Central Vigilance Commission (CVC) in matters pertaining to disciplinary proceedings conducted against the Officers of the Nationalised Banks, has been laid down by the Supreme Court in the case of

Nagaraj Shivarao Karjagi (*supra*). In that case, the Officer was charged with lack of integrity, honesty, devotion to duty, diligence and conduct unbecoming of the status of a Bank Officer in contravention of Regulation No. 3(1) of the Syndicate Bank Officer Employees (Conduct) Regulations, 1976. Enquiry was held in accordance with statutory regulations. Enquiry Officer held that the charges were proved against the petitioner. The Bank referred the matter to the CVC for advice and the CVC recommended that the petitioner be compulsorily retired from service by way of punishment. The disciplinary authority, after considering the enquiry report and affording an opportunity to the petitioner, imposed on the petitioner the penalty of compulsory retirement. The appeal filed by the petitioner was dismissed by the appellate authority. The writ petition filed by the petitioner was dismissed by the Bombay High Court, it was contended on behalf of the petitioner that the penalty of compulsory retirement has been imposed on him in obedience to the advice of the CVC which had been made binding on the punishing authorities of the Bank by direction dated 21.7.1984 issued by the Ministry of Finance, Department of Economic Affairs (Banking Division). Learned counsel for the respondent, however, submitted that notwithstanding the advice of the CVC and the direction dated 21.7.1984 of the Ministry of Finance, Department of Economic Affairs (Banking Division), the case of the petitioner has received the fullest consideration from the disciplinary and appellate authorities. They have independently considered the material on record, both on the articles of charges and also on the appropriate punishment of compulsory retirement imposed on the petitioner. The orders of the authorities do not refer to the Circulars of the Bank, nor to the punishment proposed by the CVC. It was, therefore, illegitimate to contend that punishment imposed on the petitioner has been vitiated by extraneous influences. Considering the submissions made by the parties, the Supreme Court observed as follows :-

"15. We are not even remotely impressed by the arguments of counsel for the Bank. Firstly, the Bank itself seems to have felt as alleged by the petitioner and not denied by the Bank in its counter that the compulsory retirement recommended by the Central Vigilance Commission was too harsh and excessive on the petitioner in view of his excellent performance and unblemished antecedent service. The Bank appears to have made two representations; one in 1986 and another in 1987 to the Central Vigilance Commission for taking a lenient view of the matter and to advise lesser punishment to the petitioner. Apparently, those representations were not accepted by the commission. The disciplinary authority and the appellate authority therefore have no choice in the matter. They had to impose the punishment of compulsory retirement as advised by the Central Vigilance Commission. The advice was binding on the authorities in view of the said directive of the Ministry of Finance, followed by two circulars issued by the successive Chief Executives of the Bank. The disciplinary and appellate authorities might not have referred to the directive of the Ministry of Finance or the Bank circulars. They might not have stated in their orders that they were bound by the punishment proposed by the Central Vigilance

Commission. But it is reasonably foreseeable and needs no elaboration that they could not have ignored the advice of the Commission. They could not have imposed a lesser punishment without the concurrence of the Commission. Indeed, they could have ignored the advice of the Commission and imposed a lesser punishment only at their peril."

17. We are of the considered opinion that the aforesaid observations of the Supreme Court are fully applicable to the facts and circumstances of the present case.

18. The extracts reproduced above from the communication (Annexure P-22) received from the Bank by the petitioner dated 23.10.2001 leave no manner of doubts that "the Board desired that the advice of the CVC be implemented". Therefore, in our opinion, the disciplinary authority as also the appellate authority have failed to independently exercise the jurisdiction vested in them. Even the order passed by the Appellate Authority, as reproduced above, clearly shows that the petitioner has been condemned unheard.

