

(2002) 03 GAU CK 0043

In the Gauhati High Court

Case No : Writ Appeal No. 234 of 2001 WA (SH) No. 10 of 2001

State Bank of India and Others

APPELLANT

Vs

Dr. Prasanna Kumar Agarwal

RESPONDENT

Date of Decision : 18-03-2002

Acts Referred:

State Bank of India (Supervisory Staff) Service Rules, 1975 — Rule 50A

Citation : (2002) 1 GLT 660 : (2002) 3 LLJ 46

Hon'ble Judges : R.S. Mongia, C.J.; P.G. Agarwal, J

Bench : Division Bench

Advocate : S.S. Sharma, D.K. Bhatra, K.K. Bhatra, S.K. Sangheria and R.K. Bhatra, for the Appellant; V.K. Jindal and I. Singh, for the Respondent

Final Decision : Allowed

Judgement

R.S. Mongia, C.J.—This is an appeal at the behest of the State Bank of India against the judgment and order of the learned Single Judge dated 1.6.2001 passed in W.P(C) No. 261(SH)/2000 allowing the writ petition of Dr. Prasanna Kumar Agarwal, Medical Officer of the State Bank of India. Brief resume of facts giving rise to the present appeal may be noticed.

2. The Respondent Dr. Prasanna Kumar Agarwal (hereinafter referred to as "Dr. Agarwal") was appointed as Medical Officer of the State Bank of India where he joined on 1.7.7.1983. While Dr. Agarwal was serving as Medical Officer in the Regional Office of the State Bank of India at Shillong on 30.1.1987 a First Information Report was lodged with the Police by the Bank that Dr. Agarwal having entered into a criminal conspiracy with the then Chief General Manager Shri J.P. Jakhodia cheated the Bank to the tune of Rs. 1,89,815.70 in the matter of purchase of medicine. A police case bearing No. RC 2/87 SHG was lodged by the CBI. The CBI filed a charge sheet in the Court of the Special Judge which was registered as Special Case No. 23(C)/98. Dr. Agarwal had challenged the taking of cognizance of the offence by the Special Judge by filing a petition being Criminal Revision No. 67/90 u/s 482 CrPC on 2.3.1990. However, the said

petition was ultimately dismissed and the Stay order earlier granted was vacated.

3. It may be observed here that vide order dated 17.11.1989 Dr. Agarwal had been placed under suspension. The order reads as under:

"Certain gross irregularities on your part in connection with purchasing of Medicines and management of Bank's Dispensary at Regional Office (now Zonal Office), Shillong during your incumbency there at as Bank's Medical Officer have come to light. I have, therefore, decided not to allow you to continue in the active service pending decision of the prosecution case filed by CBI in this regard. Accordingly, you are placed under suspension with immediate effect in terms of Rule 50A(1) of the State Bank of India (Supervising Staff) Service Rules.

2. In this connection, please note that you should continue to be available at the present place of your posting and you will please on receipt of this order, communicate to your Controlling Authority, in writing, your present address in full where you will normally reside and will be available for any communication sent by the Bank in future. In case there is any change in your address so communicated, you will please promptly advise such change to your Controlling Authority.

3. It has also been decided that during the period of your suspension, you will be entitled to draw the usual subsistence allowance equivalent to half of the basic pay and allowances drawn by you as on the date of this order vide Rule 50A(7) of the State Bank of India (Supervising Staff) Service Rules, in this connection, your attention is also drawn to Rules 50A(5) *ibid*."

4. Dr. Agarwal filed a civil suit being Title Suit No. 11(SH)/89 in the Civil Court and obtained ad interim injunction on 30.11.1989 restraining the Bank from giving effect to the suspension order. However, the suit was dismissed in default on 24.7.1992. The Bank issued a show cause notice to Dr. Agarwal on 29.03.94 pointing out serious irregularities allegedly committed by him. He was asked to give reply to the show cause within 15 days. The show cause notice dated 29.3.1994 reads as under :

"IRREGULARITIES AT THE BANK'S DISPENSARY STATE BANK OF INDIA, ZONAL OFFICE, SHILLONG

It is observed that the following serious irregularities were committed by you in the purchase of medicine/maintenance of relevant records pertaining to the Bank's dispensary at Zonal Office, Shillong while you were posted there at as the Bank's Medical Officer during the period July, 1983 to November, 1989.

