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**(2009) 05 GAU CK 0030**  
**In the Gauhati High Court**

Sh. Pazawna

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

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**Date of Decision :** 04-05-2009

**Acts Referred:**

Civil Services (Classification, Control and Appeal) Rules — Rule 55

Constitution of India, 1950 — Article 226

State Bank of India (Officers Service) Rules, 1992 — Rule 67

**Citation :** (2009) 6 GLR 27 : (2009) 3 GLT 780

**Hon'ble Judges :** H. Baruah, J

**Bench :** Single Bench

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## Judgement

H. Baruah, J.—Facts involved though not similar in the above two writ petitions, same are proposed to be disposed of by a common judgment in view of involvement of similar questions of law. In the WP(C) No. 49 of 2008, the writ petitioner has challenged his dismissal order dated 11.7.2007, passed by respondent No. 3, while in writ petition No. 46 of 2008, the order reducing in rank of the writ petitioner dated 17.3.2007, passed by the respondent No. 3, has been put in challenge.

2. For better appreciation and understanding the appeals this Court proposes to place the facts involved in each case at this stage as under:

WP(C) No. 46 of 2008

Writ petitioner was appointed by respondent No. 1, in the year 1975, and was discharging his duties in different capacities in various branches within the jurisdiction of Northeast Circle. The writ petitioner while was serving as Branch Manager SBI, Darlawn Branch in the year 1975, and Lawngtlai Branch from 13.5.1999 to 31.12.2002, for misconduct committed during that period, respondent No. 4, with a view to hold a departmental inquiry, on 29.10.2004, served 7(seven) numbers of allegations asking show cause reply from the writ petitioner on the following allegations:

#### Allegation No. 1:

It is reported that a person named Shri F. Thangdinga, who was working in the Lai Autonomous District council as Range Officer (Forest Department) and who claimed to have a good relationship with you, acted as a negotiator to liaise between you and the prospective housing loan applicants. Shri F. Thangdinga also claimed that he had received 14(fourteen) housing loan proposals from various persons in the year 2000, and 6(six) or 7(seven) similar proposals in the year 2001, which were to be sanctioned by you. It is reported that each of the applicants had offered Rs. 5000, to you for your favour. The money was allegedly accepted by Shri F. Thangdinga for handing over to you.

#### Allegation No. 2:

It is reported that you had received an amount of Rs. 10,000, each from Shri A. Lalmingthanga and Shri K. Lalhuzauva both of Thingkah for financing housing loans to them.

#### Allegation No. 3:

You have sanctioned a cash credit limit of Rs. 1,50,000, (Amount No. CC/1/8) to Shri F. Ramdinmawia, landlord of the Lawngtlai branch premises of State Bank of India, for setting up a general store. However, it was reported that no unit was established and the amount was used for his medical treatment. The matter was also not reported by you to your controller.

#### Allegation No. 4:

It is reported that you have sanctioned a cash credit limit of Rs. 1,00,000, to Shri Vanlalchianga (CC/1/3) landlord of the State Bank of India, Lawngtlai Branch Manager's residence and an employee of Lai Autonomous District Council but not unit was set up.

#### Allegation No. 5:

It has been observed that 25 of the housing loan borrowers diverted their loan money for other purposes without constructing any houses. This was also not reported by you to your controller.

#### Allegation No. 6:

It has have observed that out the 140 piggery loans outstanding as on 30.11.2002, 106 loans were sanctioned by you to the employees of the Lai Autonomous District Council, most of whom diverted the funds for purposes other than setting up of piggery units. It has also been observed that most of the loans were sanctioned by you, without any proper schemes or as per unit cost prescribed by NABARD and as a result of fault repayment programmes, majority of the accounts have become overdue.

