

(2015) 04 RAJ CK 0080

In the Rajasthan High Court

Case No : DB Special Appeal (W) No. 645 of 2001

State Bank of India and Others

APPELLANT

Vs

Nand Kishore Vijay

RESPONDENT

Date of Decision : 15-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) LabIC 2601 : (2016) 1 RLW 356

Hon'ble Judges : Ajay Rastogi, J;J.K. Ranka, J

Bench : Division Bench

Advocate : Sachin Mehta, for the Appellant; R.P. Vijay, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Ajay Rastogi, J.—Instant intra court appeal is directed against order of the Ld. Single Judge dt.31.7.2000 holding that the finding of the enquiry officer in regard to charge No. 2 and 3 was totally perverse and not supported by any tangible documentary evidence on record and the order of penalty dt. 12.7.1991 based on such faulty enquiry being in violation of principles of natural justice is not sustainable in law and the officer was entitled to all the benefits as if he has not been removed from service.

2. Brief facts of the case are that the respondent was working in the Officers Cadre as Junior Management Grade Scale-I (Dy. Manager) with the State Bank of India at Sanganeri Branch, Jaipur in 1982-84 and continued to work as such upto 17.11.1984 and thereafter he was transferred to Srinagar, Garwal in 1986. For some alleged delinquency of the year 1982-1984, he was placed under suspension on 20.2.1988 and was served with the charge sheet dt.30.7.1990 and the allegation against him was that while working at Sanganeri Branch, Jaipur he failed to enter the STDRs in the security register ledger of one Shyam Sunder, the borrower for two STDRs for a sum of Rs. 40,000/-. The second charge was that he along with Shyam Sunder insisted for cash payment of STDRs

from Ms. N.A. Khan officiating as officer JMGs-I and verified the signature of Shyam Sunder and got the STDRs cleared despite that STDRs were under lien and the payment of STDRs could not have been made. It was also alleged that cash payment of STDRs over Rs. 10,000/- was in violation of the bank instructions.

3. After the charge sheet came to be served, the respondent submitted reply (Ann.2) in which clarification was made that before the charge sheet came to be served upon him, because of some complaint, the so called alleged allegation has been enquired at least four times by different officers at different times and his explanation found to be valid and justified and he is now facing with the allegations for the 5th time. He had denied the charges but without taking note of enquiry earlier made on five different occasions and at no point of time the officer has found prima facie truthfulness in the allegation leveled against him still the enquiry officer was appointed.

4. The respondent officer submitted application to demand certain documents for the purpose of his defence dt.24.10.1990 (Ann.5), in response thereto, the enquiry officer sent him reply dt. 19.11.1990 (ann.6) that the documents demanded by him will be supplied at the time if the said witnesses are examined during the course of enquiry and the fact is that the relevant documents demanded by him were never supplied and fair opportunity of hearing has not been afforded particularly opportunity to cross examine PW4 Shyam Sunder, however, enquiry officer ultimately submitted his report holding charge No. 2 and 3 proved and based on the report of enquiry, disciplinary authority proceeded in the matter and finally passed penalty of removal from service vide order dt. 12.7.1991.

5. Initially, enquiry was conducted by four different officers namely Mr. A.D. Khan; Mr. J.C. Loothra; Mr. K.L. Sachdeva and Mr. A.K. Sarin in the year 1985, 1986, 1987 and 1989 respectively and despite his insistence copies of these enquiry reports were neither supplied prior to filing of writ petition nor placed on record after the writ petition came to be preferred by him and even when the matter was heard by Ld. Single Judge, the counsel took time to place the record of enquiry earlier made at five different occasions but still failed to place on record, even this Court also afforded opportunity to place the record of enquiry earlier conducted but still failed to place on record.

6. However, disciplinary enquiry proceeded and in support of the Bank, statement of witnesses PW1 Mr. P.K. Suri and PW2 Miss. N.A. Khan came to be recorded, however, name of Mr. P.K. Suri was neither available in the list of witnesses nor in the charge sheet served upon the delinquent.

