

(2018) 02 UK CK 0005
In the Uttarakhand High Court
Case No : 454 of 2015

Sunil Kumar Goel

APPELLANT

Vs

State Bank of India and others.

RESPONDENT

Date of Decision : 20-02-2018

Acts Referred:

[3998](#) Constitution of India, [3998-226](#) Article 226 -
Power of High Courts to Issue certain writs

Citation : (2018) 02 UK CK 0005

Hon'ble Judges : K.M. Joseph, Manoj K. Tiwari

Bench : Division Bench

Advocate : Lalit Kumar, Pooran Singh Rawat, D.S. Patni

Judgement

Sr.

No.",Date,"Credit (Rs. IN

LACS)",Remarks

A/c of Shri S.K. Goel (No. 10392855057 at Tel Bhavan Branch, Dehradun)",,,

1.,06.06.2007,3.00,"Transferred from overdrawn C/A of M/s Augurs Well e-Solutions (P) Ltd. The account

subsequently treated as fraud.

2.,07.09.2007,5.00,"Transferred from C/C of M/s Augurs Well e-Solutions (P) Ltd. The account subsequently

treated as fraud.

4. We heard Mr. Lalit Kumar, learned counsel for the petitioner and Mr. D.S.Patni, learned counsel appearing on behalf of the respondent Bank.",,,

5. Mr. Lalit Kumar, learned counsel for the petitioner would point out that the Court may notice that there is only one charge. There are",,,

undoubtedly, three allegations. All the three allegations are interconnected. Therefore, when the Disciplinary Authority has found that Allegation",,,

Nos. 1 and 3 were not proved, the second allegation must fall to the ground. The case set up by the petitioner is as follows:",,,

The petitioner along with his wife opened a Current Account in the year 2004 in Tel Bhawan Branch of the respondent Bank. The,,,

petitioner's wife, who was working as a Principal of an Inter College, had independent income. She purchased a piece of land in the",,,

year 2004. In the year 2007, in connection with the marriage of the petitioner's daughter, financial resources were required.",,,

Thereupon, the petitioner's wife decided to sell her property. One Mrs. Kavita Raturi was agreeable to purchase the said property,",,

and an agreement was entered into on 21.04.2007. Under the agreement, the sale consideration was fixed as Rs. 10,50,000/-. It was",,,

to be paid in the following manner:",,,

(i) A cheque bearing NO. 466521 dated 22.04.2007 for Rs. 5 lacs in favour of Mrs. Archana Goel (petitioner's wife) was",,,

delivered by Mrs. Kavita Raturi to petitioner's wife.,,,

(ii) Another cheque bearing No. 466520 for Rs. 3 lacs, but dated 08.05.2007 (post dated cheque) in favour of Mrs. Archana Goel",,,

was delivered by Mrs. Kavita Raturi to petitioner's wife;,,,

(iii) The balance of Rs. 2.5 lacs was agreed to be paid by Mrs. Kavita Raturi to Mrs. Archana Goel, at the time of execution of the",,,

sale deed."",,,

6. It is the further case of the petitioner that the sale transactions did not go through as such. It is on account of certain environmental concerns,,,

entertained by the purchaser having regard to the need for cutting down of the trees standing on the ground. In fact, it is the further case that on the",,,

request of the buyer that the cheques may not be presented and, accordingly, the cheques were not initially presented. Thereafter, on being",,,

permitted to present the cheque of Rs. 3 lacs, the cheque of Rs. 3 lacs was presented. It is also to be noticed that the definite case of the petitioner",,,

is that when the cheques were received, it was noticed that they were issued by a particular company, namely, Augurs Well e-Solutions Pvt. Ltd.",,,

(hereinafter referred to as the company). They were signed by the signatory of

the said company. It was found that it is in keeping with the practice, as Mrs. Kavita Raturi, the purchaser was an employee of the said company and she had applied for housing loan and loan had been sanctioned, that the amount would be directly paid by the Company into the hands of the seller, namely, the petitioner's wife. It is also the case of the petitioner that the petitioner had, in fact, in his assets and property statement declared the property of the petitioner's wife also. Thereafter, it appears that the purchaser from the petitioner's wife wriggled out of the contract on account of the environmental concerns and Rs. 3 lacs was returned in the following manner:

(i) An amount of Rs. One Lac each was transferred to the account of Mrs. Kavita Raturi and her husband Shri D.P. Raturi.