(a) It is observed that orders for supply of medicines worth Rs. 40,120/48 and Rs. 44,690/17 for the Bank's dispensary at Zonal Office, Shillong were placed with Agarwal Pharmacy through you. Although the Proprietor of Agarwal Pharmacy was your father, you did not disclose the fact to the appropriate authorities, which was highly irregular.

(b) It is further observed that the bills for Rs. 40,120/48 and Rs. 44,690/17 submitted by Agarwal Pharmacy were paid by the Bank on the strength of the certificate given by you on the body of the said bills that the medicines were received for use at the Bank's dispensary, whereas actually the medicines were not received at the Bank at all.

(c) It is also observed that during your incumbency as Medical Officer, orders for medicines were hurriedly placed and equally hastily paid at your behest. Moreover, no proper records were maintained at the dispensary in regard to medicines received and issued inasmuch as medicines received at the dispensary were not entered in the Stock Registers.

2. In view of the above, please arrange to submit your explanation, within 15 days from the date of receipt of this letter, in regard to the circumstances under which the aforesaid irregularities were committed by you. In case we do not receive your reply within the stipulated period, it will be presumed that you have nothing to state in your defence and the matter will be dealt with without any reference to you. In this connection, if you desire, you may peruse the relevant records after obtaining the necessary approval from your Controlling Authority.

3. Meanwhile, please acknowledge receipt of this letter by putting your fall signature with date, in ink, on the duplicate copy hereof and return the same to us."

5. Dr. Agarwal prayed to the Bank to keep the Departmental Proceedings in abeyance till disposal of the criminal case pending against him in the Court of the Special Judge at the behest of the CBI. However, the Bank did not agree. This led the respondent Dr. Agarwal to file writ petition Civil Rule No. 1786/94 challenging the suspension order dated 17.11.1989, show cause notice dated 29.3.1994 and the letter dated 27.4.1994 whereby request for keeping the departmental proceedings in abeyance was turned down by the Bank. An interim order dated 12.5.1994 was passed in the said Civil Rule staying further action on the show cause notice dated 29.3.1994. The said Civil Rule was dismissed by a learned Single Judge on 27.9.1996 reference to which will be made hereinafter. Dr. Agarwal filed Writ Appeal No. 515/96 against the Judgment and order dated 27.9.1996 in which again further proceedings by the Bank against Dr. Agarwal were stayed. However, the said Writ Appeal No. 515/96 was also dismissed by a Division Bench of this Court on 28.8.1997. Dr. Agarwal took the matter before the Apex Court by filing SLP (C) No. 22194/97. However, the said SLP was dismissed in limine on 25.12.1997 by the Apex Court. Thereafter again explanation was sought by the Bank from Dr. Agarwal against the show cause notice dated 29.3.1994 vide letter dated 31.12.1998, 28.1.1999 and also by subsequent letters. Vide communication dated 28.12.1999 received by the Bank on 5.1.2000 Dr. Agarwal admitted receipt of various communications from the Bank starting from 31.12.1998 and intimated that by earlier communication he had asked for extension of time and inspection of documents which was very necessary for giving an effective reply to the show cause notice dated 29.3.1994,

inasmuch as, the alleged irregularities were from the period July, 1983 to November, 1989. However, he also gave a detailed reply to the show cause notice. It may be observed here that some photocopies of the documents were supplied to Dr. Agarwal and some others were in possession of the CBI.

6. It may be observed here that vide order dated 24.4.1998 of the Special Judge Dr. Agarwal who had been charge-sheeted along with four other accused persons by the CBI was discharged at the charge stage, whereas other four persons were not discharged and since they were not public servants it was held that they need not be tried, by the Special Judge and be tried by other competent criminal court. After receipt of the explanation to the show cause notice dated 29.3.1994 from Dr. Agarwal vide communication dated 28.12.1999 the Bank served him a Charge Sheet dated 26.4.2000 containing 4 charges, which read as under:

"CHARGE-I

It is observed that while you were Medical Officer at Zonal Office, Shillong medicines worth Rs. 40,120.48 and Rs. 44,690.17 were purchased from Agarwal Pharmacy, Guwahati for Zonal Office Dispensary. It is also observed that prior to your appointment as bank's Medical Officer, you used to function as consultant doctor at the above mentioned pharmacy and the proprietor of the pharmacy is your father. You had failed to disclose the fact to the appropriate authority. You have thus violated Rules 50(1) and 52(3)(iii) of the State Bank of India Officers Service Rules which are applicable to you.