7. On 9.1.1991, the enquiry officer recorded the statement of the witnesses taken by the preliminary enquiry officer and also by vigilance department, copies of which were neither available at the head office nor with the Vigilance Department and in absence of any evidence available on record as demanded by

the respondent, defence representative failed to cross examine PW 2 Ms. N.A. Khan and thereafter Shri R.K. Meena was examined. However, the matter was posted for 23.1.1991, on that date because of his illness, he could not appear and attend the enquiry but examination-in-chief of PW4 was recorded and on the request made by defence nominee, it was fixed for 9.2.1991 but PW4 Shyam Sunder failed to appear for his cross examination, opportunity of cross examination was closed by the enquiry officer on the pretext that the witness PW4 Shyam Sunder was an outsider and there is no rule which compel to ensure his attendance and he lost his right of cross examination of PW4 Shyam Sunder and on that very day i.e.9.2.1991, the presenting officer filed a letter endorsed to him Ex.P13 which was alleged to be written by Shri Shyam Sunder to the Presenting Officer Shri G.D. Tandon and that letter was taken on record as evidence and relied by enquiry officer but that was never subjected to any rebuttal and was not accepted during the course of enquiry and that indicates that a fair and reasonable opportunity of hearing was not afforded to the respondent officer, however, the enquiry officer exonerated the respondent from charge No. 1 and found charge No. 2 and 3 proved against him and based on the faulty enquiry, the disciplinary authority accepted the finding recorded by the enquiry officer and penalty of removal from service was inflicted which was the subject matter of challenge in writ petition before the Ld. Single Judge.

8. The Ld. Single Judge taking note of the fact that fair, proper and reasonable opportunity was not afforded to the respondent officer and opportunity to cross examine Shyam Sunder PW4 was not afforded and what is being contended was not supported by any tangible evidence on record as such finding being perverse and based on suspicion as per record which was produced by the bank which contains affidavit of Shyam Sunder and also taking note of the affidavit attached as Ann.D2 during the course of enquiry of Shyam Sunder dt.21.5.1985 and so also the statement in examination in chief recorded during the course of enquiry of PW 4 Shyam Sunder arrived to a conclusion that fair and reasonable opportunity of hearing was not afforded to the officer to cross examine PW4 Shyam Sunder and the document demanded by him was not supplied to him particularly the enquiry report earlier conducted on 4-5 different occasions and despite his insistence was neither placed on record during the course of enquiry nor before the Ld. Single Judge as such reasonable inference can be drawn that preliminary enquiry officer has not recorded his prima facie satisfaction to hold regular enquiry and all reports have been completely ignored and that was one of the reason for which the Ld. Single Judge arrived to a conclusion that a reasonable opportunity has not been afforded to the delinquent. At the same time, it was also observed by the Ld. Single Judge that PW4 Shyam Sunder who is said to have encashed the amount nowhere stated in examination in chief or otherwise brought on record to show that the respondent officer had ever kept the money with himself and returned the same after 2-3 months which has been so mentioned in the document attached with the impugned order. Consequences of such situation is that the finding of the Investigating Officer based on no

evidence whatsoever and being perverse on the face of it and not legally sustainable in the law and in support thereof no tangible evidence is placed on record and the finding of enquiry officer based on such faulty enquiry is totally perverse and not based on any evidence in regard to charge No. 2 and 3 and the competent authority has traveled beyond the charge sheet and statement of allegations and also on evidence by incorporating the material which were extraneous in nature showed a clear biasness of the competent authority in passing the impugned order and there was violation of principles of natural justice in not supplying the documents for his use in enquiry and accordingly the Ld. Single Judge set aside the order of penalty inflicted upon him and made him entitled to all the benefits as if he was not removed from service.

9. It can be noticed from the material on record that the respondent officer was suspended on 20.2.1988 and as informed to this Court he was punished with penalty of removal from service vide order dt. 12.7.1991 and during pendency of these proceedings he had attained the age of superannuation on 31.5.2008 and during pendency of present special appeal, there was stay operating against order of the Ld. Single Judge since 26.7.2001.