19. Further discussing the power of the punishment/punishing authority, the Supreme Court in the aforesaid judgment has observed as follows:-

"16. The power of the punishing authorities in departmental proceedings is regulated by the statutory Regulations. Regulation 4 merely prescribes diverse punishment which may be imposed upon delinquent officers. Regulation 4 does not provide specific punishments for different misdemeanours except classifying the punishments as minor or major. Regulations leave it to the discretion of the punishing authority to select the appropriate punishment having regard to the gravity of the misconduct proved in the case. Under Regulation 17, the appellate authority may pass an order confirming, enhancing, reducing or completely setting aside the penalty imposed by the disciplinary authority. He has also power to express his own view on the merits of the matter and impose any appropriate punishment on the delinquent officer. It is quasi-judicial power and is unrestricted. But it has been completely fettered by the direction issued by the Ministry of Finance. The Bank has been told that the punishment advised by the Central Vigilance Commission in every case of disciplinary proceedings should be strictly adhered to and not to be altered without prior concurrence of the Central Vigilance Commission and the Ministry of Finance."

20. In paragraph 17 of the aforesaid judgment, the Supreme Court has further observed as follows:-

"17. ...This Court in A.N.D "Silva v. Union of India (1962) Supp.(1) S.C.R. 968 has expressed the view that the Commission's function is purely advisory. It is not an appellate authority over the inquiry officer or the disciplinary authority. The advice tendered by the Commission is not binding on the Government. Similarly, in the present case, the advice tendered by the Central Vigilance Commission is not binding on the Bank or the punishing authority. It is not obligatory upon the punishing authority to accept the advice of the Central

Vigilance Commission."

21. With regard to the nature of the punishment, in the aforesaid judgment, the Supreme Court has observed as follows:-

"19..... The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer (See: De Smith's Judicial Review of Administrative Action. Fourth Edition, P.309). The impugned directive of the Ministry of Finance is, therefore, wholly without jurisdiction and plainly contrary to the statutory Regulations governing disciplinary matters."

22. In the present case, the petitioner has been demanding copies of the correspondents/recommendations made to the CVC. None was ever supplied to the petitioner. In our opinion, the petitioner has been condemned unheard. The entire action taken against the petitioner is liable to be quashed. In our opinion, the respondents have failed to exercise the quasi-judicial jurisdiction vested in them. They were required to take independent decisions, on the basis of the facts and circumstances of this particular case. The recommendations of the Regional Manager as contained in letter dated 19.12.1996 (Annexure P-17), ought to have been given due consideration by the disciplinary authority, appellate authority and the reviewing authority. All the three authorities, however, chose only to act on the advice/opinion tendered by the CVC. The advice tendered by the CVC is not binding on the Bank or the punishing authority, The Bank authorities were required to take an independent decision, without being influenced by any extraneous considerations. Mr. Bhoop Singh has rightly contended that there has been wholesale breach of rules of natural justice, in the procedure adopted by the Bank, culminating into the passing of the order of punishment and the subsequent dismissal of appeal and the review filed by the petitioner. Mr. Bhoop Singh has rightly relied on the observations of the Supreme Court rendered in the case of D.C. Aggarwal (supra). In similar circumstances, the Supreme Court in the aforesaid case, observed as under:-

"4. Law on natural justice is so well settled from series of decisions of this Court that it leaves one bewildered, at times, that such bodies like State Bank of India, who are assisted by hierarchy of law officers, commit such basic and fundamental procedural errors that courts are left with no option, except to set aside such orders. Imposition of punishment to an employee, on material which is not only not supplied but not disclosed to him, has not been countenanced by this Court. Procedural fairness is as much essence of right and liberty as the substantive law itself.

5.It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed, the Court was not justified in misinterpreting the rule. The learned counsel urged that the Bank was not justified in misinterpreting the rule. The learned counsel urged that the Bank was very fair to the respondent and the Disciplinary Authority after application of mind and careful analysis of the material on record on his own evaluation, uninfluenced by the CVC recommendation passed by the order. It was emphasised that in the exercise would have been mechanical the Disciplinary Authority would not have disagreed with CVC recommendations on punishment. Learned counsel submitted that, in any case, the Disciplinary Authority having passed detailed order discussing every material on record and the respondent having filed appeal there was no prejudice caused to him. None of these submissions are of any help. The order is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of Rule 5. But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the Disciplinary Authority but was examined and raised, was certainly violative of procedural safeguard and contrary to fair and just inquiry.

