

(2005) 11 CAL CK 0014
In the Calcutta High Court
Case No : W. P. No. 1458 of 2004

Shri Bhabani Adhikari

APPELLANT

Vs

West Bengal State Co-Operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 09-11-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : 110 CWN 458

Hon'ble Judges : Pranab Kumar Chattopadhyay, J

Bench : Single Bench

Advocate : Soumya Majumdar, Joydeep Banerjee, Debojyoti Adhikari, Daniel Pakrasi and Sumit Basu, for the Appellant; Tarun Roy, Krishnendu Banerjee and Prithu Ghosh, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—Petitioner herein has challenged the initiation of the disciplinary proceedings and issuance of the dismissal order by the respondent authorities. The facts mentioned in this writ petition are briefly summarised hereinafter:

The Petitioner joined the service of the West Bengal State Co-operative Bank Limited as a clerk on February 22, 1965. Subsequently, the said petitioner was promoted to the post of Branch Manager (Grade-III Officer) and at the relevant point of time the said petitioner was posted in the Chetla Branch of the said bank as Branch Manager. After rendering almost 34 years of service to the Bank, the said petitioner was dismissed from service on 29th April, 2003.

On September 26, 1998 (Saturday), the petitioner was working in the Chetla Branch as Branch Manager, September 26 was the last working day before the Bank was to close for the "Puja Holidays" in the year 1998. The Bank was to reopen on October 03, 1998. The petitioner had already been sanctioned leave for October 03, 1998, October 04, 1998 and October 05, 1998 in connection with

the first annual "Sradh Ceremony" of his mother. Thus, for the petitioner, his date of resuming the duty in the concerned Branch would have been October 06, 1998 and not on October 03, 1998. As such, the competent authority of the Bank appointed another Officer, Shri Ashim Mukherjee as reliever, who had come to the Branch on September 26, 1998 at about 1-50 p.m.

It has been submitted on behalf of the petitioner that at about 3-00 p.m., on the said 26th September, 1998, the said petitioner had requested the Branch Cashier to complete the cash balance. Admittedly, the petitioner had to leave the Branch when cash-balancing process was going on. In the absence of the said petitioner, the Branch Cashier detected the shortage of cash of Rs. 1,00,000/- (Rupees One Lakh only) in the Cash Counter.

2. The learned advocate of the petitioner submits that according to the Banking Rules "cash" has to be counted by the cashier at the time of receiving the deposit from the depositors. It has been alleged by the petitioner that the said cashier did not perform his duty properly on the fateful day as the said cashier issued the receipts to the depositors before counting, the money. It is not in dispute that the shortage of cash was detected by the Cashier at the time of cash balancing at about 3-00 p.m. on the fateful day after the petitioner had left the Branch at about 3-00 p.m. The Cashier informed the reliever of the petitioner, Mr. Ashim Mukherjee, about the aforesaid short deposit and the said reliever thereafter reported the incident to the General Manager (Administration) at the Headquarters over telephone.

3. It has been submitted on behalf of the petitioner that the said petitioner came back to the Branch at about 7-30 p.m. and thereafter came to know about the aforesaid short deposit. According to the petitioner, a telephone call was received by him from Pranabananda Cooperative Bank Ltd. at about 8 p.m. on that very day in presence of some other staff of the Branch wherefrom the said petitioner came to know that the short deposit had been made by the said Pranabananda Cooperative Bank Ltd. It has also been submitted on behalf of the petitioner that pursuant to the advice of the General Manager (Operation) of the West Bengal State Cooperative Bank Limited, a letter was written by the said petitioner at about 8-30 p.m. on that fateful day as the Chairman of the Board of Administrators of the Pranabananda Co-operative Bank Ltd. to the Branch Manager, Chetla Branch of the West Bengal State Cooperative Bank Limited to make necessary correction in pay-in-slip only for the said short deposit.