#### Allegation No. 7:

You had sanctioned the following overdrafts while you were working as Branch Manager, State Bank of India, Darlawn SAB during the year 1986:

| -----        |              |           |            |              |          |           |             | Name of    |
|--------------|--------------|-----------|------------|--------------|----------|-----------|-------------|------------|
| borrower     | Limit        | Date      | of         | Present      | National | sanction  | outstanding | interest   |
| -----        |              |           |            |              |          |           |             | 1. Sri K.  |
| Thanhliira,  | Rs. 5,000    | 30.4.1986 | -          | Rs. 10,486   | East     | Phaileng. |             |            |
| -----        |              |           |            |              |          |           |             | 2. Sri     |
| Chhuanvawra, | Rs. 1,00,000 | 10.3.1986 | -          | Rs. 42,390   | Ramhlun  | Venglai,  | Aizawl      |            |
| -----        |              |           |            |              |          |           |             | 3. Sri     |
| Lalzalova    | Rs. 50,000   | 11.6.1986 | Rs. 85.079 | Rs. 1,97,411 | College  | Veng,     | Aizawl      |            |
| -----        |              |           |            |              |          |           |             | Total: Rs. |
| 2,50,287     | -----        |           |            |              |          |           |             | (i)        |

You have sanctioned the above overdrafts in excess of your discretionary powers.

(ii) You have neither reported the matter to your controller through control returns nor have you obtained post facto sanction of the overdrafts.

(iii) You have sanctioned the overdrafts to persons beyond the service area of the Branch.

Respondent No. 4, being not satisfied with the show cause reply appointed an Inquiry Officer to inquire into the allegations levelled against the writ petitioner. At the closure of the departmental inquiry, Inquiry Officer found allegation Nos. 1 and 2, was partly proved while other allegations were held not proved. When the entire proceedings of the departmental inquiry were placed before the respondent No. 4, disagreed with the findings of the Inquiry Officer and held all allegations levelled against proved against the writ petitioner. The findings of the Inquiry Officer and respondent No. 4, when placed before the respondent No. 3, the appointing authority of the writ petitioner recorded a penalty of reduction of post to the lower grade of JMGS-1 under Rule 67(g) of the State Bank of India Officers Service Rules at the initial scale of JMGS-1. Having been penalized as stated above, the writ petitioner preferred an appeal before the appellate authority, the respondent No. 2, who dismissed the appeal and maintained the penalty recorded by respondent No. 3. It is contended that the respondent Nos. 2, 3 and 4, having been adorned with different position under the respondent No. 1, acted illegally, improperly and arbitrarily with gross violation of the Government service rules and instructions as well as the law established while imposing the penalty. Imposition of penalty of reduction to the lower grade of JMGS-1, it is contended, as unconstitutional, bias, illegal and arbitrary. Further, it is also contended that there was gross violation of principle of natural justice since the writ petitioner was not afforded with opportunity to cross-examine the witnesses more particularly the complainants to verify the veracity of their statements. The respondents failed to rely on the facts revealed during the inquiry rather imported a vindictive attitude against the writ petitioner basing on some extraneous consideration. In the inquiry the bank authority, it is contended, failed to bring home the allegations against the writ petitioner. It is

also contended that the respondent No. 4, while disagreeing with the findings adopted by the Inquiry Officer distorted the evidence of PW1 and held otherwise. The papers, documents which were necessary for full proof of allegations were not produced and proved during inquiry and, therefore, the findings of the Inquiry Officer as well as the respondent No. 4, are not based on legal evidence. The statements of witnesses were not taken into consideration at its face value either by the Inquiry Officer or by the respondent No. 4, and thus both arrived at erroneous findings which legally cannot sustain. The persons who alleged to have paid Rs. 5,000, each to the writ petitioner for providing loan, were not produced during inquiry. To prove such allegation against the writ petitioner, findings of the allegation as proved without being examined those two complainants is illegal and erroneous. No opportunity was afforded to the writ petitioner to cross-examine them in the context of allegation brought against him. Further it is also contended that the appellate authority without applying his mind to the facts, circumstances and evidence mechanically dismissed the appeal preferred by the writ petitioner.

### 3. WP(C) No. 49 of 2008.

In the year 1983 petitioner was appointed as Probationary Officer with the respondent No. 1, and after completion of probation period of two years he was posted in different branches within the circle in different capacity. In August 2005 petitioner was serving as Branch Manager, SBI at Tawipui South Branch. Petitioner being the only officer posted thereat was entrusted with all responsibilities of the branch including banking business, deposit mobilization, sanction of loans, pre-sanction and post-sanction inspection and survey of the borrower units, field visit, recovery of advances, etc., etc., on 19.12.2005, respondent No. 4, placed the writ petitioner under suspension. For alleged charge of absconding from the branch for the period from 13.12.2005, to 16.12.2005, and also for shortage of cash at the branch in cash balance. Having been suspended petitioner submitted an application to respondent No. 4, denying all the charges levelled against him contending inter alia that during the period there was power failure in the branch and accordingly the master system of the branch could not function during the period and as such up to date accounts could not be made for which skeleton services was provided manually to meet the necessity of the customers. The authority concerned declined to accept such explanation of the petitioner rather on 11.8.2006 served a memorandum of charge along with articles of charges for the purpose of holding a departmental inquiry. Writ petitioner replied to the charges denying the same and ask for some copies of documents for further reply, however, the respondent authority refusing to accept the explanation preferred to hold the departmental inquiry against the alleged charges which can be stated as under:

#### Allegation No. 1:

It is alleged that while you were posted as Branch Manager at our Tawipui South Branch during the period from 18.8.2005 to 19.12.2005, you were absconding

from your duties from 13.12.2005 to 16.12.2005, without any information either to the Regional Office or to the Branch staff. As a result of your absence the Branch could not function for those days causing a business loss and damage of the image of the Bank to the Public.

**Allegation No. 2:**

You misappropriated an amount of Rs. 1,50,000, (Rupees one lakh fifty thousand) only from the cash balance of the Branch and there was a shortage of Rs. 1,50,000, in cash balance from 13.12.2005 to 18.12.2005.

**Allegation No. 3:**

You claimed reimbursement for an amount of Rs. 1,000, (Rupee one thousand) only as conveyance bill incurred for going to Lawngtlai Branch With UCP for completion of EOD/SOD for 12.12.2005, whereas the EOD/SOD was done successfully at the Branch on the day itself by 6.00 pm.

**Allegation No. 4:**

You allowed the Branch messenger to operate the cash vault and to take out money in the evening of 12.12.2005, after completion of the EOD for 12.12.2005, and closure of cash.

**Allegation No. 5:**

You were drunk during the office hours on 12.12.2005, hampering the day's work and damaging the image of the Bank.

4. It is contended by the writ petitioner that during inquiry the petitioner was not supplied with relevant documents despite verbal and written request. Even the petitioners was not allowed to remain present in the inquiry proceeding in other words at the time of examine-in-chief of PW1 in spite of recorded objection by his defence representative. In the manner it is contended there was total violation of principle of natural justice. The findings of the respondent No. 4, in respect of the allegation/article of charges were on some extraneous consideration and some documents/statements were taken at the back of the petitioner without affording any opportunity to the writ petitioner to cross-examine the author(s), maker(s) of those documents/statements despite objection. The appellate authority while dealing with the appeal as preferred also failed to apply his mind to the facts and evidence and mechanically dismissed his appeal. The petitioner, therefore, in the above premises prayed this Court to set aside and quash the impugned dismissal order dated 11.7.2007 passed by respondent No. 3, and to reinstate him in the post held by him at the relevant time and pay his salaries, allowances, etc., with all other consequential benefits.

5. In both the writ petitions the respondents are common, they of course by filing two separate counter affidavits resisted the writ petitions. The respondents by their counter affidavits have denied the allegations brought against them by the writ petition. It is the case of the respondents in WP(C) No. 46 of 2008, that

the writ petitioner while posted as Branch Manager in the State Bank of India, Darlawn Branch in the year 1986 and Branch Manager of State of India in Lawngtlai Branch during the period from 13.5.1999 to 31.12.2000, committed gross lapses/irregularities on his part in respect of sanction, disbursement and follow up advances of housing loan, cash credit loan and agricultural term loans including giving overdrafts to many persons by obtaining pecuniary gain/ advantage from the borrowers whereby the bank suffered huge pecuniary loss which prompted the respondent authorities to initiate a departmental inquiry against the writ petitioner. The departmental inquiry so initiated was conducted as per procedure relevant for such departmental inquiry and nothing illegality had been committed while conducting as such. The Inquiry Officer after conclusion of the departmental inquiry held guilty the writ petitioner in some of the allegations and in all by respondent No. 4. While conducting the departmental inquiry against the writ petitioner, writ petitioner was given every opportunity to defend him and more over he was allowed to be represented by a defence representative. It is also the case of the respondents that in the departmental inquiry, the presenting officer tried his best to procure the presence of Shri F. Thangdinga, A. Lalhmingthanga and K. Lalhuzauva, the authors of the complaints for their examination and cross-examination but their presence could not be procured on account of writ petitioner's willful prevention in as much as the writ petitioner himself obtained some documents from those persons favourable to him. On submission of the inquiry report before the respondent No. 4, by the Inquiry Officer, respondent No. 4, differed with the findings of the Inquiry Officer and after offering reasonable grounds while disagreeing with the findings of the Inquiry Officer. Respondent No. 4, being the disciplinary authority has the power to differ/disagree with the findings of the Inquiry Officer provided in the disciplinary proceeding. Such findings of disagreement in respect of the allegation were arrived, at by the respondent No. 4, by applying his mind to the facts, evidence on record both oral and documentary and nothing illegality had been committed by respondent No. 4, in offering his disagreement/views in respect of the findings of the Inquiry Officer. Respondent No. 3, also independently examined the details of the records of inquiry and the findings recorded by the Inquiry Officer as well as respondent No. 4, and basing on their findings passed the impugned order dated 17.3.2007 which is now under challenged. The appellate authority too by applying his mind to the records of the departmental inquiry, the findings of Inquiry Officer as well as respondent No. 4, did not find any merit in the appeal so preferred by the writ petitioner and accordingly turned down the appeal. The punishment awarded to the writ petitioner in view of the findings of the Inquiry Officer as well as respondent No. 4, are beyond the scope of interference since the departmental proceeding did not suffer from any lapses, illegalities. Respondent authorities, therefore, prayed for dismissal of the writ petition.