(ii) On 17.06.2007 during a personal meeting between Mrs. Kavita Raturi and petitioner's wife Mrs. Archana Goel, a cash amount of Rs. One

Lac, being the balance of Rs. 3 Lacs was given by Mrs. Archana Goel to Mrs. Raturi. Also the original cheque bearing No. 466521 for Rs. 5

Lacs which had not been presented for collection till then, was returned to Mrs. Kavita Raturi and with that the "agreement to sale" became null

and void.

7. It was the further case of the petitioner that subsequently, the very same Mrs. Kavita Raturi approached the petitioner and it was agreed that the

same property would be sold to the purchaser for Rs. 10 lacs and Rs. 50,000/- was reduced from the agreed price as the problem has arisen

regarding the need to cut the trees standing on the land. It is the case of the petitioner that the Cheque of Rs. 5 lacs, which was given initially in

connection with the agreement dated 21.04.2007 was returned. This is besides returning the amount of Rs. 3 lacs, which was actually encashed. It

is thereafter that on the basis of the agreement in between the petitioner's wife and Smt. Kavita Raturi that the property was sold by the wife of the

petitioner for Rs. 10 lacs. The sale consideration was paid by way of three cheques; two cheques of Rs. 2.5 lacs each and a sum of Rs. 5 lacs,

which was paid by way of a cheque, which was originally given to the petitioner's wife and returned when the transaction did not take place. The

amount was credited in the joint account of the petitioner and his wife. It is this, which had actually happened.

8. Mr. Lalit Kumar, learned counsel for the petitioner would contend that reliance placed on Rule 59 of the Rules is misplaced. Rule 59 reads as",,,

under:-",,,

59(a): No officer shall in his individual capacity: (i) borrow money or permit any member of his family to borrow money or otherwise",,,

place himself or a member of his family under a pecuniary obligation to a broker or a money lender or a subordinate employee of the",,,

bank or any person, association of persons, firm, company or institution, whether incorporated or not, having dealings with the Bank;",,,

Provided that nothing in this Clause shall apply to borrowing from the Bank, the Life Insurance Corporation of India, a co-operative",,,

credit society or any financial institution including a bank subject to such terms and conditions as may be laid down by the bank.,,,

Provided further that an officer may accept a loan, subject to other provisions of these rules, from relative or personal friend or",,,

operate a credit account with a bona fide tradesman.,,,

(ii) buy or sell stocks, shares or securities or any description without funds to meet the full cost in the case of a purchase or scrip for",,,

delivery in the case of a sale; (iii) incur debts at a race meeting;,,,

(iv) lend money in private capacity to a constituent of the Bank or have personal dealings with a constituent in the purchase or sale of",,,

bills of exchanges, Government paper or any other securities and",,,

(v) guarantee in his private capacity the pecuniary obligations of another person or agree to indemnify in such capacity another person",,,

from loss, except with the previous permission of the competent authority.",,,

Provided that an officer may stand as surety in respect of a loan taken from a co-operative credit society of which he is a member by",,,

another member. Provided further that nothing in this Clause shall apply to any guarantee/indemnity that an officer may execute in",,,

favour of (a) the President of India in support of a passport application for any relative of his(b) any financial institution or educational",,,

trust for a loan or advance that such institution or trustee may give to any relative of his for educational purpose.,,,

b) lend money or have security related dealings with a constituent."""",,,

9. He would submit that Rule 59 would not be attracted as the petitioner has not done anything in his individual capacity. There is no transaction,,,

with the company, which was extended financial assistance by the Bank. It is the case of the petitioner that the petitioner was working in the Zonal",,,,

Office. Therefore, there is no question of attribution of any wrong motives or any wrong action. He would further submit that the Court may notice",,,,

the manner in which the matter was dealt with by the Appointing Authority. We have already referred to the portion in the order dated 23rd July",,,,

2013, and counsel submits that it would show that the matter is pre-determined and he also points out the seal of the Vigilance Department of the",,,,

Bank on these pages. In this connection, he would submit that there was pressure being exerted by the Vigilance Department. Next, he would",,,,

contend that after the Appointing Authority has purported to give an opportunity, the petitioner went before the Authority and made his",,,,

submissions. He also made available copy of the written submissions as was requested by the Appointing Authority, and he also made oral",,,,

submissions. He would point out the fact that the order actually passed in terms of the Rules by the Appointing Authority purporting to remove the",,,,

petitioner from the service is a verbatim reproduction of the order of the Disciplinary Authority. He would contend that it clearly shows that there is",,,,

no application to the arguments addressed by the petitioner. He would also complain that there is mechanical exercise of power by the Appellate",,,,