4. The reliever of the petitioner thereafter submitted a report to the General Manager (Administration) of the respondent West Bengal State Co-operative Bank Limited narrating the whole incident. On the basis of the said report, subsequent steps were taken against the petitioner by the authorities of the respondent Bank by issuing the suspension order, charge sheet and initiation of the enquiry proceedings. The Managing Director of the respondent West Bengal State Co-operative Bank Limited proposed to hold an enquiry against the petitioner and issued the charge sheet on 26th April, 1999. The petitioner duly

received the charge sheet and submitted his reply denying the charges levelled against him. The Managing Director of the West Bengal State Co-operative Bank Limited, however, issued an order on 14th September, 1999 informing the petitioner about the appointment of the Enquiry Officer and the Presenting Officer for the purpose of conducting enquiry proceeding against the said petitioner pursuant to the charge sheet issued earlier by the said Managing Director. The petitioner raised objection against the appointment of the Enquiry Officer on the ground of bias and lack of impartiality.

5. Pursuant to the aforesaid objection of the petitioner, the Managing Director of the West Bengal State Co-operative Bank Limited in partial modification of his earlier order changed the enquiry officer for the purpose of conducting the enquiry in respect of the charges levelled against the said petitioner. The Managing Director of the respondent West Bengal State Co-operative Bank Limited also issued a suspension order to the petitioner on 3rd October, 1999. The said suspension order was sent by registered post, as the same could not be served upon the petitioner personally.

6. The petitioner herein filed a writ petition being W.P. No. 975 of 2001 challenging the aforesaid suspension order and the initiation of the disciplinary proceedings. The aforesaid writ petition, however, was dismissed by a learned Single Judge of this Hon'ble Court on 27th August, 2001. The petitioner thereafter preferred an appeal before the Hon'ble Division Bench and the said appeal is still pending for final adjudication. In any event, since the enquiry proceeding was not stayed by the Hon'ble Division Bench, the Enquiry Officer proceeded with the enquiry proceedings.

7. It has been submitted on behalf of the petitioner that it was not possible on the part of the petitioner to attend the enquiry on February 8, 2001 due to the sudden death of the elder brother of the said petitioner. From the records it appears that by the letter dated 6th February, 2001, the said petitioner requested the Managing Director of the West Bengal State Cooperative Bank Limited and also the Enquiry Officer to postpone the enquiry proceedings on 8th February, 2001 as the petitioner had been observing mourning during the said period. In the aforesaid letter dated February 6, 2001 the petitioner also raised various other objections in relation to the conduct of the enquiry proceedings.

8. It has been alleged on behalf of the respondent authorities that the enquiry proceedings had to be conducted and completed ex-parte as the writ petitioner choose not to attend the enquiry inspite of issuance of notices dated 30th September 1999, 7th October 1999, 5th November 1999, 20th November 1999, 27th December 1999, 9th December 2000, 20th January 2001, 10th February 2001 and 22nd February 2001 informing the dates of enquiry on 7th October 1999, 14th October 1999, 20th November 1999, 27th December 1999, 7th January 2000, 10th January 2001, 8th February 2001, 22nd February 2001 and 8th March 2001 respectively.

9. The learned Advocate of the petitioner, however, submits that the copy of the minutes of the proceedings of February 08, 2001 was never communicated to the petitioner. On February 08, 2001, several documents were produced by the Presenting Officer and it also appears that on the same day, the report of the Reliever was also produced.

10. On February 22, 2001, the petitioner did not appear as the intimation regarding the date of the enquiry was sent by the Presenting Officer instead of the Enquiry Officer. The petitioner raised his objection in this regard by his written communication dated February 20, 2001.

11. The Enquiry Officer, however, permitted the prosecution to submit various documents and also recorded the depositions of some of the prosecution witnesses without considering the objection raised by the petitioner in his aforesaid letter dated February 20, 2001. The next date of hearing was undisputedly fixed on March 8, 2001. On the said date also the petitioner did not appear and the enquiry proceeding was conducted ex parte. The learned Advocate of the petitioner submits that the Enquiry Officer did not serve any notice upon the petitioner informing that the date of enquiry has been fixed on March 8, 2001.