10. Counsel for appellant submits that the finding which has been recorded by the Ld. Single Judge in the light of the affidavit which might not have been accepted but came on record as referred to by Shyam Sunder PW4 dt.13.10.1990 along with follow up document Ex.P13 dt.23.1.1991 in itself sufficient to establish charge No. 2 and this what has been recorded by the enquiry officer in its report dt.13.3.1991 and what has been observed by the Ld. Single Judge in respect of charge No. 2 in the light of affidavit of Shyam Sunder PW4 dt.13.10.1990 is not sustainable and finding in this regard deserves to be quashed and set aside and the Ld. Single Judge has erred in holding that PW 4 Shyam Sunder could not be cross examined because of reason for adjournment, examination was not allowed but according to him, the Ld. Single Judge failed to appreciate that the complainant could not be cross examined by the respondent due to his own fault and on the date of enquiry he made lame excuses and sought adjournment and the complainant thereafter did not come for cross examination and that can very well be established prior to the proceedings of enquiry dt.23.1.1991 and 20.2.1991 as such finding which has been recorded of a proper opportunity of cross examination being not afforded to PW 4 Shyam Sunder is not sustainable in law and further submits that the affidavit dt.21.5.1985 allegedly executed by PW 4 Shyam Sunder could not be relied upon in the light of subsequent letter written by Shyam Sunder to the enquiry officer dt. 13.10.1990. As such, the Ld. Single Judge exceeded its jurisdiction in interfering the finding recorded by the enquiry officer as an appellant authority which was not valid and justified and as regard certain document being not supplied during the course of enquiry, counsel submits that it was mere an assumption that there was certain preliminary enquiries prior to the enquiry conducted by Shri OP Choudhary but it was the internal administrative action on the part of the bank and enquiry officer/disciplinary authority was not under

obligation to disclose the material conclusion during the course of preliminary enquiry or writ petition thereof unless it has been used against delinquent officer in the course of enquiry and in these facts and circumstances, there is no requirement or obligation on the part of the appellant to supply the same to the respondent officer and what has been observed by the Ld. Single Judge in regard to document not being supplied and the conclusion that it has denied fair opportunity of hearing is not unsustainable in law and once enquiry has been conducted as per procedure prescribed under the State Bank of India (Supervising Staff) Service Rules, 1977 in compliance of procedure prescribed under R.50, the Ld. Single Judge exceeded jurisdiction in interfering in the finding recorded by the enquiry officer and interference in the nature of punishment is not legally sustainable in law and the order deserves to be quashed and set aside under law.

11. Counsel for respondent on the other hand supported the order of Ld. Single Judge and submits that the departmental proceedings are quasi judicial proceedings and enquiry officer always performs as quasi judicial function and charges leveled against delinquent official has to be proved on the basis of material available on record and duty of the enquiry officer is to arrive at a finding taking into consideration material brought on record by the parties and such affidavit which are not part of record could not have been relied upon and at least fair opportunity of hearing was supposed to be afforded to the delinquent which indisputably was not afforded and the Ld. Single Judge after examining the matter at length arrived to the conclusion that finding in respect of charge No. 2 and 3 is not sustainable in law, not supported with material on record does not call for interference of this Court in the instant intra court appeal.

12. We have heard counsel for the parties and with their assistance examined the material available on record.

13. Before we proceed with the matter, it will be appropriate to first take note of statement of allegation against the delinquent respondent officer which reads ad infra-

(i) On 21st December 1982 Shri Shyam Sunder a borrower of SIB Division of Jaipur Branch obtained two STDRs bearing No. 425628 and 425629 for Rs. 25,000/- and Rs. 15,000/- respectively from P.B. Division. These STDRs were meant to be kept as security against Medium Term Loan sanctioned to Shri Shyam Sunder for purchase of TATA Model 1210-b-E-42 Truck and a lien was noted against these STDRs in the relative STDR issued register on 25th February 1983. He did not enter the STDRs in the security register/ledger in the (SIB) Division.

(ii) On 3rd October 1984 he went to the TDR Desk in PB division to obtain the premature payment of the said STDRs along with a person claiming to be Shri Shyam Sunder. Miss N.A. Khan who was officiating as Officer, JMGS-I objected to make payment in cash as the STDRs exceeding Rs. 10,000/- could not be paid in

cash. He insisted for the cash payment of the STDRs asking Miss Khan to show him the relative instructions. He verified the signature of Shri Shyam Sunder and calculated the interests of the STDRs. He got the STDRs passed by the Officiating Officer, JMGS-I in utter disregard of the fact that the STDRs were under lien and cash payment of STDRs over Rs. 10,000/- were against the Bank's instructions.

(iii) He obtained the cash payment himself of the said STDRs aggregating Rs. 45,001.63 (inclusive of interest) as is evident from the payment scroll of the Cashier.

14. However, charge No. 1 was not found proved and remaining charge No. 2 and 3 were found proved.

15. Before we may examine the factual matrix of the matter in the instant case, it will be appropriate to first take note of scope of judicial review available to this Court to be exercised u/Art.226 of the Constitution in examining the order of punishment passed in departmental proceedings.