Authority.,,,,

10. Per contra, learned counsel for the respondent Bank Mr. D.S. Patni would contend that no interference is called for. As far as the proceedings",,,,

dated 23rd July, 2013 are concerned, he would only submit that as required under the Rules, the Appointing Authority concurred with the",,,,

Disciplinary Authority. In this case, the Appointing Authority also gave an opportunity of hearing and it is unlike the case in State Bank of India and",,,,

others vs. Ranjit Kumar Chakraborty and another reported on 2009 2 LLJ 487, which was a case, where major penalty was imposed without",,,,

affording an opportunity of hearing.,,,,

11. We must remind ourselves that in the disciplinary matters, the Court has restricted jurisdiction. It does not reappraise the findings of fact, unless",,,,

it is perverse. As such, there is no case that the findings are perverse. There is

no case that the inquiry was conducted by the Officer in violation of",,,
any requirement of law. There is no case of procedural illegality, in other words.",,,

12. No doubt, the petitioner would make much of the fact that he stands exonerated in regard to Allegation Nos. 1 & 3. The impact of this finding",,,
according to the petitioner, is quite monumental in the facts of this case as the findings in Allegation No. 2 cannot stand on its own and it must",,,
necessarily sustain itself with reference to Allegation Nos. 1 & 3. He would also question application of Rule 59 to the facts of this case.,,,

13. There is no dispute that the Bank had sanctioned a cash credit loan in favour of the Company. There is also no dispute that the said company,,,
violated its obligation to the Bank and violated the terms and it was declared as fraud. There is also no dispute that the amount, which was credited",,,
in the joint Current Account of the petitioner and his wife came from the Current / Cash Credit Account of the Company. The case of the,,,
petitioner in this regard, as we have already noted, is that one Mrs. Kavita Raturi was an employee of the Company. In fact, Mr. Lalit Kumar",,,
would point out that she was the wife of a person having control over the Company.,,,

14. In this regard, we may notice the manner, in which the Inquiry Officer has dealt with Allegation No. 2:",,,

I.A's findings",,,

1. Prosecution has cited EX P3, which is statement of Account of A/c No. 10392855057 of Shri SK Goel Ex P3/2 reveals that a",,,

sum of Rs. 3,00,000/- and Rs. 5,00,000/- has been credited on 06.06.2007 and 07.09.2007 respectively. Ex P 7 states that a sum",,,

of Rs. 3,00,000 and Rs. 5,00,000 was debited in account no. 30109613127 (CA) and 30234780784 (CC-OD) of M/s Augurs",,,

well e-solutions Pvt. Ltd on 06.06.2007 and 07.09.2007 vide cheque no. 466520 and 104601 respectively. Prosecution has further,,,

cited EX P 4 which is Assets and Liabilities Statement of the OPA as on 31.03.2007 & 31.03.2008 Prosecution has tried to prove,,,

that the money has gone from the account of M/s Augurs Well e-Solutions to the OPA's account.,,,

2. Defence has counter argued as under:-,,,

a. Ex D 12 which is the copy of Account Opening form for account number 10392855057 in the name of Shri Sunil Kumar Goel and,,,

Smt. Archana Goel The operation instructions are "E or S",,,

b. Ex D-17 which is an Agreement to Sale between Smt. Archana Goel and Smt. Kavita Raturi Inter alia, the documents also reveals",,,

that Smt. Archana Goel agreed to sell a plot of land for Rs. 10,50,000 for which two cheques bearing No. 466620 for Rs. 3,00,000",,,

and Ch. No. 466521 for Rs. 5,00,000 drawn on SBI Dehradun have been given to Smt. Archana Goel by Shri Kavita Raturi.",,,

c. Ex D-5 is the copy of the cheque no. 466520 dated 08.05.2007 for Rs. 3,00,000/- favouring Smt. Archana Goel issued by M/s",,,

Augurs Well E-Solutions Limited As per OPA this corresponds with the what is written in the Agreement to Sale.,,,

d. Ex D-6 is the copy of the CA cheque no. 466521 dated 22.04.2007 favouring Smt. Archana Goel for Rs. 5,00,000/- issued by",,,