12. From the records it appears that the enquiry was held on March 8, 2001 ex parte and as many as 10 prosecution witnesses deposed before the enquiry officer. It has been alleged on behalf of the petitioner that all the said 10 witnesses were examined "suo moto" by the Enquiry Officer even without serving any formal intimation to the said witnesses. The Enquiry Officer, however, had expressed his satisfaction as regards service of notices in connection with the enquiry dated 8th March, 2001 on the basis of the receipt issued by the courier.-

13. On examination of the said receipt issued by the concerned courier, it appears that the same does not bear the signature of the petitioner and therefore, it cannot be said that the said notice was duly served upon the petitioner herein. The Enquiry Officer, however, submitted his report on April 10, 2001. It has been submitted on behalf of the petitioner that no intimation was ever given regarding conclusion of the ex-parte enquiry to the petitioner by the concerned Enquiry Officer and the petitioner came to know in this regard for the first time in course of hearing of the earlier writ petition filed by the petitioner herein.

14. On June 13, 2002, the petitioner submitted representation to the enquiry report. In the said representation, the petitioner categorically pointed out that by letter dated February 06, 2001, he had intimated about the expiry of his elder brother to the Enquiry Officer and it was stated in the representation that the petitioner did not receive any notice for holding the enquiry on March 08, 2001. In the enquiry report, the petitioner has been exonerated in respect of Charge no. 1.

15. On February 10, 2003, the petitioner received an order of the Managing Director wherein it was mentioned that the Board of Directors in a meeting held on June 06, 2002 had decided to accept the enquiry report and to issue a second show cause notice as to why the petitioner should not be dismissed from the service. Thus, there was a delay of about eight (8) months between submission of enquiry report and receipt of second show cause notice.

16. By letter dated February 24, 2003, the petitioner gave reply to the said second show cause notice against the proposed punishment. In the said representation, the petitioner categorically pointed out his innocence and also described how the principles of natural justice had been violated while conducting the enquiry.

17. The respondent Bank issued the order of dismissal on 29th April, 2003. The said order of dismissal has been challenged by the petitioner in the present writ petition. It has been specifically urged on behalf of the petitioner that the principles of natural justice have been flagrantly violated by the respondent authorities while conducting the enquiry.

18. Learned Advocate of the petitioner submits that the enquiry was conducted ex-parte on 8th March, 2001 and the notice for holding the aforesaid enquiry on 8th March, 2001 was not even served upon the petitioner although several witnesses for the respondent Bank were examined by the Enquiry Officer on that day. It has been specifically urged on behalf of the petitioner that there is no evidence regarding service of notice upon the petitioner intimating the date of enquiry, which was fixed on 8th March, 2001. The learned Advocate of the petitioner also submits that although the writ petitioner by his letter dated 6th February, 2001 prayed for postponement of the enquiry fixed earlier on 8th February, 2001 on the ground of sudden death of his elder brother but the Enquiry Officer instead of granting adjournment held the enquiry ex-parte on the said date i.e. on 8th February, 2001.

19. The learned Advocate of the petitioner further submits that the respondent authorities also did not consider the reply of the petitioner in answer to the second show cause notice in an appropriate manner before taking final decision regarding dismissal of the petitioner from the service of the bank. It has also been urged on behalf of the petitioner that the respondent Bank did not suffer any financial loss on account of any act and/or action of the said petitioner. According to the petitioner, the Board of Directors have decided to dismiss the said petitioner without even considering his representation in connection with the enquiry report.

20. Referring to the said second show cause notice, learned Advocate of the petitioner submits that the said second show cause notice also does not reflect that at any stage the representation of the petitioner in relation to the enquiry report had been taken into consideration by the concerned respondent.

21. Mr. Soumya Majumdar, learned Advocate of the petitioner submits that the

impugned order of dismissal issued against the petitioner is wholly unreasoned one as the same does not contain any reason. Mr. Majumdar further submits that the impugned order of punishment issued against the petitioner is thoroughly disproportionate to the alleged misconduct as the Cashier who received the short deposit has not been punished and as a matter of fact, the said Cashier has been allowed to retire from service with all service benefits. According to Mr. Majumdar, the Cashier of the bank cannot escape his responsibility regarding shortage of cash balance of the bank.