6. Even the submission of no prejudice is not well founded. The respondent was a very senior officer of the bank. He was promoted to the top executive grade in August 1980. We have refrained from entering into merits but once the Disciplinary Authority found that the action of the respondent did not cause any harm to the bank nor the respondent gained out of it the High Court cannot be said to have misdirected itself in quashing the order for procedural error....."

23. In our opinion, the aforesaid observations leave no manner of doubt that the impugned action taken against the petition in the present case is vitiated.

24. As noticed earlier, the immediate superior of the petitioner by letter dated 19.12.1996 (Annexure P-17), has recommended that the action taken by the petitioner be confirmed as a special case. It was observed in the aforesaid letter as under:-

".....Though the act of the branch in purchasing cheques/drafts involving a very large amount exposed the bank to risks the main motive for such acts, which were over and above the powers vested in him, was based on ambition of earning highest revenue with no mala fide intention. This fact is substantiated by realization of all the instruments without any returning and involving no revenue

loss to the bank. Out of the total discounting as above, nearly one third comprises of demand drafts. The branch incumbent has now understood the gravity of such acts and has henceforth stopped indulgence in transgressing his powers.

The overall performance of the branch after the joining of Sh. S.S. Sheokand has been quite impressive in regard to achievement of deposit and advances targets with handsome margins which may be observed from the figures given below:-

(Rs. in lacs) Dec."92 31.3.94 31.3.96 33039996 30.9.96 Deposits: Target 890 840 1000 1250 1350 Actual 635 930 1202 1500 1736 Advances: Achievement 462 709 886 1157 926 Total Working 1097 163 2088 2657 2662 None performing advance percentage to the total advances is only 3.90 and all the other advances are healthy. Besides overall working of the branch including house keeping is also satisfactory.

Keeping in view all the above facts, we recommend that the action of the branch manager for purchasing the cheques and drafts beyond his discretionary powers to an individual party and a group may please be confirmed as a special case. We have confirmed action of the branch in having purchased the drafts which, however, be issued a warning letter for the lapses committed and for its non-recurrence."

25. Instead of putting an end to the matter, on the basis of the aforesaid observations, the respondents continued to proceed departmentally against the petitioner. In view of the law laid down by the Supreme Court, we hold that the entire action taken against the petitioner is vitiated. There is also substance in the submission made by the learned counsel for the petitioner that in view of the findings of the Enquiry Officer, the lapses, if any committed by the petitioner would not constitute such misconduct as to invite the imposition of a major penalty. Learned counsel has rightly pointed out to the findings of the Enquiry Officer. As noticed earlier, charge No. 1 was that the petitioner did not discharge his duties with integrity, devotion and diligence and acted in a manner unbecoming a bank officer. The Enquiry Officer has categorically come to the conclusion as follows:-

".....Ex.S14 is a letter from the Co accepting the aforesaid matter with an assurance to not to repeat the same in future. In view of the aforesaid evidence, the contention of the CO to treat the matter as that of the priority sector is naturally not tenable. However, the Co has stated that there was no loss to the bank. The PO has not disputed this. Therefore, the act of omission and commission of the CO can essentially be treated as procedural lapses. The charge of the lack of integrity has not been substantiated.

Charge-1 is held as partly proved."

26. In support of the submission that the aforesaid observations would not constitute a misconduct justifying a major punishment, Mr. Bhoop Singh has

relied on a Division Bench judgment of the Calcutta High Court in the case of Dipankar Sengupta and Anr. v. United Bank of India and Ors. 1992 I L.L.J 222. In that case, the Division Bench has observed as under:-

"12. The entire charges levelled as against the writ petitioners would show that they were charged for failure to adhere to the usual banking norms as also failure to discharge their duties with utmost integrity, devotion and diligence. The petitioners had also been charged with acting in a manner which was unbecoming of an officer of the Bank.