M/s Augurs Well e solutions Limited. As per OPA this corresponds with the what is written in the Agreement to Sale.,,,

e. The OPA has argued that the cheques were received by Smt. Archana Goel fromk Mrs Kavita Raturi on account of sale of plot of",,,

land as mentioned in point No. b above. He has further argued that the cheque 466520 and 566521 were given from the current a/c",,,

of the company and not from the Cash Credit account of the Company.,,,

f. OPA has further cited that Ex. D 14/1 which is said to be copy of Khasra Khatauni showing the sale deed of property at Khasra",,,

No. 169 Khacha 010285 in the name of Smt. Archana Goel W/o Shri Sunil Kumar Goel has been sold to Smt. Kavita Ratudi W/o",,,

DP Ratudi residence of Pauri Garhwal.,,,

g. OPA has further cited that Ex P 7/2 is not an extract of account statement and is manually prepared statement. This does not",,,

contain the detail of the transactions as required in the regular statement.,,,

h. He has further argued that Smt. Kavita Ratudi was an employee in M/s Augurs Well e solutions Pvt. Ltd and delivered the cheques",,,

in consideration of purchase after obtaining House Building Advance from the employer. The Company has issued the cheque direct",,,

in the name of the seller which is as per the practice in the Banks.,,,

i. He has concluded that from the above that he was never a party to the transactions as mentioned herein above from "a to h",,,

3. The cash credit limit to the unit was sanctioned on 31.08.2008 Ex-P 2/2 and from Ex ?P 7/3 statement of Account of Cash Credit,,,

Account, it is clear that two cheques were debited to the account no 30234780784 of M/s Augurs Well e solutions Limited for Rs.",,,

5.00 Lacs each.,,,

4. From the available evidences is not clear which cheque was credited in which account. As per DPA"s brief it seems that a cheque,,,

of Rs. 5,00,000/- was credited in the account of Smt. Archana Goel. The account number to which it was credited is not available.",,,

The details of the second cheque bearing number 104601 debited to CC, OD Ac No. 30234780784 of Augurs Well e solutions Ltd",,,

are also not available while the OPA has conceded that a sum of Rs. 5,00,000/- was received by his wife he was able to evidence",,,

the Agreement to sale of Rs. 10,50,000 between Smt. Archana Goel (seller) and Smt. Kavitia Ratudi (Buyer) (Ex D 17) The OPA",,,

has submitted that the transaction being genuine between two independent parties, is a lawful act and moreover he is not involved in",,,

the same.,,,

5. Sum of Rs. 3,00,000 was debited in the CA No. 30109613127 of M/s Augurs well e-solutions Ltd on 06.06.2007. The account",,,

was already over drawn on the day of debit (Ex P 7/2) The same was credited in the A/c No. 10392855057 of Shri SK Goel and,,,

Archana Goel / Ex P 3/2).,,,

6. The OPA has argued that it was a current account with joint names (Smt. Archana Goel Wife) or S Clause) the cheque for Rs,,,

3,00,000 in favour of Smt. Archana Goel (Ex D-5) was given by Smt. Kavita Raturi against agreement to sale and the same was",,,

deposited in the aforementioned joint account on 06.06.07. The OPA has argued that this deal did not materialized and the amount,,,

was refunded.,,,

7. The OPA did not bring out the evidence of refund of the aforementioned amount to Kavita Ratudi,,,

8. The OPA did not exp0lain the following in a convincing manner,,,

a. Agreement to sale was for Rs. 10,50,000 (Ex-D-17) between Smt. Archana Goel and Smt. Kavita Ratudi while actual amount",,,

mentioned in Khasra was for Rs. 5,00,000 only (Ex D 14/1). Under the circumstances authenticity of the Agreement to sale itself is",,,

under doubt.,,,

b. OPA has submitted that the sum of Rs. 3,00,000 received vide cheque no. 466520 was returned back as deal did not materialize.",,,

If the deal did not materialize why the amount collected through cheque No. 466521 of Rs. 5,00,000 was also not returned back?",,,

As per agreement to sale, aforementioned two cheques were given by the buyer to the seller Secondly how the money (Rs.",,,

