
(2001) 09 BOM CK 0034

In the Bombay High Court

Case No : Writ Petition No. 1722 of 1989

Wasudeo Ganesh Altekar

APPELLANT

Vs

Punjab National Bank and Another

RESPONDENT

Date of Decision : 10-09-2001

Acts Referred:

Citation : (2002) 2 MhLj 695

Hon'ble Judges : S.J. Vazifdar, J;A.P. Shah, J

Bench : Division Bench

Advocate : S.M. Dharap, for the Appellant; S.K. Talsania, instructed by Talsania and Co., for the Respondent

Judgement

S.J. Vazifdar, J.—The petitioner was an employee of Respondent No. 1. Respondent No. 2 is a trustee of Punjab National Bank Employees Provident Fund.

2. The previous orders of various Benches of this Court, make it clear that though this petition was filed on 12th May, 1989, Rule was not issued as it had been decided to hear the petition finally. In any event, by consent of parties, we issue Rule and proceed forthwith to decide the matter.

3. The petition challenges an order dated 21st March, 1988 imposing a penalty on the petitioner for recovery of an alleged pecuniary loss caused to Respondent No. 1 from his pay or such other amounts as may be due to him, an order dated 30th July, 1988 dismissing the Petitioner's Appeal from the said order dated 21st March, 1988 and an order dated 19th April, 1989 dismissing the Review Petition filed by the petitioner and confirming the above punishment.

4. Thirteen years ago the petitioner's request that an enquiry be held into the charges against him was refused in the most arbitrary manner. We are unable to believe that the refusal was a bona fide error in judgment. Twelve years the petitioner waited for his Writ Petition to reach hearing. He is today 73 years old, ailing and in financial difficulties. When the writ petition was finally, taken up for hearing by us twelve years after it was filed, on behalf of the Respondents, it was

submitted that the matter be remanded to enable them to hold a proper enquiry, To accede to this request would be a mockery of justice and our judicial system. We reject the application.

As we propose disposing of this petition on the ground that the impugned orders were passed in gross violation of the principles of natural justice, we shall refer to only such of the facts as are necessary in this regard and refrain from dealing with the merits of the case in detail. We do so despite the fact that on going through the record carefully prima facie we felt that had the petitioner been granted a hearing he would have had an almost unanswerable case. In fact, we were left with a rather uncomfortable feeling that the Respondents deliberately avoided affording the petitioner a hearing with a view to shielding certain senior Officer's of Respondent No. 1.

5. The petitioner joined Respondent No. 1 in June, 1963 and retired from the services of Respondent No. 1 after almost twenty five years on 31st March, 1988. On 23rd January, 1985 the petitioner was posted as the Manager of the Opera House (Bombay) branch of Respondent No. 1 known as "B" Close Branch. The petitioner acted as a Manager of the Opera House branch upto 8th February, 1987. On 9th February, 1987, the petitioner was transferred as the Senior Manager, Bombay Regional Office of Respondent No. 1 from which post he retired on 31st March, 1988.

6. On 1st September, 1986 i.e. when the petitioner was the Manager of the Opera House branch, one Mr. I. K. K. Rao, the Chief Inspector of the first Respondent, introduced the Petitioner to three parties from Delhi and recommended them as sound and stable and requested the petitioner to grant them Foreign Letters of Credit facilities for imports against their respective individual report performance. The said Mr. Rao, who was senior to the petitioner, occupied a senior and responsible position in the first Respondent. The Opera House branch of the first Respondent duly received separate applications for opening Foreign Letters of Credit for import of certain goods from (i) Shamlal Sharma, Proprietor of Karan Housing Textiles, (ii) Mr. Ved Prakash Sharma, Proprietor of New Bharat Hosiery and (iii) Ms. Krishna Kumari, Proprietress of K. K. Manufacturing Company in the sums of Rs. 3,72,000/-, Rs. 3,00,000/- and Rs. 3,29,000/- respectively for import of Polyester filament textures yarn. Foreign Letters of Credit all dated 19-9-1986 relating to the above imports were opened in the sums of Rs. 3,54,438/-, Rs. 2,94,089/- and Rs. 3,20,610/-.