6. The respondent authorities in their counter filed in WP(C) No. 49 of 2008, alleged that the contention raised by the writ petitioner in his petition are

virtually incorrect, misconceived and devoid of any merit. The departmental inquiry initiated against the writ petitioner for proof of the allegations, was conducted as per rules and procedure and every opportunity was afforded to the writ petitioner to present his case. The departmental inquiry so held, therefore, cannot be said to have faced some irregularities, lapses as claimed by the writ petitioner. At the conclusion of the departmental inquiry, records of the same while placed before the respondent No. 4, the disciplinary authority, disagreed with the findings of the Inquiry Officer. Such disagreement was arrived at by the respondent No. 4, after applying his mind to the facts, the allegation, the evidence both oral and documentary. Therefore, the findings of the respondent No. 4, disagreeing the findings of the Inquiry Officer cannot be called in question since the respondent No. 4, being the disciplinary authority has the power to disagree with the findings of the Inquiry officer. In the same way the appellate authority too applied his mind while deciding the appeal filed by the writ petitioner. Nothing illegality had been committed by the appellate authority while rejecting the appeal. In paragraph-7 of the counter it is stated that during departmental inquiry two persons namely Shri Lalhmachhuana and Sri Lengsanga were examined as PW1 and PW2 respectively. But Sri Lengsanga could not be produced for cross-examination on account of his hospitalization due to cancer. In paragraph-8 it is also stated that presenting officer is not under obligation to adduce all cited witnesses in departmental inquiry. The evidences already on record, if, found sufficient to record a finding of guilt of delinquent officer, the presenting officer is not obliged to call all the witnesses cited for their examination. Therefore, in the disciplinary inquiry, misconduct on the part of the writ petitioner has been proved and therefore, the penalty of dismissal of the writ petitioner is beyond the scope of judicial review.

7. Mr. Asit Kr. Mukharjee, Learned Counsel representing both the writ petitioners at the very outset of his argument submitted that the manner in which the departmental inquiries were held and conducted cannot be said to be held per rules and procedure as required under law. The departmental inquiries so held against the writ petitioners were clouded with irregularities, infirmities and, therefore, the findings arrived at by the Inquiry Officer as well as respondent No. 4, cannot be binding on the writ petitioners. It was argued that in all departmental inquiries some fixed rules and procedures are to be followed and adopted, any deviation thereof render such departmental inquiries untenable beyond the scope of consideration and no punishment/penalty can be awarded to delinquent officer. The allegations brought against the writ petitioners required production of oral and documentary evidence but some of the relevant documents necessary for the purpose of inquiry were not supplied to the writ petitioner on demand nor proved during the inquiries. That apart witnesses who were called to depose, one or two subsequently was not produced for cross-examination by the writ petitioner. In view of creeping of such lapses in the conduct of departmental inquiries against the writ petitioners, findings of the Inquiry Officer as well as respondent No. 4 which resulted the penalty as against