16. It is settled principles of law that this Court u/Art.226 of the Constitution is not acting as an appellate authority in the disciplinary proceedings, re-appreciating the evidence recorded before the enquiry officer and scope of judicial review is available to this Court to examine as to whether the enquiry is held by a competent authority and the procedure prescribed under the Scheme of Rules to hold enquiry has been complied and whether there is any violation of principles of natural justice in conducting proceedings and the basic principle which is to be kept in mind while appreciating the disciplinary proceedings under the scope of Art.226 of the Constitution as held in *State of Andhra Pradesh and Others Vs. Chitra Venkata Rao*, AIR 1975 SC 2151 : (1976) 32 FLR 44 : (1975) LabIC 1585 : (1976) 1 LLJ 21 : (1975) 2 SCC 557 : (1976) 1 SCR 521 : (1975) 7 UJ 774 , the principles have been discussed at paragraph-21 which read as infra-

21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in *State of A.P. v. S. Sree Rama Rao*. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition Under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal Under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the

delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ Under Article 226.

17. In the case of Registrar General, Patna High Court Vs. Pandey Gajendra Prasad and Others, AIR 2012 SC 2319 : (2012) 134 FLR 548 : (2012) 5 SCALE 404 : (2012) 6 SCC 357 : (2012) 3 SLJ 221 : (2012) AIRSCW 3383 : (2012) 4 Supreme 39 , it has been observed ad infra-

"It is trite that the scope of judicial review, under Article 226 of the Constitution, of an order of punishment passed in departmental proceedings, is extremely limited. While exercising such jurisdiction, interference with the decision of the departmental authorities is permitted, if such authority has held the proceedings in violation of the principles of natural justice or in violation of statutory Regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by consideration extraneous to the evidence on the merits of the case, or if the conclusion reached by the authority, on the face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above.

18. In Union of India (UOI) Vs. P. Gunasekaran, (2014) 310 ELT 417 : (2015) 1 ESC 101 : (2015) 144 FLR 219 : (2015) LabIC 268 : (2014) 10 SCJ 341 Hon"ble the Supreme Court has held as under-

"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;
- b. the enquiry is held according to the procedure prescribed in that behalf;

- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

19. Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii). go into the adequacy of the evidence;
- (iv). go into the reliability of the evidence;
- (v). interfere, if there be some legal evidence on which findings can be based.
- (vi). correct the error of fact however grave it may appear to be;
- (vii). go into the proportionality of punishment unless it shocks its conscience.

20. As per the principles laid down by Hon"ble Supreme Court, it is true that this Court is not constituted in a proceeding u/Art. 226 of the Constitution as a court of appeal over the decision of the authorities holding departmental enquiry against a public servant but at the same time, it is equally concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed and whether the rules of natural justice are not violated and where there is some evidence, which the authority entrusted with the duty to hold enquiry has accepted and which evidence may reasonably support conclusion that the delinquent officer is guilty of the charge.

21. It is not the function of this Court in a petition for a writ u/Art. 226 to revisit the evidence and to arrive at an independent finding on the evidence recorded by the enquiry officer during the course of enquiry but at the same time this Court can always undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of

natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so capricious or that no man of ordinary prudence could have arrived at that conclusion.

22. It is also true that departmental proceedings is a quasi judicial proceedings. Enquiry officer performs quasi judicial functions and it is the duty of enquiry officer to arrive to a finding taking into considerations the material brought on record by the parties keeping in view the time tested principles laid down by the Apex Court in laying down guidelines of judicial review, the scope of judicial review u/Art.226 of the Constitution to an order of punishment passed in departmental proceedings which is indisputably is very limited but if there is a flagrant violation of principles of natural justice in concluding the proceedings or having been influenced by irrelevant or extraneous consideration or conclusion arrived at is not supported by tangible evidence on record or finding is based on no evidence that can always be interfered by this Court even in limited jurisdiction available u/Art.226 of the Constitution.

23. In the instant case, charge No. 2 and 3 are found to be proved by the enquiry officer in the course of departmental enquiry and based on the finding of enquiry officer the impugned order attached with Ann.10 dt.12.7.1991 by which the respondent was removed from service by the General Manager attaching therein note of the disciplinary authority and that clearly indicates that authority has proceeded beyond the charge sheet as reproduced above and it will be appropriate to quote para 3 and 4 of the communication dt. 12.7.1991 which was neither part of the charge sheet nor of the enquiry and thus the order seems to be passed with biased mind. Relevant para 3 and 4 of the impugned order reads ad infra-

3. In this Connection, Shri Vijay also failed to have effective control over the affairs of VKIE Jaipur Branch and due to his loose control and poor supervision in maintenance of records at the Branch, the Bank has been defrauded and put to a loss of Rs. 3,10,829.83. The Bank, however, reserves its right to revive the disciplinary proceedings against him in this case registered by CBI under RC No. 2/87-JPR from the stage where it has been kept in abeyance.