3,00,000) was returned was also not brought by the OPA.",,,

c. When the deal was finalized between the individuals, why the Company issued the cheques. The OPA has submitted that Smt.",,,

Kavita Ratudi was extended a housing loan by the Company. According to him Kavita Ratudi was extended a housing loan by the",,,

company. According to him, Kavita Ratudi was an employee in the company. The OPA did not produce any evidence in this regard.",,,

d. It was a newly incorporated company which did not start any work. A cash credit was extended to the Company of which Rs.,,,

8,00,000 lacs have gone in the account of Smt. Archana Goel (Rupees 3,00,000) paid to Smt. Archana Goel by debiting already",,,

overdrawn current account was adjusted by cash credit A/c on 31.08.2008 Logic for a company which is not on its feet",,,

giving Housing Loan to its employees is not understood.,,,

9. From the evidence produced and arguments put forth by the two sides the fact emerges is that the two transactions cited in the",,,

allegation were credited in the Joint Account of the OPA. These were not genuine business transactions. (Though OPA payment ie",,,

extending limit to a non-existent unit and thereafter immediately making payment to Smt. Archana Goel from CC/CA accounts of the",,,

fraudulent unit tantamount to entering in a financial dealing.""",,,

15. Noticing our inherent limitations in dealing with such matters, we cannot possibly come to the conclusion that the finding is vitiated by",,,

perversity, nor can we, as we have already pointed out, hold that there is any

procedural illegality. The finding has been concurred by the",,,
Appointing Authority and also by the Authority in review. We may notice in particular that the sale consideration in agreement dated 21.04.2007,,,
was fixed at Rs. 10,50,000. The sale deed came to be executed only for Rs. 5 lacs. No doubt, there is a case that there is a subsequent",,,
development, as we have noticed, which led reduction in the price from Rs. 10,50,000/- to Rs. 10 lacs. We notice that there is no new agreement,",,,
which is produced. We further notice that the Authority has not reposed confidence in the case that Smt. Kavita Raturi was an employee of the,,,
company. Also it questions the possibility of advance or housing loan being given by the Company. The aspect of returning of Rs. 3 lacs appears to,,,
be not believed. Therefore, this cannot at any rate be treated as a finding liable to be interfered with in proceedings under Article 226.",,,
16. It may be true that Rule 59, which we have referred to, in its first Clause is directed against an employee in individual capacity borrowing or",,,
permitting any member of his family from borrowing or entering or permitting any member entering in pecuniary obligation in respect of any of the,,,
categories of persons and what is more relevant for our case any person having dealing with the Bank. Rule 59(a)(iv) also prohibits the following:,,,
59(a): No officer shall in his individual capacity:",,,
(i),,
(ii),,
(iii),,
(iv) lend money in private capacity to a constituent of the Bank or have personal dealings with a constituent in the purchase or sale of,,,
bills of exchanges, Government paper or any other securities and""",,,
17. Furthermore, we notice, at any rate, even accepting that this particular limb of the allegation is not as such established, the charge as such",,,
contained refers to Rule 50(4). It reads as follows:,,,
50(4) Every Officer shall, at all times, take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost",,,
integrity, honesty, devotion and diligence, and do nothing which is unbecoming of an officer.""",,,
18. In fact, the case of the petitioner is that there is only one charge and there

are three allegations in support of the charge. Therefore, if the",,,
allegations in regard to payment of the amount into the joint Current Account of
the petitioner and his wife are not to be questioned and the case of,,,
the agreement and sale set up by the petitioner is not relied on, certainly, it may
become a serious matter as it appeared to the Disciplinary",,,
Authority, as also, the Appointing Authority.",,,

19. The fact that the Appointing Authority has recorded the findings, which were
referred to in the order dated 23rd July, 2013 of concurring with",,,

the recommendation of the Disciplinary Authority and the fact that it is typed on
the same page may not assist the petitioner in our view. In this,,,

regard, we may refer to the Scheme of the Rules. Rule 67 provides for penalties,
which includes minor penalties and major penalties. "Removal",,,

from service" figures amongst major penalties. Rule 68 deals with Decision to
initiate and Procedure for Disciplinary Action. There has been made,,,

an elaborate procedure. Thereafter, as relevant for our purpose, is Rule 68(3) (i)
to (iii) along with the proviso. The same reads as under:",,,