21. It is, therefore, evident that although the enquiry officer had recorded that the charges had been partly established, in fact, the petitioner had substantially been exonerated from all the charges except lapses of certain procedural aspects or supervisory duty. Such lapses, even according to the enquiry officer, was not done with any ill motive or mala fide on this part...."

24. Such procedural or supervisory lapses by itself may not be a misconduct.

25. In Union of India and Ors. v. J. Ahmed (supra) it has been held at P.18:

"It is, however, difficult to believe that lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would themselves constitute misconduct. If it is so, every officer rated average would be guilty of misconduct. Charges in the case as stated earlier clearly indicate lack of efficiency, lack of foresight and indecisiveness as serious lapses on the part of the respondent. These deficiencies in personal character or personal ability would not constitute misconduct for the purpose of disciplinary proceedings."

It has further been held:

"The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary which runs as under:

"Misconduct" means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.

28. There cannot be any doubt whatsoever that the word "misconduct" is a generic term. However, in the instant case, the writ petitioners had not been charged with commission of any specific misconduct in terms of the Conduct Regulations. Be that as it may, the question which arises for consideration in these matters are as noticed herein before is as to whether the writ petitioners can be said to have committed any misconduct on the basis of the findings of the Enquiry Officer. Having gone through the report of the Enquiry Officer; and keeping in view the decisions of the Apex Court in Union of India v. J. Ahmed (supra), and Virendra Prasad v. Union of India and Ors. (supra), we are of the opinion that in terms of the findings arrived at by the Enquiry Officer himself, the alleged procedural lapses and lack of supervision and/or failure on the part of one of the petitioners to pursue the matter cannot come within the purview of the word "misconduct""

27. We are of the considered opinion that the aforesaid observations are fully applicable to the case put forward by the petitioner.

28. During the pendency of the disciplinary proceedings, the case of the petitioner was not considered for promotion. The petitioner could not be promoted, as, according to the respondents, the result with regard to his interview was kept in sealed cover. We are unable to accept the submission made by the learned counsel for the respondents that the matter be referred back to the respondents-Bank for re-consideration. In normal circumstances, if action is held to be vitiated for breach of natural justice or for breach of any procedural safeguards, this Court, while exercising writ jurisdiction under Articles 226/227 of the Constitution of India, would refer the matter back to the authorities for re-consideration. But in the present case, the petitioner has been facing wholly unwarranted disciplinary proceedings for more than seven years. The show-cause notice was issued on 26.2.1997. His immediate superior had recommended even at that stage that the petitioner be issued a warning and the matter be dropped. But the respondents have belligerently continued with the disciplinary proceedings. Not only is it a case where no loss has been caused to the respondents-Bank, but it is a case where adopting a rather enthusiastic approach, the petitioner has increased the revenue of the Bank in the relevant period from Rs. 28.00 lacs to be 133.00 lacs. Surely the aforesaid figures spoke volumes for the devotion to duty, diligence, honesty and integrity of the petitioner and his dedication to protect the interest of the Bank. It would be doing injustice to the petitioner now to remand the matter back to the respondents for re-consideration. In our opinion, the petitioner has suffered enough for any procedural lapses that he may have committed which was sought to be duly condoned by his immediate superior as "a special case".

29. In view of the above, the writ petition is allowed. Impugned orders (Annexures P-10, P-15, P-20 and P-22) passed by respondents No. 4, 3 and 2 respectively, are hereby quashed. The respondents are directed to re-fix the pay of the petitioner, after re-leasing all benefits which would have accrued to him, but for the orders of punishment. A writ of mandamus is issued to the respondents to consider the case of the petitioner for promotion from MMGS-III to SMGS-IV from the date when his juniors were promoted, with all consequential benefits. Let the necessary orders which regard to the re-fixation of pay, increments etc. as well as promotion of the petitioner and consequential benefits be passed within a period of three months of the receipt of a certified copy of this order. No costs.