4. Taking into consideration the gravity of the charges established against Shri Vijay and all other aspects of the case including his blemished service record (Shri Vijay has already been inflicted the punishment of bringing him down by 3 stages in the time scale vide our letter No. DAC/376 dt.12.3.1990 in another case registered by the Central Bureau of Investigation under RC No. 35/86 JPR), I propose to inflict upon him the penalty of "Removal from service" in terms of Rule 49(g) of the State Bank of India (Supervising Staff) Service Rules and recommend accordingly. Further his suspension period be treated as such and he will not be paid salary and allowance for the period of suspension except the

subsistence allowance already paid to him."

Based on the note of the disciplinary authority, the appointing authority had observed as under-

"I have gone through the attached papers. On the basis of these papers, after taking into consideration the facts brought out, I have come to the conclusion that Shri N.K. Vijay be imposed the penalty of "Removal from service" in terms of Rule 49(g) of the State Bank of India (Supervising Staff) Service Rules. Further, his suspension period be treated as such and he will not be paid salary and allowances for the period of suspension except the subsistence allowance already paid to him".

24. As per the finding recorded by the enquiry officer in its report, charge 2 and 3 was proved regarding amount being retained by the delinquent officer of Shyam Sunder-PW4 who could not be permitted to cross examine by the delinquent officer and later on paid to Shyam Sunder by the respondent. The finding based on is perverse and on suspicion as per the record produced during course of enquiry which contains the affidavit of Shyam Sunder. The affidavit seems to be attached as Ann.D2 during the course of enquiry in which it was stated by Shyam Sunder on 3.10.1982 that he had gone to the Bank to encash his STDRS of Rs. 25,000/- and Rs. 15,000/- and he had requested the delinquent to introduce and identify him which he had done. It is also mentioned that he had received cash from the Bank on that date and further stated that he had received a notice from the bank that Shyam Sunder should not have encashed the STDRs because they were supposed to keep lien but thereafter Shyam Sunder PW4 deposited the outstanding dues with the bank along with interest.

25. Contents of the affidavit which was filed by Shyam Sunder dt.21.5.1985 which is a part of record Ex.D2 dt.31.7.2000 relevant for the present purpose reads ad infra-

26. Even during the course of enquiry proceedings, statement of PW4 Shyam Sunder was recorded by the presenting officer and he had made the following statement-

"I have been shown loan application for the purchase of truck for Rs. 170,000/- Ex.P-11 which bears my signatures, and I offered a deposit of Rs. 40,000/- in shape of Bank fixed deposits for sanctioning a truck loan".

"I have been shown Ex.P2 and P-3 which are TDR issue vouchers for Rs. 25,000/- and Rs. 15,000/- dated 21.12.82 respectively which bear my signature and the relative TDR Nos. 425628 and 629 for 36 months were held with the SBI Jaipur along with other documents of truck loan sanctioned to me"

27. It may be noticed that opportunity of cross examination was not afforded to the delinquent officer on 23.1.1991 and PW4 Shyam Sunder could not be cross examined because of reasons for adjournment and the next date of the enquiry proceedings was fixed on 9.2.1991. The alleged written affidavit which he