68 (3) (i): The Disciplinary Authority, if it is not itself the Inquiring Authority
may, for reasons to be recorded by it in writing, remit",,,

the case to the Inquiring Authority whether the Inquiring Authority is the same or
different for fresh or further inquiry and the Inquiring,,,

Authority shall thereupon proceed to hold further inquiry according to the
provisions of the sub-rule (2) as far as may be.,,,

(ii) The Disciplinary Authority shall, if it disagrees with the findings of the
Inquiring Authority on any article of charge, record its",,,

reasons for such disagreement and record its own findings on such charge; if the
evidence on record is sufficient for the purpose;,,,

(iii) If the Disciplinary Authority, having regard to the findings on all or any of the
articles of charge, is of the opinion that any of this",,,

penalties specified in rule 67 should be imposed on the officer, it shall, not
withstanding anything contained in sub-rule (4) make an",,,

order imposing such penalty," ,,,

Provided that where the Disciplinary Authority is of the opinion that the penalty
to be imposed is any of the penalties specified in,,,

Clauses (e), (f), (g) (h), (i) and (j) of rule 67 and if it is lower in rank to the
Appointing Authority in respect of the category of officers",,,

to which the officer belongs, it shall submit to the Appointing Authority its recommendations regarding penalty that may be imposed.",,,

Records of the inquiry specified in Clause (xxi) (b) of sub-rule (2), shall also be submitted to the Appointing Authority in respect of",,,,

penalties to be imposed under Clauses (f), (g), (h), (i) & (j) of Rule 67. The Appointing Authority shall make an order imposing such",,,,

penalty as it considers in its opinion appropriate."""",,,,

20. In this case, there is no doubt that the proviso to Rule 68 (3)(iii) is applicable. It is a case, where intervention by the Appointing Authority was",,,,

inevitable. It is accordingly that in compliance, apparently, of Rule 68(3) (iii), the Disciplinary Authority made its recommendation regarding the",,,,

penalty to be imposed. It is thereafter that the Appointing Authority is to make the order imposing penalty. It is no doubt true that the said",,,,

provision does not contemplate a notice as such by the Appointing Authority, but as we have noticed from the judgment in State Bank of India and",,,,

others vs. Ranjit Kumar Chakraborty and another reported on 2009 2 LLJ 487, dealing with the similar provision, the Hon"ble Apex Court has",,,,

held as follows:,,,

5. In this case, the respondent was punished with a major penalty was not heard. Therefore, the order of removal was set aside. We have been",,,,

taken through the Rule 68(3)(iii) and we are in full agreement with the view taken by the High Court. When the Disciplinary Authority is not",,,,

competent to pass a major penalty, that is, of the removal or other major penalty prescribed in the Rule, the papers are required to be placed by",,,,

the Disciplinary Authority to the Appointing Authority who is competent to pass a major penalty. In the present case Disciplinary Authority was not",,,,

competent to pass major penalty, therefore, matter was placed before the Appointing Authority & Appointing Authority passed major penalty of",,,,

dismissal without hearing delinquent.,,,,

Such Order which is on the face of it is against the principles of natural justice, cannot be countenanced as it is void ab initio. The proviso certainly",,,,

says that the Appointing Authority, on the recommendation given by the Disciplinary Authority, shall be competent to pass the major penalty.",,,

Simply by recommending the matter and sending the papers to the Appointing Authority, does not mean that the incumbent who is going to be",,,,

served with the major penalty is not required to be heard in the matter. It is now settled principle that where ever the Rule is silent the principles of,,,

natural justice shall be read in it. A hearing should be given to a person who is being punished with a major penalty. Therefore, the principle of",,,

natural justice has to be read in this Rule. A notice ought to have been issued to the delinquent by the Authority to whom papers were sent to show,,,

cause why the major penalty may not be imposed on him. It is true that the competent authority could pass the Order of major penalty but not,,,

without hearing the incumbent. Therefore, in this context of the matter, we are of the opinion that the view taken by the Division Bench of the",,,

Calcutta High Court is correct and there is no ground for interference in this appeal."""",,,

21. It is apparently in accordance with the same that the Appointing Authority has proceeded to provide an opportunity of hearing to the,,,

incumbent. In this case, we must notice that a Constitution Bench of the Hon"ble Apex Court in the case of Managing Director, ECIL, Hyderabad",,,

and others vs. B. Karunakr and others reported in (1993) 4 SCC 727 has proceeded to take the following view, inter alia:",,,