22. The learned Advocate of the petitioner further submits that in the charge-sheet also the said petitioner has been charged with the alleged misconduct regarding shortage of cash balance of the bank jointly with the said Cashier and therefore, the respondent authorities have also accepted that the said Cashier has the joint responsibility in the matter alongwith the petitioner although the said Cashier has not been punished and allowed to go scott free.

23. For the aforementioned reasons, the learned Advocate of the petitioner submits that the impugned order of punishment is totally disproportionate and liable to be quashed on that ground alone as the same clearly reflects the vindictive attitude of the superior authorities of the respondent bank towards the petitioner herein. Mr. Majumdar also submits that the Managing Director of the bank being the disciplinary authority herein participated in the enquiry proceeding as a witness although it was never held by the Enquiry Officer that the disciplinary authority was really required to be produced as a witness.

24. Mr. Majumdar further submits that the present Enquiry Officer was appointed by the said Managing Director and in order to create an undue pressure, the said Managing Director participated in the enquiry proceeding as a witness. The learned advocate of the petitioner submits that at no point of time, the petitioner had handled the money or cash in dispute.

25. Mr. Majumdar learned Advocate of the petitioner also submits that it was never alleged on behalf of anybody that the petitioner herein had any occasion to handle the disputed cash before the same was received by the Cashier of the bank. In any event, ultimately the bank did not suffer any financial loss and therefore, according to the petitioner, the punishment imposed by the disciplinary authority dismissing the petitioner from service is not only harsh or excessive but the same is also disproportionate to the act and/or irregularities allegedly committed by the petitioner herein.

26. The learned Counsel of the respondent bank submits that the petitioner herein chose to abstain from appearing before the Enquiry Officer on several occasions in spite of service of notices upon the said petitioner and therefore, the Enquiry Officer had no other option but to conduct the enquiry proceedings ex-parte. The learned Advocate of the respondent Bank specifically submits before this court that no real prejudice was caused to the writ petitioner in the enquiry proceeding due to any laches and/or lapses on the part of the Enquiry Officer.

27. Mr. Tarun Roy, learned advocate of the respondent Bank submits that the writ petitioner himself has admitted in substance the factual allegations constituting the basic ingredients of the charges of misconduct mentioned in the Articles of Charge Nos. II, III and IV. Mr. Roy urged before this court that in absence of denial of any basic allegation of fact constituting the misconduct of the petitioner, it cannot be said that the said petitioner suffered any prejudice because the enquiry was held ex-parte and those very allegations were established behind his back.

28. Referring to a judgment of the Hon'ble Supreme Court in the case of S.K. Singh Vs. Central Bank of India and Others, Mr. Roy submits that non-supply of the said enquiry report. Mr. Roy also referred to and relied upon another decision of the Supreme Court in the case of State Bank of Patiala and others Vs. S.K. Sharma, and submits that if no prejudice is established to have resulted for non-supply of the enquiry report then no interference is called for.

29. The learned advocate of the respondent Bank also submits that the petitioner herein being the Branch Manager of the bank has tried to shift his responsibility on the cashier although according to the said learned advocate even if the cashier is held guilty for negligent act then the same cannot shield the guilt of the writ petitioner herein. Mr. Roy further submits that the writ petitioner herein cannot take the defence that the alleged act and/or actions did not cause any financial loss to the bank.

30. According to the respondent Bank, proof of any loss, be it financial or otherwise, cannot be a relevant consideration. It has been submitted on behalf of the respondent Bank that the question of reconsideration of evidence or enquiry proceeding cannot arise in the facts of the present case as the writ petitioner has not denied or disputed the basic facts constituting the alleged misconduct of the said petitioner.

31. Referring to a decision of the Supreme Court in the case of Karnataka SRTC vs. S. G. Kotturappa reported in (2005) 3 SCC 4093 SCC 409, the learned Advocate of the respondent Bank submits that the principle of natural justice cannot be applied in vacuum and furthermore, the same are not required to be complied with when it will lend to an empty formality. It has also been argued on behalf of the respondent Bank that the present writ petition is not at all maintainable on the ground that the said Bank is not a "State" or "authority" within the meaning of Article 12 of the Constitution of India.