CHARGE-II

Medicine worth Rs. 65,518.25 and Rs. 39,486.80 were purchased from Shalex Distributors, Pan Bazar, Guwahati, a fictitious firm. The licence No. 1630/1631 mentioned on the bills, etc. actually belong to Mehendl Medical Stores, Nagrijuli, Kamrup, under the restricted drug licence issued by the Controller of Drugs, Assam. No such firm under Shalex Distributors or its proprietor Sri Bimal Choudhury is registered with the Controllers of Drugs, Assam. The firm also does not exist in the given address at Panbazar, Guwahati. It is alleged that the bills of the medicines purported to have been supplied by Shalex Distributors paid by the Bank Draft issued by Lailurnukhrah branch vide drafts No. OL/AP 305632 dt. 19.2.1985 for Rs. 39,486.80 and No. OL/AP 305339 dt 12.11.1984 for Rs. 65,518.25 were received by you under your signature. Thus, you have violated Rules 50(4) and Rules 52(3) (iii) of SBI Officers Service Rules by placing order with a non-existing/fictitious firm.

CHARGE-III

It is observed that the bills for Rs. 40120.48 and Rs. 44,690.17 submitted by Agarwal Pharmacy were paid on the strength of the certificate given by you on the body of the said bills to the effect that the medicines were duly received for use at the bank's dispensary. Whereas actually the medicines were not received by the bank at all. The bill for medicine supplied by Agarwal Pharmacy, a

Guwahati based firm was dated 7.5.1984 and you had certified having received the medicines on the same day. Thus, you have violated the Rule 50(4) of the SBI Officers Service Rules by giving false certificate.

CHARGE-IV

It is observed that during your incumbency as Medical Officer, order for medicines were hurriedly placed and the bills were paid with equal alertness at your behest. Moreover, no proper records were maintained at the dispensary in regard to medicines received/purchased. Thus, you have violated Rule 50(1) of State Bank of India Officers Service Rules by disobeying the instructions issued by your superior."

To the above charge sheet Dr. Agarwal filed a reply on 5.6.2000 by stating as under:

"With reference to your letter No. DPS/65/2000-01 dated 26.4.2000, I deny totally the charges leveled against me and request to be kind enough to exonerate me from the said unfounded and baseless charges."

7. It may be noticed here that after Dr. Agarwal was discharged from the criminal case by the Special Judge, he had applied for revocation of his suspension. However, by the order dated 19.08.2000 the Bank informed Dr. Agarwal that he will continue to be under suspension. The letter reads as under :

"Dear Sir,

STAFF SUPERVISING

BANK'S MEDICAL OFFICER.

SUSPENSION.

Please refer to your letter dated 27.5.2000.

2. In this context, please note that Special Judge, Assam, Guwahati has discharged you vide his order dated 24.4.1998 on technical grounds and not on merits of the case. Therefore, it has been decided that your suspension will continue to be in effect till the departmental action against you is concluded.

3. Please acknowledge receipt of this letter on the enclosed duplicate copy under your full signature and date and return the same to us."

8. Dr. Agarwal filed writ petition, W.P.(C) No. 261(SH)/2000 challenging the order dated 17.11.1989 and the order dated 26.4.2000 issuing charge sheet as also the order dated 19.8.2000 by which the suspension of Dr. Agarwal was ordered to be continued. That writ petition has been allowed vide the impugned judgment dated 1.6.2001. Hence, the present appeal.

9. The State Bank of India (Supervising Staff) Service Rules (hereinafter called "the Rules") admittedly govern the service conditions of Dr. Agarwal. Rule 50A

deals with the power of the Disciplinary Authority to place an employee under suspension. The relevant portion of Rule 50A is in the following terms :

"50A(1). An employee may be placed under suspension by the Disciplinary Authority:

- (a) where a disciplinary proceeding against him is contemplated or is pending ; or
- (b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

(2) If an employee who is detained under custody whether on a criminal charge or otherwise for a period exceeding forty-eight hours or is convicted of an offence to a term of imprisonment exceeding forty-eight hours is placed under suspension by an order of the Disciplinary Authority, it shall be open to the Disciplinary Authority to give effect to such suspension from a retrospective date not earlier than the date of such detention or such conviction.