30. Hence the incidental questions raised above may be answered as follows:",,,

(i) Since the denial of the report of the Inquiry Officer is a denial of reasonable opportunity and a breach of the principles of natural,,,

justice, it follows that the statutory rules, if any, which deny the report to the employee are against the principles of natural justice and,",,

therefore, invalid. The delinquent employee will, therefore, be entitled to a copy of the report even if the statutory rules do not permit",,,

the furnishing of the report or are silent on the subject.,,,

(ii) The relevant portion of Article 311(2) of the Constitution is as follows:,,,

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been",,,

informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."""",,,

Thus the Article makes it obligatory to hold an inquiry before the employee is dismissed or removed or reduced in rank. The Article,",,

however, cannot be construed to mean that it prevents or prohibits the inquiry when punishment other than that of dismissal, removal",,,

or reduction in rank is awarded. The procedure to be followed in awarding other punishments is laid down in the service rules,,,

governing the employee. What is further, Article 311(2) applies only to members of the civil services of the Union or an all India",,,

service or a civil service of a State or to the holders of the civil posts under the Union or a State. In the matter of all punishments both,,,

Government servants and others are governed by their service rules. Whenever, therefore, the service rules contemplate an inquiry",,,

before a punishment is awarded, and when the Inquiry Officer is not the disciplinary authority the delinquent employee will have the",,,

right to receive the Inquiry Officer's report notwithstanding the nature of the punishment.,,,

(iii) Since it is the right of the employee to, have the report to defend himself effectively, and he would not know in advance whether",,,

the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right.",,,

Whether, therefore, the employee asks for the, report or not, the report has to be furnished to him.",,,

(iv) In the view that we have taken, viz., that the right to make representation to the disciplinary authority against the findings recorded",,,

in the inquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice,,,

to deny the said right, it is only appropriate that the law laid down in Mohd. Ramzan Khan's case should apply to employees in all",,,

establishments whether Government or non- Government, public or private. This will be the case whether there are rules governing",,,

the disciplinary proceeding or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the,,,

subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in",,,

question, the delinquent employee should have the benefit of the report of the Inquiry Officer before the disciplinary authority records",,,

its findings on the charges levelled against him. Hence question (iv) is answered accordingly.,,,

(v) The next question to be answered is what is the effect on the order of punishment when the report of the Inquiry Officer is not,,,

furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the,,,

punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not,,,

furnished to him, in some cases the nonfurnishing of the report may have prejudiced him gravely while in other cases it may have made",,,

no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases,,,

is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have,,,

been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked,,,

nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account",,,

of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the",,,

furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to",,,

resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the,,,

concept of justice to illogical and exasperating limits. It amounts to a ""unnatural expansion of natural justice"" which in itself is",,,

antithetical to justice.""",,,

22. In this case, there is no dispute that the Disciplinary Authority has made available a copy of the Inquiry Report to the petitioner and the",,,

petitioner was afforded an opportunity to represent against the inquiry report. In fact, the fact that this exercise has been effected and, in fact, is at",,,

least partly fruitful for the petitioner, is evident from the order of the Disciplinary Authority purporting to take the view that Allegation Nos. 1 and 3",,,

are not proved. Therefore, the opportunity was extended as declared by the Hon"ble Apex Court as mandatory in the Constitution Bench",,,

judgment. There is no case of violation of any of the Rules by the petitioner in this regard. As far as natural justice is concerned, we must notice",,,

that the Appointing Authority at page 158 has ordered as follows:,,,

APPOINTING AUTHORITY'S VIEWS",,,

After perusal of all the relevant records, the charge sheet, the Inquiring Authority's report, briefs of the CSO & Presenting Officer, the submissions",,,

of S K Goel, OSMGS-V (the charge sheeted officer) on the Inquiring Authority's report and plea made during personal hearing held on",,,

02.08.2013, I am in agreement with the conclusion of the Disciplinary Authority.",,,

After due application of my mind independently, I, in the capacity of Appointing Authority by virtue of powers conferred upon me under Rule",,,

68(3) (iii) of SBI Officers' Service Rules, concur with the recommendations of the Disciplinary that the ends of the justice would be adequately",,,

met by imposing following penalty on Shri S K Goel, OSMGS-V (the charge sheeted officer):",,,

Removal from Service"" in terms of Rule No. 67 (i) of State Bank of India Officers' Service Rules.",,,