32. The learned Advocate of the respondent bank submits that there is no violation of any statutory provisions, rules or regulations or failure to perform any statutory duty by the authorities of the respondent bank. It has been specifically submitted on behalf of the respondent bank that the service of the petitioner including the conduct and discipline is governed by the Service Rules of the respondent bank adopted in a particular meeting of the said bank. Mr. Roy, learned advocate of the respondent bank categorically submits that the Service

Rules by which the writ petitioner is governed are contractual in nature and the same do not have any statutory force. According to Mr. Roy, the service of the writ petitioner herein is governed by private service contract. Mr. Roy referred to and relied upon the following decisions in this regard :

1. AIR 1990 AP 171 (FB) [Sri Konaseema Cooperative Central Bank Ltd., Amalapuram and Anr. vs. N. Seetharama Raju]
2. 1990 (2) CLJ 456 (DB) [Arjed Ali Gazi vs. State of West Bengal]
3. The Shamrao Vithal Co-operative Bank Limited and another Vs. Padubidri Pattabhiram Baht and another,
4. U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others,

33. On careful consideration of the arguments advanced by the learned counsel appearing for the respective parties and giving my anxious thought to the facts and circumstances of this case, I am of the opinion that the petitioner herein being an employee of the Co-operative Bank cannot be dismissed on the basis of the enquiry report which has been prepared on the basis of an enquiry conducted behind the back of the said employee. If any enquiry proceeding is conducted in violation of the principles of natural justice then the dismissal of the concerned employee on the basis of such enquiry report cannot be allowed to be sustained and is liable to be quashed in the writ jurisdiction of this court.

34. Although it has been argued on behalf of the respondent Bank that the service of the petitioner is governed by the Service Rules of the bank and the said Service Rules are contractual in nature and also do not have any statutory force but it has never been claimed on behalf of the respondent bank that the provisions of Rule 108 of the West Bengal Cooperative Societies Rules, 1987 are not applicable in the facts of the present case. The respondent Bank did not file any affidavit-in-opposition in relation to this writ petition.

35. On careful examination of the arguments advanced on behalf of the respondent bank and also scrutinising the written notes of arguments it appears to me that the conditions of service of the petitioner as an employee of the respondent Co-operative Bank are very much controlled by the provisions of Rule 108 of the West Bengal Co-operative Societies Rules, 1987.

36. The learned counsel of the respondent Bank did not produce any document in order to show that the service of the petitioner is governed by private service contract. In absence of any specific contract between the bank and the petitioner governing the service of the said petitioner, it cannot be said that the authorities of the respondent Bank are not required to follow the provisions of Rule 108 of the West Bengal Cooperative Societies Rules, 1987. From the facts of the present case, it has also not been established that the conditions of service of the petitioner are controlled by the specific terms of any private contract between the bank and the petitioner and therefore, the conditions of service of the

petitioner are controlled by the aforesaid Rule 108, which is undoubtedly a statutory rule.

37. For the aforementioned reasons, the authorities of the respondent bank are bound to comply with the requirements of the provisions of Rule 108 of the West Bengal Cooperative Societies Rules, 1987 while conducting the disciplinary proceedings against the petitioner. Accordingly, for breach of any such obligation under the statutory Rules, namely Rule 108 of the West Bengal Cooperative Societies Rules, 1987, a Writ Petition can be filed by the aggrieved employee before the Hon''ble High Court even though Cooperative Society in West Bengal is not a "State" within the meaning of Article 12.

38. Almost similar question came up for consideration in the case of U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, . The learned counsel for the bank cited the aforesaid decision in support of his arguments, but my opinion, ratio of the aforesaid decision has not been properly appreciated by the said learned counsel of the bank.

39. Dealing with the question whether the Cooperative Bank, like the present bank, will be amenable to writ jurisdiction in the context of a departmental proceeding against its employees, the Hon''ble Supreme Court clarified the position after considering various statutes, which control the functioning of the bank.