Explanation : The period of forty-eight hours referred to above shall be computed from the commencement of the imprisonment after conviction or detention and for this purpose, intermittent periods of imprisonment or detention, if any, shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee under suspension is set aside in appeal or on review under Rule 51 and the case is remitted for further inquiry or action or with any directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee under suspension is set aside or declared or rendered void in consequence of, or by a decision of a court of law, and the Disciplinary authority on consideration of the circumstances of the case decides to hold further inquiry against him on the allegation which the penalty of dismissal, removal or compulsory retirement was originally imposed, the employee shall be deemed to have been placed under suspension by the Disciplinary Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5) (a) An order of suspension made under this rule, shall continue to remain in force until modified or revoked by the authority which made the order ;

(b) An order of suspension made under this rule may at any time be modified or revoked by the authority which made the order.

(6) No leave shall be granted to an employee under suspension.

(7) (i) An employee "who is placed under suspension shall be entitled to receive

during the period of such suspension and subject to Clause (ii) and (iii) subsistence allowance equal to half his substantive salary and such other allowances as the Appropriate Authority may decide.

(ii) During the period of suspension an employee may, at the discretion of the Bank, be allowed occupation of an official house upto a period of four months but shall, not be entitled to free use of the Bank's car or receipt of conveyance or entertainment allowance or special allowance.

(iii) No employee who is under suspension shall be entitled to receive payment of subsistence allowance unless he furnishes a certificate that he is not engaged in any other employment, business, profession or vocation.

(8) (i) Where the Appointing Authority holds that the employee has been fully exonerated or that the suspension was unjustifiable, the employee shall be granted the full pay to which he would have been entitled, had he not been so suspended, together with any allowance of which he was in receipt immediately prior to his suspension or may have been sanctioned subsequently and made applicable to all employees.

The period of absence from duty in such a case shall, for all purposes, be treated as period spent on duty.

(ii) In all cases other than those referred to in Clause (i) above and where the employee has not been subjected to the penalty of dismissal, the period spent under suspension shall be dealt with in such a manner as the Disciplinary Authority may decide and the pay and allowances of the employee during the period adjusted accordingly."

10. The case of the appellant Bank before the learned Single Judge as respondent was that Dr. Agarwal had been placed under suspension under Rule 50A(1) as will be clear from the suspension order dated 17.11.1989 (reproduced above) and not under Sub-clause (b) of Rule 50A(1) and, therefore, even after the discharge of Dr. Agarwal from the criminal case by the Special Judge, he could be continued under suspension as disciplinary proceedings against him were contemplated and suspension would continue under Rule 50A(1)(a). The learned Single Judge held that the earlier suspension order dated 17.11.1989 was under Rule 50A(1)(b) and since Dr. Agarwal had been discharged from the criminal case and the Disciplinary Authority had not taken any action to initiate the Departmental Disciplinary Proceedings and it had only decided on 16.4.2000 to initiate departmental proceedings, therefore, continuing the suspension order dated 17.11.1989 was bad in law. Learned Single Judge further held that the allegations against Dr. Agarwal in the criminal case as also in the charge sheet dated 26.4.2000 were identical and he having been discharged by the Special Judge the departmental proceedings cannot be initiated. Reliance was placed for this purpose on decision of the Apex Court reported in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, It was further held by the learned Single Judge that there was delay in initiating the departmental proceedings and

therefore the same cannot be initiated and consequently quashed the charge sheet issued by the communication dated 26.4.2000.

11. It may be observed here that when this writ appeal was admitted an order was passed on 27.6.2001 in Misc Case. No. 107/2001 that since Dr. Agarwal, the writ petitioner had already been reinstated after passing of the judgment and order by the learned Single Judge quashing the suspension order, he may be allowed to continue in service subject to disposal of the appeal. Holding of the disciplinary proceedings as also the payment of arrears and other benefits was, however, stayed by the Division Bench.