If Shri S K Goel desires to make an appeal to the Appellate Authority against the order, imposing upon him the penalty specified above, he may",,,

do so within 45 days from the date of receipt of this order by him, as provided for in Rule 69 of State Bank of India Officers' Services Rules.""",,,

23. In fact, Mr. D.S. Patni, learned counsel for the respondent Bank brought to our notice a recent decision of the Hon"ble Apex Court in Civil",,,

Appeal No. 22970 of 2017 arising out of SLP (Civil) No. 25040 of 2012 between the State Bank of India and others Vs. B.R. Saini. Therein",,,

also, we notice, the case arose under the same Rules and the same Bank. We may notice the following discussion:",,,

9. In State Bank of India v. Ranjjit Kumar Chakraborty (supra) which is the basis of the judgment of the High Court, it was held that the",,,

Appointing Authority could not pass an order imposing a major penalty. In that case, the Disciplinary Authority sent the Records of the Appointing",,,

Authority who passed order of ""dismissal from service"". It is not clear from the judgment as to whether the delinquent officer in that case was given",,,

a notice by the Disciplinary Authority before the records were sent to the Appointing Authority. This Court held that even in the absence of any",,,

Rule requiring a notice to be given, the principles of natural justice would require an opportunity to the delinquent employee. It was not held in the",,,

said judgment that even if the Inquiry Report was furnished and an opportunity was given to the delinquent there is a further requirement of another",,,

opportunity before imposing the penalty. This Court found that before imposition of a major penalty the delinquent was entitled for an opportunity,,,

of being heard. The High Court was wrong in holding that the delinquent employee is entitled for a notice before the penalty is imposed.,,,

10. Though Article 311 (2) of the Constitution of India, 1951 is not applicable to the officers of the Appellant-Bank; in Managing Director, ECIL",,,

v. B. Karunakar, this Court held that Government servants as well as others are governed by their service rules and that whenever an Inquiry is",,,

conducted and a punishment is awarded, a delinquent employee is entitled to a copy of Report of the Inquiring Authority and an opportunity to",,,

submit his explanation. The absence of any rule providing for an opportunity to be given to a delinquent employee before imposition of a penalty,,,

cannot be taken advantage of by the employer. However, there is no requirement of a second show cause notice before imposition of penalty.",,,

11. In this case, the Respondent had sufficient opportunity to respond to the Report of the Inquiring Authority and to the findings of the Disciplinary",,,

Authority disagreeing with the Inquiring Authority regarding Charge Nos. 6 and 8. He is not entitled to any further notice before imposition of a,,,

penalty. Apart from the requirement of a second show-cause notice before imposition of penalty no other point was raised in this Appeal."",,,

24. In the light of the later judgment of the Hon"ble Apex Court, which is also rendered by a Bench of equal strength, it is clear that even the notice",,,

was not necessary and even the opportunity need not have been given. Therefore, the fact, which is recorded at page 123 that the Appointing",,,

Authority agreed with the recommendation of the Disciplinary Authority and thereafter, decided to issue notice or the fact that after issuance of the",,,

notice, order is passed, which is a verbatim reproduction of the order of the Disciplinary Authority will not be of any avail to the petitioner. In this",,,

regard, we have noticed that there is no case as far as quantum of penalty is concerned that it is disproportionate.",,,

25. Regarding the contention that Allegation Nos. 1 to 3 are interdependent and because Allegation Nos. 1 & 3 have been found to be not,,,

proved, Allegation No. 2 cannot stand by itself, the same cannot be accepted. As we have noticed, there is a reference to Rule 50(4) of the Rules,",,

which reflects the exacting standards of conduct expected of a Bank employee. Therefore, we would think, the finding on Allegation No. 2, which",,,

is accepted by the Disciplinary Authority, as also, by the Appointing Authority, was in our view possible and it can stand by itself.",,,

26. We cannot accept the case of the petitioner that the appellate order is mechanical.,,,

27. Equally, we would think that the very fact that under RTI Act, reply was received, which was in fact received after the charges were sent to the",,,

petitioner that it is not necessary for an employee to declare the transactions made by the member of the family, who has an independent source of",,,

income may not itself demolish the entirety of Allegation No. 2.,,,

28. In such circumstances, we see no merit in the writ petition. The writ petition stands dismissed.",,,