addressed to the presenting officer dt. 13.10.1990 was neither exhibited nor was the part of enquiry proceedings and the fact is that in the absence of fair opportunity of hearing being afforded to the delinquent officer reasons assigned by the enquiry officer in his report and arrived to prove charge No. 2 was certainly based on irrelevant material for which proper and adequate hearing was not afforded to the delinquent officer and this what the Id. Single Judge also observed in its order impugned and it was not the case of the presenting officer or of the department that the affidavit which was earlier submitted by Shyam Sunder dt.21.5.1985 which was part of record Ex.D2 was not written by him or what is being contended was not supported by material on record and merely because it was accepted to the presenting officer that could not be considered to be a reason to disown the first affidavit which the prosecution witness Shyam Sunder furnished way back on 21.5.1985 and was part of the record pointed out in defence of delinquent officer and apart from it was throughout the case of delinquent officer that before he has been placed under suspension and regular charge sheet was served the matter was enquired on 4-5 occasions by different officers and either of them has not found prima facie proved the allegation against him and copies of these documents were not made available to him and even from the statement of PW 4 who is said to have encashed the amount had no where stated in his examination in chief or has come on record to show that the delinquent officer has ever kept the money with himself and returned the same after 2-3 months and in these facts and circumstances the finding which has been recorded by the enquiry officer certainly based on no evidence whatsoever and can be considered by this Court to be perverse on the face of it and proceedings against the delinquent officer cannot be sustained in the eye of law and what is being considered by the disciplinary authority and taken note of by the appointing authority while passing the order of penalty, has certainly traveled beyond the charge sheet and the statement of allegation by incorporating material which was completely extraneous in nature and appears to be a bias attitude of the competent authority and that what the complaint which the delinquent officer has made from day one of initiation of departmental enquiry. It was specific case of the delinquent that to obtain a report against him the bank authorities have tried to hand over enquiry to Shri K.L. Sachdeva who had exonerated the delinquent, again re-started the enquiry by appointing another person Shri J.C. Boothra whose report was also in favour of the officer and not satisfied with the respondent bank authority again appointed Shri A.K. Sarin deputed at Regional Office, Jaipur according to the wishes of the bank authorities and despite demand of the enquiry reports of all the three officers by the delinquent officer, the same were not made available to him, however, the bank in its reply in respect of previous enquiry alleged that all the enquiries were against the delinquent officer but despite specific allegation of the delinquent officer during the course of enquiry and also in the writ petition copies of such reports were not placed on record and even when the matter was taken by us in special appeal filed at the instance of the bank we still afforded them opportunity to place those reports on record and that is evident from the order sheet

dt.26.11.2014, 22.1.2015 and 26.2.2015 where counsel sought time to place such enquiry reports on record and this Court can certainly draw inference that had they submitted their report against the delinquent officer there was no justification to appoint fresh enquiry officer one after other, however, explanation has been furnished by the respondents that these reports as alleged to have not been supplied on the premise that if those are being relied upon will be made available to him during the course of enquiry but that appears to be a lame excuse in not providing those reports to him which can be part of his defence during the course of departmental enquiry.

28. The Ld. Single Judge specifically asked the bank authorities to produce the material of earlier enquiry reports for perusal but the same were not produced, however, there is admission on the part of the bank that there were enquiry reports for and against the delinquent officer of the same charge and by not supplying such earlier enquiry reports to him has denied his right of defence which is certainly in the opinion of this Court is a denial of fair opportunity of hearing to him in participating during the course of enquiry and after going through the record what is being made available before us. We are fully satisfied that the procedure in the instant inquiry has been followed with the aim to hold the delinquent officer guilty and despite sufficient cogent evidence on record including the statement of Shyam Sunder PW4 which was placed on record by the delinquent officer Ex.D2 dt.21.5.1985, there was no contrary evidence on record in rebuttal and later affidavit of the complainant which was neither exhibited nor part of the record still relied upon by the enquiry officer dt.13.10.1990 and taken note of by the enquiry officer just to hold delinquent officer guilty.

29. In our considered view the procedure which has been followed during the course of enquiry certainly violate the principles of natural justice and he has been deprived of fair opportunity of hearing during the course of enquiry and this what the Ld. Single Judge also observed in passing the order impugned and we are in conformity with the view expressed by the Ld. Single Judge. The Ld. Single Judge finally has set aside the order of penalty and directed the delinquent officer to be reinstated and entitled for all consequential benefits flowing thereof.

30. While upholding the order of Ld. Single Judge, we had an option either to remit the matter back to the disciplinary authority and to initiate further enquiry from the stage opportunity to cross examine PW4 Shyam Sunder has been denied to him but as he has attained the age of superannuation in May 2008, to remit the matter back to the disciplinary authority, may not be in the interest of justice and taking note of the nature of allegation we accordingly consider appropriate to modify the relief and consider that while setting aside the penalty inflicted vide order dt.12.7.1991, the delinquent officer shall be treated to be in service and the period of service rendered by him be considered as a qualifying service for the purpose of pension and for other retiral benefits to which he became entitled at the age of superannuation on 31.5.2008 and he shall not be

entitled to actual salary for the intervening period from the date of punishment till he attained the age of superannuation on 31.5.2008 and after due computation of arrears/retiral benefits it shall be paid to him within three months failing which he shall be entitled for interest @ 12% till actual payment.

31. The special appeal in the above terms, stands disposed of. No costs.