40. Here also similarly the bank while holding departmental proceeding against the employees is controlled by various statutory provisions as discussed above. This court, therefore, follows the conclusions reached by the Apex Court in the aforesaid decision. The relevant conclusions of the Apex Court in the aforesaid decision are set out hereunder :

27. In view of the fact that control of the State Government on the appellant is all pervasive and the employees had statutory protection and therefore the appellant being an authority or even instrumentality of the State, would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution, it may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law....

28. We, therefore, hold that the appellant is an authority controlled by the State Government and the service condition of the employees of the appellant particularly with regard to disciplinary proceedings against them are statutory in nature and thus writ petition was maintainable against the appellant. To this extent, we agree with the High Court....

41. A similar view was taken earlier by Calcutta High Court in the case of Arjed Mi Gazi vs. State of West Bengal reported in 1990 (2) CLJ 456. Justice G. N. Ray speaking for the Division Bench of this Hon''ble Court specifically observed as hereunder :

7.... When a duty flows from the statutory rule in the matter of employment,

although such employment may be at the inception a product of private contract between the parties, in the matter of regulation of the condition of service of such employment a duty of a public nature comes into operation. Accordingly, for breach of such obligation under statutory rules, a writ petition for appropriate writs and/or directions are maintainable....

42. In the aforesaid circumstances, this writ petition is therefore, very much maintainable before this court in its Constitutional Writ Jurisdiction as the conditions of service of the petitioner are controlled by and under the provisions of Rule 108 of the West Bengal Co-operative Societies Rules, 1987. Accordingly, I hold that the preliminary objection raised on behalf of the respondent bank regarding maintainability of this writ petition is devoid of any merit and the same is therefore, rejected.

43. As mentioned hereinbefore, the petitioner herein has raised specific issue regarding non-observance of the principles of natural justice by the respondent authorities while conducting the enquiry proceedings. From the records it appears that the enquiry was held ex-parte on March 8, 2001 and at least 10 witnesses were examined on that day before the Enquiry Officer. Although the Enquiry Officer had expressed his satisfaction regarding service of notice upon the petitioner for holding of enquiry on March 8, 2001 on the basis of the receipt granted by the courier but undisputedly the said receipt does not bear any signature and/or endorsement of the petitioner in acknowledgment of the service of the said notice. No document has been produced before this court wherefrom it would appear that the petitioner has been duly intimated about holding of the enquiry on March 8, 2001.

44. In the aforesaid circumstances, I am constrained to hold that the Enquiry Officer held the enquiry on March 8, 2001 in clear violation of the principles of natural justice as no notice was served upon the petitioner regarding holding of enquiry on March 8, 2001. The Enquiry Officer thus illegally conducted the enquiry ex-parte in flagrant violation of the principles of natural justice.

45. The Enquiry Officer should not have examined the prosecution witnesses behind the back of the charge-sheeted employee, namely, the petitioner herein as the petitioner is entitled to cross examine the said witnesses. By conducting the enquiry ex-parte, the Enquiry Officer took away the right of the petitioner to cross-examine the prosecution witnesses and to make effective submissions before the Enquiry Officer. Accordingly, the report submitted by the Enquiry Officer cannot be accepted and/or relied upon as the said enquiry report has been prepared by the Enquiry Officer without following the principles of natural justice. Mr. Roy, learned Advocate of the respondents, however, specifically urged before this court that the petitioner has not actually suffered any prejudice on account of failure to observe any particular requirement of the principles of natural justice.

46. The learned Advocate of the respondents referred to and relied upon a

decision of the Supreme Court in the case of State Bank of Patiala and others Vs. S.K. Sharma, In the aforesaid case, the Hon"ble Supreme Court has specifically observed as hereunder:

In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it Void" or a nullity if one chooses to).

47. The learned advocate of the respondents also referred to and relied upon another decision of the Supreme Court in the case of B.C. Chaturvedi Vs. Union of India and others, and submits that the High Court while considering the power of judicial review cannot normally substitute its conclusion on penalty. Referring to the aforesaid decision, Mr. Roy further submits that non-supply of enquiry report to the petitioner cannot invalidate the order of dismissal.