7. The shipments arrived on 18th November, 1986. The three parties had agreed to retire the documents in December, 1986 which they did not stating that they had some difficulties in arranging payment. The petitioner, on behalf of Respondent No. 1, therefore, stored the goods in the Bonded Warehouse at Vashi through its clearing agents M/s. Damani Brothers and obtained receipts in respect thereof from the Government Warehouse. The market value of the goods at this time was about Rs. 40,00,000/- i.e. far in excess of the amount due to Respondent No. 1. He further opened three Cash Credit (pledge) accounts on

24th December, 1986 and debited the balance amounts outstanding in the respective Foreign L.C. facilities to the same.

8. By a letter dated 19-1-1987 the petitioner informed the Regional Manager of Respondent No. 1 the above facts. He stated that he was keeping a close watch on the securities which fully secured the interest of Respondent No. 1. He also intimated details of the above transactions to the Regional Manager of the first Respondent to whom he was supposed to report in the monthly statements of the limits sanctioned. No objection was raised by the Regional Manager of the first Respondent to the above transactions at this stage.

9. As stated above, on 8th February, 1987 the petitioner was transferred from the Opera House Branch to the Regional Office at Dalamal House, Nariman Point, Bombay. The Opera House Branch was thereafter no longer under the charge of the petitioner and he thereafter ceased to have any authority to deal with the issues and operation of the Opera House Branch including as regards the recovery of the amounts in respect of the aforesaid transactions.

10. On 25th June, 1987, one of the aforesaid parties re-paid an amount of Rs. 2,50,000/-.

11. In July, 1987, the Directorate of Revenue Intelligence and the Customs Authorities took up the aforesaid three import transactions for random scrutiny to examine the duty entitlement thereon and pending conclusion thereof the Customs authorities did not allow clearance of the aforesaid goods. At the time of filing of the petition, the proceedings against the said parties were pending before the Customs authorities for clearance of the goods. The imported goods were lying in the bonded warehouse,

12. It is important to note that upto this point of time, the first Respondent did not take any proceedings against the three importers for recovery of the dues of the first Respondent. Nor had Respondent No. 1/the Regional Manager of Respondent No. 1 raised any objections or even queries regarding the F.L.C. facilities. This despite the fact that the Regional Manager had been informed in January, 1987 of the details thereof. It was only in December, 1989 that suits were filed by the first Respondent against the said parties for recovery of the amounts due thereon. We shall revert to the said suits later.

13. Respondent No. 1 by its letter dated 14th November, 1987 addressed to the petitioner alleged that certain irregularities in the conduct of the said three accounts had been brought to its notice and requested the petitioner to furnish clarifications/comments on certain issues raised therein. The petitioner by his letter dated 24th November, 1987 gave a detailed explanation to the said memorandum dated 14th November, 1987.

14. Respondent No.1, however, served a charge-sheet on the petitioner containing the two Articles of charges, and a statement of imputation of misconduct. The two Articles of charge are as under :--

"ARTICLE-I. He extended undue/unauthorized accommodation to a group of firms without observing pre-sanction safeguards and jeopardised bank's funds.

ARTICLE-II: He concealed the position about close linkage between the firms and their failure to retire documents received under FLC from the authorities.

He, thus committed misconduct in terms of Regulation 3(1) of PNB Officer Employees (Conduct) Regulations, 1977."

15. The petitioner submitted his reply dated 12-1-1988 to the aforesaid articles of charge and statement of imputation of misconduct. At this stage it will be convenient to set out the petitioner's case. We shall restrict ourselves only to that part of the petitioner's defence which is material/related to the findings against him and not to the part which relates to the charges in general not considered in the impugned order. We hasten to add that we do so not for the purpose of deciding the merits thereof but to ascertain whether the defence of the petitioner required the Respondents to grant the petitioner a hearing.