12. So far as the order of suspension is the learned counsel for the appellant argued that bare reading of the order of suspension dated 17.11.1989 would go to show that it was specifically passed under Rule 50A(1) and there was no mention that the same was being passed under Rule 50A(1)(b) and, therefore, the order should be read to have been passed both under Clause (a) and (b) of Rule 50A(1) and merely because Dr. Agarwal was discharged by the Special Judge trying the criminal case, the suspension could not automatically come to an end. He further submitted that under Rule 50(5)(a) (reproduced above) the order of suspension would continue till it is revoked by an order. On the other hand, learned counsel for the respondent Dr. Agarwal submitted that the bare language of the order of suspension dated 17.11.1989 would go to show that the same had been passed because of the pendency of the criminal case and not because of pendency of any Departmental Proceedings and, therefore, the order of suspension should be read to have been passed under Rule 50A(1)(b) and should have come to an end on the discharge of Dr. Agarwal by the Special Judge in the year 1998.

13. It cannot be disputed that while the criminal case was pending the Bank sought to commence departmental proceedings against Dr. Agarwal and for that purpose for an explanation was sought from him by the Bank vide communication dated 29.3.1994 already reproduced above. So on 29.3.1994 both criminal case as well as the Departmental proceedings in the form of show cause notice were pending against Dr. Agarwal. Dr. Agarwal had challenged the show cause notice dated 29.3.1994 by filing the earlier writ petition Civil Rule No. 1786/94 in which initially a stay order was granted. But the writ petition was dismissed on 17.9.1996.

14. After hearing the learned counsel for the parties we are of the view that even after Dr. Agarwal had been discharged by the Special Judge he could be continued under suspension because of the Departmental proceedings under Rule 50A(1)(a). No order had, been passed by the authorities revoking the suspension of Dr. Agarwal's discharge by the Special Judge. Rule 50A(5)(a) envisages that an order of suspension made under Rule 50A shall continue to remain in force until modified or revoked. The Bank taking the view that since the order of suspension dated 17.11.1989 had been, passed under Rule 50A(1) and not specifically under Rule 50(1)(b) no fresh order of suspension need be

passed. The order dated 17.11.1989 was not revoked on the discharge of Dr. Agarwal by the Special Judge. Even if there was any doubt in the mind of Dr. Agarwal, the same was clarified vide order dated 19.8.2000 when on the asking of Dr. Agarwal the Bank refused to revoke the order of suspension and ordered that the suspension would continue. The order of suspension dated 17.11.1989 even if it be read to be under Rule 50A(1)(b), it could be read to be under both the Clauses (a) and (b) from the date of the show cause dated 29.3.1994 and in any case from 19.8.2000 when specifically Dr. Agarwal was told that the suspension would continue till the disciplinary proceedings are over.

15. For the foregoing reasons we do not find that the learned Single Judge was right in quashing the order of suspension on the grounds which have been mentioned above. We will be dealing with the point in initiating the disciplinary proceedings belatedly in detail which also influenced the learned Single Judge in quashing the order of suspension.

16. Now we will take up the twin argument for quashing the charge sheet, i.e., (i) there is delay in initiating disciplinary proceedings and serving the charge sheet; (ii) the charge sheet in sum and substance contains the same allegations as were in the charge sheet submitted by the CBI before the Special Judge in which the writ petitioner, now respondent, had been discharged. Having been discharged by the Special Judge on the same set of allegations no departmental enquiry can be held.