the writ petitioners cannot be accepted and acted upon. The findings so arrived at by the Inquiry Officer as well as respondent No. 4, therefore, rather all perverted and this writ court has jurisdiction to set aside such perverted findings and the resultant penalty. Mr. Mukharjee, Learned Counsel for the petitioners referring to the some of the averments appearing in the counter affidavit submitted that the respondent authorities admitted their lapses in conducting the departmental inquiries against the writ petitioners. Respondents authorities admitted the factum of non-furnishing of some of the relevant documents to the writ petitioner on demand as well as proof of some documents during the departmental inquiry. The respondent authorities also admitted non-production of the witnesses Shri F. Thangdinga, A. Lalhmingthanga and K. Lalhzuauva for cross-examination by the writ petitioner. Mr. Mukharjee, therefore, in the face of such irregularities, lapses on the part of the respondent authorities in conducting the departmental inquiry strenuously submitted that the penalty awarded on the basis of the findings of the Inquiry Officer as well as respondent No. 4, cannot be set at rest, since such findings were not based on evidence.

8. Mr. Mukharjee referring to the provisions of Rules 7, 8, 3, 8, 4, 13 and 14, from Vigilance Manual State Bank of India, Chapter-VIII submitted that the witnesses and the documents essential for proof of charges are required to be produced and proved in the inquiry else the charged officer would be prejudiced. Their place, therefore, cannot be filled up by others. If some of the material evidence is not with held, the charges are likely to fail. Mr. Mukharjee, therefore, taking aid of this Rules submitted that during the inquiry some of the material witnesses were not produced in the same way some relevant documents necessary for the purpose of proof of the charges neither supplied to the writ petitioner nor proved during the departmental inquiry. It was also argued by Mr. Mukharjee that some of the statement of the witnesses though exhibited, makers of such statements were not produced for examination and cross-examination, therefore, such statement apparently cannot have evidentiary value and on the basis of the same no finding of guilt can be recorded against the charged officers). According to Mr. Mukharjee, the findings of the Inquiry Officer as well as respondent No. 4, in respect of allegations are not based on evidence and, therefore, the resultant penalty awarded by respondent No. 3, to the writ petitioners cannot sustain.

9. Admittedly, the respondent authorities while conducting the departmental inquiry against the writ petitioner [WP(C) 49 of 2008], failed to produce Sri Lengsanga for cross-examination although his evidence-in-chief was recorded. That apart it is also admitted by the respondents that some relevant documents could not be produced during the inquiry for proof of the same by the Presenting Officer. Even in spite of the same the Inquiry Officer and the respondent No. 4, while dealing with the departmental inquiry did not abstain themselves from considering the evidence recorded-in-chief and factum of non-production of the documents while deciding the allegation against the writ petitioner. In such a situation it was argued by Mr. Mukharjee that the person charged ought to have

given an opportunity to cross-examine the witnesses and denial thereof would prejudiced the person charged. The witness examined as PW2 was not produced for cross-examination and, therefore, no findings can be based on such evidence, if at all based, such finding would be erroneous and illegal. Denial of opportunity to cross-examine the witness by the charged officer would amount to violation of principle of natural justice. Mr. Mukharjee in support of his contention relied on the decisions reported in 2002 IV LLJ (Supp) NOC 388 (Bombay) and in the case between Mahendra Kr. Singh Vs. Union of India (UOI) and Others,

10. It was also argued by Mr. Mukharjee that in the inquiry some of the statements were taken into consideration while deciding the allegations against the writ petitioners. But the makers of the statements during the departmental inquiry were not brought neither for the purpose of examination nor for cross-examination, therefore, dismissal of the writ petitioner based on such inquiry cannot be remained unassailed. A division bench of the Allahabad High Court in the case between State of U.P. and Ors. v. Lala Ram Chaturvedi and Anr. held that if the maker of the statement is not produced for cross-examination by the charged Officer, the finding of the Inquiry Officer basing on such statement, other matters and other evidence on record cannot be held sustainable and allowed to be set at rest against the delinquent officer. The penalty awarded on such findings, therefore, could not be upheld, it held.