48. In my view, the aforesaid decision of the Supreme Court is not at all applicable in the facts of the present case as the main issue raised in this petition is whether the respondent authorities have conducted the enquiry upon due observance of the principles of natural justice. It has been repeatedly urged on behalf of the petitioner that the enquiry authority held the enquiry on March 8., 2001 and examined the prosecution witnesses without serving any notice regarding holding of enquiry on that day and thus clearly violated the principles of natural justice. The aforesaid decisions of the Supreme Court therefore cannot be of any help in deciding the real issue raised in this petition.

49. The learned advocate of the respondents also cited a decision of the Supreme Court in the case of State Bank of Bikaner and Jaipur and others Vs. Prabhu Dayal Grover, in support of the contention that it is not obligatory on the part of the disciplinary authority to give reasons for its order. In the aforesaid decision, Supreme Court has never observed that no reason is required to be furnished by the disciplinary authority while issuing the order of punishment.

50. The Supreme Court, in the aforesaid case, has specially observed on the basis of the express provisions of the regulations considered in the said case that there is no implied obligation to record reasons in the case of concurrence with the findings of the Enquiry Officer.

51. In the present case, however, there is no existence of any such rule which permits the disciplinary authority not to record any reason in support of its direction in case of concurrence with the findings of the Enquiry Officer.

52. The learned Advocate of the respondents although urged before this court that the impugned order of punishment should be read alongwith the report of the Enquiry Officer and the second show-cause notice but the same cannot fulfil the lacuna for non-furnishing the proper reasons by the disciplinary authority. The disciplinary authority is bound to consider the entire aspects of the matter in relation to a disciplinary proceeding on the basis of the charge-sheet, reply of the

charge-sheeted employee to the said charge-sheet, enquiry report submitted by the Enquiry Officer and reply to the said enquiry report by the charge-sheeted employee before issuing the order of punishment.

53. The disciplinary authority is required to disclose the reasons for rejecting the representations made by the petitioner in connection with the enquiry report. Reason is undoubtedly the essence of disciplinary proceedings and the disciplinary authority, therefore, cannot avoid the obligation to furnish reasons in support of its order.

54. The learned advocate of the respondents also referred to and relied upon the following decisions of the Supreme Court in support of his aforesaid arguments :

1 Karnataka State Road Transport Corporation and Another Vs. S.G. Kotturappa and Another, Paragraph 24.

2. Disciplinary Authority-cum-Regional Manager and Others Vs. Nikunja Bihari Patnaik, Paragraphs 7 and 8.

3. Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar, Paragraph 14.

4. Regional Manager, U.P.S.R.T.C., Etawah and Others Vs. Hoti Lal and Another, Paragraph 10.

5. 2005 SC 314 [Ganesh Santa Ram vs. State Bank of India & Anr.] Paragraphs 32, 33 and 34.

55. In my view, the aforesaid decisions are not at all applicable in the facts of the present case.

56. For the reasons discussed hereinbefore, not only the enquiry proceeding but the entire disciplinary proceedings have been vitiated due to non-observance of the principles of natural justice and therefore, the impugned order of punishment cannot be sustained in the eye of law and the same is therefore, quashed.

57. Since the petitioner cannot be reinstated in service as he has already attained the age of superannuation, the respondent authorities are directed to make necessary payment of back wages to the said petitioner treating him in service from the date of suspension till the date of superannuation after adjusting the subsistence allowance already paid to the said petitioner. Respondent authorities will make the aforesaid payment to the petitioner within a period of eight weeks from the date of communication of this order.

58. However, I make it clear that disposal of this writ petition will not prevent the respondent authorities from proceeding against the petitioner de novo on the basis of the impugned charge-sheet, if the authorities so desire, but in that event, the disciplinary authority must apply -a new Enquiry Officer for the purpose of conducting the enquiry proceedings as I have already held hereinbefore that the said Enquiry Officer failed to discharge his due duties and

responsibilities in an appropriate manner in accordance with law and was totally biased against the petitioner herein.

59. This Writ Petition thus stands allowed. There will be, however, no order as to costs. All parties concerned are to act on a xerox signed copy of this order on the usual undertaking.