17. So far as the delay in initiating the Departmental proceedings and service of charge sheet is concerned, some dates and events may be recapitulated. Dr. P.K. Agarwal was suspended on 17.11.1989. In Title Suit No. 11 (SH)/89 filed by Dr. Agarwal, he was granted an ad interim injunction. However, the suit was dismissed in default on 24.7.1992. The CBI had filed charge sheet before the Special Judge which was registered as Special Case No. 23(C)/89. The petition for quashing the proceeding was filed by Dr. Agarwal (Criminal Revision No. 67/90) and a stay order was obtained by him on 2.3.1990. However, later on the petition was dismissed. After dismissal of the criminal revision petition the Bank vide communication dated 29.3.1994 asked Dr. Agarwal to give his explanation to certain alleged acts of omission and commission. Dr. Agarwal submitted an application to the Bank on 18.04.1994 with a request not to proceed with the case till the criminal proceedings pending before the Special Judge were disposed of. This plea was rejected by the Bank on 27.4.1994. Dr. Agarwal had challenged the issuance of the show cause notice dated 29.3.1994 and his suspension order dated 17.11.1989 by filing Civil Rule No. 1786/94 and a stay order was initially granted. However, the said Civil Rule was dismissed on 27.9.1996. Against the aforesaid judgment Dr. Agarwal filed Writ Appeal No. 515/96 in which further departmental proceedings were ordered to be stayed. The appeal was, however, dismissed on 28.8.1997. Against the judgment of the Division Bench in Writ Appeal No. 515/96 Dr. Agarwal filed SLP(Civil) No. 22194/97 before the Apex Court which was dismissed on 15.12.1997. On 24.7.1998 the Special Judge

discharged Dr. Agarwal in the CBI case. Despite this Dr. Agarwal did not give any reply to the show cause notice dated 29.3.1994. Since no explanation was furnished by Dr. Agarwal to the show cause notice, the Bank vide letters dated 31.12.1998, 28.1.1999 and subsequent letters dated 6.12.1999 and 8.12.1999 etc. again asked Dr. Agarwal to give reply. The respondent, Dr. Agarwal, gave explanation only on 21.12.1999 and also submitted that he wanted copies of certain documents, though photo copies had been supplied and some of the documents were in possession of the CBI. It was only after receipt of the aforesaid explanation the charge sheet dated 26.4.2000 was served to which one word reply was submitted by Dr. Agarwal on 5.6.2000 to which reference has already been made above. It may be observed here that in Civil Rule No. 1786/94 Dr. Agarwal had also raised the question of delay in initiating departmental proceedings. Learned Single Judge vide his judgment dated 27.9.1996 while dealing with the point of delay observed as under:

"Another ground urged by the learned counsel is about the delay in initiating departmental proceedings. The respondent Bank cannot be blamed for delay and it is not attributable to the Bank authorities, considering the fact that the matter was under investigation by the CBI, having filed a regular charge sheet and the interim orders passed by the Court. This petition itself has been pending for over two and half years after passing of the interim order. All these factors cannot be lost sight of while considering the question of delay. In *Union of India and others Vs. A.N. Saxena*, the Supreme Court has pointed out where charge sheet showing charges of very serious nature which if proved would establish misconduct, the Court should be slow in passing stay orders against authorities from taking disciplinary action against the erring officer in accordance with the charge sheet. In *Deputy Registrar, Cooperative Societies, Faizabad Vs. Sachindra Nath Pandey and Others*, the Supreme Court has observed that where the charges are serious, namely, mere fact that 16 years had elapsed from the date of commencing departmental enquiry, was not a sufficient ground to close the matter. Similar view has been expressed in *Registrar of Cooperative Societies, Madras and Another Vs. F.X. Fernando*, and *Union Carbide Corporation Ltd. Vs. Union of India (UOI) and Others*,

18. The learned Single Judge had further observed that in view of the order dated 2.3.1990 passed by this Court in Criminal Revision filed by Dr. Agarwal (Crl. Revn. No. 67/90) and order dated 12.5.1994 passed in the writ petition (Civil Rule No. 1786/94) it emerged that criminal trial had been held up for last 8 years and there was no progress at all and as a result of the interim order dated 12.5.1994 passed in the writ petition further proceedings in pursuance of the show cause notice dated 29.3.1994 were also held up. Neither the criminal trial was going on nor the departmental proceedings. The learned Single Judge held that there was no delay on the part of the Department, i.e., the Bank in launching the departmental proceedings. Thus, the writ petition was dismissed.

19. In Writ Appeal No. 515/96 against the judgment in Civil Rule No. 1786/94

the same point was re-urged and the contention of the appellant Dr. Agarwal was noticed by the Bench as under :-

"The order of suspension was challenged on the ground of delay and the delay is attributable to the employer and not to the employee and as such the view taken by the learned Single Judge that the Court will not interfere in such matter is not correct."

"There was inordinate delay in initiating the departmental proceedings against the petitioner for no fault of his. That being the position, the learned Single Judge ought to have seen that the delay was intentional and on the part of the employer. The conclusion on this point is not sustainable in law."