11. Mr. Mukharjee during the course of argument on placement of the records of the departmental inquiry conducted against the writ petitioners submitted that such lapses, irregularities are apparent on the records. In one of the records [departmental inquiry held against writ petitioner Pazawna in WP(C) No. 46 of 2008], it is noticed that during examination of one of the witnesses, the delinquent Mr. Pazawna was not allowed to remain in the inquiry despite objection raised by the defence representative, which according to Mr. Mukharjee was the refusal to the delinquent officer to participate in the inquiry. Such evidence recorded behind his back cannot, however, be allowed to be used/taken into consideration while deciding the allegations. Findings of the allegations on the basis of such evidence and the resultant penalty therefore suffers from error and illegality. In support of his contention Mr. Mukharjee also relied in a decision rendered by a division bench of the Allahabad High Court in the case between Radhey Kant Khare v. U.P. Co-operative Sugar Factories Federation Ltd. In the context of acting on the statements of some of the persons non-examined and not made available for cross-examination by the writ petitioner Mr. Mukharjee also relied on the decision in the case between Debabrata Sarkar v. Union of India and Ors. (2005) IV LLJ (Supp) NOC 456 It was argued by Mr. Mukharjee that the maker of the statement not examined and not made available for examination by the charged officer, the procedure followed by the Inquiry Officer was unfair and irregular.

12. Mr. Mukharjee, Learned Counsel for the writ petitioners, therefore, argued that both the departmental inquiries suffer from lapses," irregularities and,

therefore, the findings arrived at on the basis of such departmental inquiries cannot be held as proved and the award of penalty on the basis of such finding is illegal and liable to be set aside and quashed. It was also argued by Mr. Mukharjee that the departmental inquiries were thus conducted in violation of the natural justice and the disciplinary proceedings held against the writ petitioners are vitiated.

13. Refuting the submissions of Mr. Mukharjee, Learned Counsel for the writ petitioners; Mr. M.M. Ali, Learned Counsel representing the respondents (in both the writ petitions) submitted that the departmental inquiries held against the writ petitioners for proof of the allegations brought against them were conducted per rules and procedure and no illegality, lapses ever had been committed while conducting such departmental inquiries. Against the allegations so brought in, each writ petitioner was given reasonable opportunity to defend him and rebut the allegations but even if in spite of that writ petitioners failed to rebut the allegations and therefore the inquiry officers appointed were constrained to hold guilty the petitioners in some of the charges. But the respondent No. 4, being the disciplinary authority who has the power to re-appreciate the findings of the Inquiry Officer, disagreed with the findings of the Inquiry Officer in both the departmental proceedings and accordingly offered his decision in respect of each of the allegations brought against the writ petitioners and, therefore, findings of the respondent No. 4, cannot be assailed. In the departmental proceeding the writ petitioners were furnished with relevant documents which were sought to be proved by the Presenting Officer in the inquiry and also allowed participation in the inquiry conducted against Pazawna due to willful prevention of writ petitioner [writ petitioner in WP(C) No. 46 of 2008], the complainants could not be produced for cross-examination. The said writ petitioner during the inquiry exhibited and proved some letters written by the said complainants whereby the complainants denied to have written the annexures-R-1 and R-2, the complaints. The writ petitioner Pazawna thus, influenced the complainants not to put their presence available in the inquiry proceeding. Such conduct of the writ petitioner, therefore, constituted a motive with reference to the fact in issue or relevant fact. Therefore, the allegation that the writ petitioner was not allowed to be cross-examined such complainants cannot stand in the way in deciding the allegations against the writ petitioner.

14. In the context of non-production of witnesses Sri Lengsanga for cross-examination by the writ petitioner in WP(C) No. 49 of 2008, it was argued by Mr. M.M. Ali that the respondent authorities were prevented from producing him before the Inquiry Officer for his cross-examination on account of his hospitalization due to cancer. No laches, negligence, etc., can be attributed against the respondent authorities in view of compelling circumstances prevailing during the relevant period. A cancer patient hospitalized for treatment could not be produced for cross-examination. That apart defence representative at no point of time requested the Inquiry Officer to postpone such cross-examination of witness Sri Lengsanga until his recovery. Since no such attempt was made from

the side of the delinquent officer, the writ petitioner herein in view of the circumstances prevailed at that time, the inquiry cannot be held vitiated. It was also argued by Mr. M.M. Ali, that the presenting officer is not always obliged to examine all the cited witness in the inquiry. If the allegations brought in against the delinquent officer can be sufficiently proved on the basis of the available evidence on record, examination of cited witness or in other words exhaustion of the list is not required. During the departmental inquiry the delinquent officer, the writ petitioner in WP(C) No. 49 of 2008, was asked to adduce defence evidence but even in spite of offering such opportunity neither he examined himself nor examined any witness in support of his defence. Therefore, according to Mr. Ali, the claim of perversity of the findings of the Inquiry Officer as well as respondent No. 4, cannot sustain.

15. Mr. M.M. Ali, in regard to disagreement with the findings of the Inquiry Officer by the respondent No. 4, argued that respondent No. 4, as disciplinary authority has ample power to differ/disagree with the findings of the Inquiry Officer. The respondent No. 4, while disagreeing with the findings offered reasons and justifications therefore and therefore such findings of respondent No. 4, cannot be brushed aside on the ground that no such finding was ever recorded by the Inquiry Officer. In this context Mr. M.M. Ali, relied on the decision of the Apex Court rendered in the case between Union of India (UOI) Vs. H.C. Goel, In paragraph 19 of the judgment it was held by the Apex Court that findings of facts recorded by an Inquiry Officer entrusted with the work on holding a departmental inquiry into misconduct of a Government servant under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules are not binding on the Government. The Government is competent to take a different view on evidence adduced against the Government servant and proceed on the same basis that the conclusion on facts rendered by the Inquiry Officer were unsound and erroneous. Laying emphasis on this case law, Mr. M.M. Ali submitted that no error and illegality has been committed by respondent No. 4, in differing/disagreeing with the findings of the Inquiry Officer. The respondent No. 4, being the disciplinary authority had the power to differ with the views/findings of the Inquiry Officer, therefore, according to Mr. M.M. Ali, nothing illegality had been committed by the respondent No. 4. On this issue no resistance is forthcoming from the side to the writ petitioners, therefore, this Court finds no ground to hold a different view that the respondent No. 4, was not authorized to do so in other words to differ with the views/findings of the Inquiry Officer.

16. It was argued by Mr. Ali, that the writ petitioners being the Branch Manager of the SBI Branch during the relevant period misconducted themselves in the bank's business. They failed to maintain honesty, integrity, diligence while dealing with the bank business which caused huge pecuniary loss to the bank and eroded confidence of the public and the depositors. Both the writ petitioners failed to maintain devotion to duty, diligence, integrity and honesty. The departmental inquiry held against them in respect of the allegations was conducted honestly without any malice. The punishment awarded by respondent

No. 3, therefore, cannot be assailed through this writ petition. Mr. M.M. Ali, in support of his contention also relied on a decision rendered by the Apex Court in the case between Union Bank of India Vs. Vishwa Mohan, In paragraph 9 and 12 of the judgment hon"ble Apex Court held as under:

9. We are totally in disagreement with the above quoted reasoning of the High Court. The distinction sought to be drawn by the High Court that the first charge sheet served on the respondent related to the period when he was a clerk whereas the other three charge sheets related to the period when he was promoted as a bank officer. In the present case, we are required to see the findings of the enquiry authority, the order of the Disciplinary authority as well as the order of the appellate authority since the High Court felt that the charges levelled against the respondent after he was promoted as an officer were not of a serious nature. A bare look at these charges would unmistakably indicate that they relate to misconduct of a serious nature. The High Court also committed an error when it assumed that when the respondent was promoted as a bank officer, he must be having a good report otherwise he would not have been promoted. This finding is totally unsustainable because the various acts of misconduct came to the knowledge of the Bank in the year 1989 and thereafter the first charge sheet was issued on 17.2.1989. The respondent was promoted as a bank officer sometime in the year 1988. At that time, no such adverse material relating to the misconduct of the respondent was noticed by the Bank on which his promotion could have been withheld. We are again unable to accept the reasoning of the High Court that in the facts and circumstances of the case "it is difficult to apply the principle of sever ability as the charges are so inextricably mixed up". If one reads the four charge sheets, they all relate to the serious misconduct which includes taking bribe, failure to protect the interests of Bank, failure to perform duties with utmost devotion, diligence, integrity and honesty, acting in a manner unbecoming of a bank officer, etc. In our considered view, on the facts of this case, this principle has no application but assuming that it applies yet the High Court has erred in holding that the principle of sever ability cannot be applied in the present case. The finding in this behalf is unsustainable. As stated earlier, he appellant had in his possession the enquiry report/findings when he filed the statutory appeal as well as the writ petition in the High Court. The High Court was required to apply its judicial mind to all the circumstances and then form its opinion whether non-furnishing of the report would have made any difference to the result in the case and thereupon pass an appropriate order. In para 31, this Court in managing director, ECIL has very rightly cautioned:

The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts.