20. While dealing with the aforesaid contentions, the Division Bench observed as under :-

"It is very unfortunate that on account of the stay order granted by this Court there has been undue delay in completing the departmental proceedings. However, by virtue of the order made by the learned Single Judge under appeal, that order of stay has been vacated. Indeed, the criminal proceedings have also been disposed of. The departmental proceedings can be taken up immediately and the matter may be heard and disposed of on priority basis."

It may be observed here that neither the learned Single Judge nor the Division Bench at all held that the employer, i.e., Bank was in any way responsible for not initiating and disposing the departmental proceedings expeditiously or that the delay was attributed to the Bank. Consequently, it is evident that upto the Apex Court the plea of the petitioner Dr. Agarwal regarding delay in initiating departmental proceedings was negated. The petitioner was discharged in the CBI case on 24.4.1998. Thereafter, the ball was in the court of Dr. Agarwal to give reply to the show cause notice dated 29.3.1994. He having failed to do so the Bank asked him to give explanation again by letters dated 31.12.1998 and 28.1.1999 and by some other communications thereafter. The explanation was given only on 21.12.1999 and thereafter the regular charge sheet followed on 26.4.2000 to which one word reply was given on 5.6.2000. Under the aforesaid circumstance, it cannot be said that there is any delay on the part of the employer to initiate the departmental proceedings. Either there was stay order from a Court or it was Dr. Agarwal who was dillydallying the matter. Really speaking, upto 15.12.1997 the earlier writ petition filed by Dr. Agarwal, took care regarding the point of delay which was decided against Dr. Agarwal upto the Apex Court. After 15.12.1997, in view of the facts mentioned above, it cannot at all be said that there was any delay in initiating departmental proceedings. According to us, learned Single Judge did not appreciate properly the aforesaid facts specially the view taken by this Court in the earlier writ petition filed by Dr. Agarwal (Civil Rule No. 1786/94) regarding the delay which was upheld in appeal and by the Apex Court. Moreover, in Deputy Registrar, Cooperative Societies, Faizabad Vs. Sachindra Nath Pandey and Others, the Apex Court observed that

where charges are serious namely, misappropriation and abscond with official records mere fact that 16 years had elapsed from the date of commencement of the departmental enquiry, was not a sufficient ground to close the matter.

21. In *The State of Madhya Pradesh Vs. Bani Singh and another*, the Apex Court was of the view that if there was in no explanation for not initiating departmental enquiry for a sufficient long period which may cause prejudice to the defence of the delinquent officer it will not be unfair to start the Departmental proceedings. In the present case, as has been noticed above, sufficient explanation has been given by the Bank in not initiating the departmental proceedings till 1994 and in what circumstance the charge sheet was served ultimately in April, 2000. No prejudice has been shown to have been caused to the petitioner Dr. Agarwal, now Respondent, on account of initiation of the departmental proceedings in 1994 culminating into charge sheet dated 26.4.2000. It may be observed here that the learned Single Judge was not correct that the departmental proceedings were being initiated by the service of the charge sheet. In fact, the departmental proceedings had been initiated against Dr. Agarwal by service of the show cause notice asking his explanation in September, 1994 and it has already been held in earlier writ petition Civil Rule No. 1786/94, that there was no delay. This finding as observed above, was upheld by the Envision Bench in appeal as also by the Apex Court. For the foregoing reasons we find that the learned Single Judge was not correct In holding that there was any delay in initiating departmental proceedings. The finding is hereby reversed.

22. So far the second limb of the argument that since Dr. Agarwal had been discharged by the Special Judge on the same set of charges the departmental proceedings cannot proceed. It may be observed here that for holding so, the learned Single Judge has primarily relied on the Apex Court Judgment in *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another*, It may be observed here that in that case the criminal trial went to full length and it was held that the prosecution had failed to prove that there had been a raid at the premises of Capt M. Paul Anthony. On the statement of the same witness before the enquiry officer who had earlier appeared in the criminal trial, the enquiry officer gave a finding that in fact there was a raid. In these circumstances the Apex Court held that the finding by the enquiry officer cannot be upheld in view of the finding recorded by the criminal Court on the same evidence by the same witnesses. In other words, it was held that on the same evidence by the same witness if there is a finding of a criminal court that would prevail over the finding by the enquiry officer in a departmental enquiry. It was in these circumstances that the punishment awarded in the Departmental enquiry was set aside. Neither it was projected before the Apex Court nor it was held that on acquittal by the criminal court a departmental enquiry cannot be held. There is a direct judgment of the Apex Court reported in *Senior Superintendent of Post Offices v. A. Gopalan* AIR 1999 SC 1514 in which it was held that acquittal of delinquent officer by a criminal court does not conclude departmental proceedings in respect of same charge. The primary reason given by the Apex Court was that in a criminal case