12. After hearing the rival contentions, we are of the firm view that all the four charge sheets which were enquired into relate to serious misconduct. The respondent was unable to demonstrate before us how prejudice was caused to

him due to non-supply of the enquiry authority's report/findings in the present case. It needs to be emphasized that in tire banking business absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public/depositors would be impaired. It is for this reason, we are of the opinion that the High Court had committed an error while setting aside the order of dismissal of the respondent on the ground of prejudice on account of non-furnishing of the enquiry report/findings to him.

17. The scope of judicial review of a disciplinary action taken by an authority is very limited. The court in exercise of power under Article 226 of the Constitution of India has the power to interfere with the disciplinary action taken against the charged officer, if such disciplinary action is taken in violation of the rules governing such proceeding or in violation of principle of natural justice. Court's jurisdiction is circumscribed by limits of judicial review to correct an error of law or procedural error leading to manifest injustice or violation of natural justice.

18. From a careful scrutiny of the facts averred in the writ petitions, the averments made in the counter and the proceedings of the departmental inquiries, it has become apparent that the disciplinary proceedings were conducted in violation of the rules governing such disciplinary proceedings and also in violation of principle of natural justice. It is an admitted fact that one of the witness examined-in-chief was not produced for cross-examination by the charged officer. It is also seen from the above that the complainants who made complaints against the writ petitioner alleging acceptance of money for providing loan to them were not examined during inquiry. Those witness being vital for the proof of the allegations brought against the writ petitioner ought to have been produced by the presenting officer. But non-production of those witnesses prejudiced the writ petitioner, i.e., the charged officer. That apart it also come to the notice of this Court that some documents relevant for the purpose of the inquiry were not produced in spite of demand. But the Inquiry Officer and the respondent No. 4, relying on such evidence recorded/decided the allegations/charges which resulted punishment of reducing in rank and dismissal from service. Where manifest injustice and violation of principle of natural justice is caused in a departmental inquiry, courts jurisdiction under Article 226 of the Constitution is not limited. There was apparent perversity of findings and, therefore, the punishment awarded by the respondent No. 3 against the writ petitioners invites interference.

19. In paragraph 10 of the judgment rendered by a Division Bench of this High Court in the case between Mahendra Kr. Singh Vs. Union of India (UOI) and Others, it was held as under:

10. As discussed above, the scope of judicial review of a disciplinary action taken against the charge officer is very limited. The court can interfere with such proceeding or the action taken thereof, if there is procedural impropriety or violation of principle of natural justice. Noncompliance of the procedural

safeguards, in a given case, may vitiate the disciplinary action taken against a charged officer. It is the bare minimum requirement of natural justice that statement made by a person against a charged officer, cannot be taken into account without making such persons available for cross-examination by the charged officer. In the instant case, the statements made in the preliminary enquiry by Ram Avatar Singh and Bijendra Singh were relied upon by the disciplinary authority while recording the finding that the charge levelled against the appellant has been proved, even though those persons were never produced in the disciplinary proceeding for cross-examination by the appellant. Such course of action amounts to denial of opportunity to the appellant to cross-examine and to challenge the version of those persons .made against the appellant, which strikes at the root of the disciplinary action taken, against the appellant as the same has caused manifest injustice to the appellant.

20. In the above premises this Court of view that the findings arrived at by the Inquiry Officer as well as respondent No. 4, and also appellate authority are perverted and therefore, the punishment awarded on the basis of such findings cannot be allowed to be set aside at rest. The punishment awarded vide impugned order dated 17.3.2007 [In WP(C) No. 46 of 2008] and impugned order dated 19.12.2005, and 11.7.2007, [in WP(C) No. 49 of 2008] are set aside and quashed. Both the writ petitions are accordingly allowed.

21. The respondent authorities are directed to place the writ petitioner in WP(C) No. 46 of 2008, in the post earlier held by him immediately preceding the holding of the departmental inquiry with all consequential benefits such as, pay, arrears etc. The respondent authorities are also directed to reinstate the writ petitioner [WP(C) No. 49 of 2008] in the post held immediately preceding the holding of the departmental inquiry with all consequential benefits including the pay, arrears etc. However, it would be open for the respondent authorities to initiate de novo departmental inquiry against the writ petitioners, if so advised. No cost.