the charge is to be proved by the standard of proof beyond reasonable doubt, while in a departmental proceedings the standard of proof for proving the charge is preponderance of probabilities. In paragraph 6 of the judgment it was observed :

"6. We have heard Shri V.C. Mahajan, the learned senior counsel appearing for the appellants and Shri K.M.K. Nair, the learned counsel appearing for respondent Shri Nair has submitted that since the respondent has been acquitted by the criminal court on the charge of withdrawal of Rs. 8000 the Tribunal was right in holding that the finding regarding the first charge could not be sustained. Shri Nair has placed reliance on the decision of this Court in Nelson Motis Vs. Union of India and another, The said decision does not lend support to the said submission of Shri Nair. In that case, the Court Has rejected the contention that disciplinary proceeding could not be continued in the face of the acquittal in the criminal case and has held that the nature and scope of the criminal case are very different from those of a departmental disciplinary proceedings and an order of acquittal, therefore, cannot conclude the departmental proceedings. This is so because in a criminal case the charge has to be proved by the standard of proof beyond reasonable doubt while in departmental proceedings the standard of proof for proving the charge is preponderance of probabilities. The Tribunal was, therefore, in error in holding that in view of the acquittal of the respondent by the criminal court on the charge relating to withdrawal of Rs. 8,000 the finding on the first charge in the departmental proceedings cannot be upheld and must be set aside. The Tribunal was also not right in taking the view that even though the second charge of misappropriation of sum of charge of Rs. 379 and Rs. 799 realized the customs duty was established, the punishment of compulsory retirement that was established, the punishment of compulsory retirement that was imposed on the respondent could not be sustained. Having regard to the fact that the second charge related to misappropriation of funds for which the punishment of compulsory retirement could be imposed the Tribunal, in exercise of its jurisdiction, could not direct the appellate authority to review the penalty imposed on the respondent."

23. Similar view was expressed by a Division Bench of this Court in United Bank of India and Another Vs. Promode Ranjan Das, .

24. Paul Anthony case (supra) of the Apex Court is not applicable on the facts of the present case. No evidence on behalf of the prosecution was recorded by the Special Judge before discharging Dr. Agarwal and no evidence has yet been led in the departmental enquiry. So to say that the finding recorded by the enquiry officer goes against the finding recorded by the Special Judge on the same evidence does not hold good as the evidence is yet to be led in the enquiry. In passing, we may also observe here that the Single Bench as well as the Division Bench in Civil Rule No. 1786/94 and Writ Appeal No. 515/96 had observed that the subject matter of the CBI case was not exactly the same as was the show cause notice dated 23.9.1994. Be that as it may, as observed above, Paul

Anthony's case (supra) would not come to the rescue of the petitioner Dr. Agarwal, rather the case falls within the dicta of the Apex Court in A. Gopalan case (supra). For the foregoing reasons we do not agree with the findings recorded by the learned Single Judge on this point and reverse the same.

25. In view of the discussion above, the writ appeal is allowed and the judgment of the learned Single Judge is hereby quashed.

26. Before parting with the judgment, we may observe that in pursuance of the judgment of the learned Single Judge the Bank has reinstated Dr. Agarwal by revoking the order of suspension. It will be open to the Bank to pass fresh orders in accordance with law. We further direct that the enquiry officer may conclude the enquiry expeditiously, but not later than 6 (six) months from the date the first sitting is held by him hereinafter. If the delinquent Officer, i.e., Dr. Agarwal does not co-operate with the enquiry officer, it will be open to the Enquiry Officer to proceed with the enquiry in accordance with law.