16. The petitioner's case was that on 1st September, 1986 i.e. when the petitioner was the Manager of the Opera House Branch, one Mr. I. K. K. Rao, the Chief Inspector of the first Respondent, introduced the petitioner to the three parties from Delhi and recommended them, as sound and stable and requested the petitioner to grant them Foreign Letters of Credit facilities for imports against their respective individual report performance. The said Mr. Rao, who was senior to the petitioner, occupied a senior and responsible position in the first Respondent, In various meetings, circulars and letters, Managers were exhorted to try and secure foreign exchange business for Respondent No. 1. The said transactions had the potential of promoting such foreign exchange business for Respondent No. 1 which was seized upon by the petitioner. The balance sheets were certified by the Chartered Accountant. The petitioner, therefore, did not insist upon the signatures of the parties thereon. Before opening the L.Cs. the petitioner had ascertained from the available records that the imported goods were duty free. Xerox copies of exemption certificates were taken on the record of Respondent No. 1. The antecedents of the firms had been gone into, market enquiries were made and a report about the firms dealings and experience had been included in the relative reports. The price per Kg. of the imported goods was Rs. 26/-. On enquiries, the petitioner was informed that the market price of the imported raw material was over Rs. 40,00,000/- i.e. far above the imported price and the dues of Respondent No. 1. The petitioner's case is that such interim/alternative arrangements are quite common in the ordinary course of banking business and, therefore, he had no reason to refuse to accede to their request to make payment for the same for the lime being and take delivery of the . goods and store the same in a bonded warehouse promising to make payment to the first Respondent shortly. Accordingly on 28th October, 1986, the first Respondent made payment of the amounts against the documents and debited the same to the three current accounts opened at the time of opening the three L.Cs by creating overdrafts in these current accounts. The petitioner

has averred that this was done as per the procedure laid down by the first Respondent in 1982. In fact, therefore, no cash credit advance was made to any of these parties. It was because the parties could not retire the bills received under the Foreign L.Cs. facility that the cash credit account was opened in the names of the said firms and the outstanding were debited therein. As the 10 per cent margin was taken while establishing the said Foreign L.Cs. the same margin continued in the cash credit account. This was, therefore, not a case where Respondent No. 1 had made a cash credit advance with a lower margin.

17. The petitioner requested the Assistant General Manager of Respondent No, 1 as the disciplinary authority to furnish a list of documents by which the charges, according to him, were deemed to have been proved as well as evidence and documents on the basis of which it was held that actual loss or apprehended loss had been caused to Respondent No. 1. The petitioner also made several representations to Respondent No. 1 requesting release of his terminal benefits including his own contribution to the Provident Fund, interest and voluntary provident fund. The Respondents did not respond to these requests.

18. The Disciplinary Authority by the impugned order dated 21st March, 1988 rejected the petitioner's submissions and imposed the "minor" penalty of recovery of the alleged pecuniary loss caused to Respondent No. 1 from the petitioner's pay or such other amounts as may be due to the petitioner. He did so without holding an inquiry despite having the power, and as we shall presently demonstrate, the obligation to do so under Regulation 8(2) of the Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977.

19. The findings by the Respondents against the petitioner are that he issued the Foreign L.Cs. against the advance import licences accompanied by incomplete certificates of duty exemption in favour of the three parties; that he did not verify the antecedents of the parties or make any independent enquiries about their business and standing; that he granted the facilities against 10% margin instead of the prescribed minimum margin of 25% and that he sanctioned the facilities on the basis of provisional balance-sheets dated 31-8-1986 which were neither signed by the parties nor certified by the Chartered Accountants. It was also alleged that the three proprietary concerns belongs to members of the same family viz. father, son and the son's wife and that, therefore, the aggregate of the Foreign L.Cs. limits set up by the petitioner in favour of the said three parties exceeded the authorised limits of the petitioner. It was further held that the credit report from existing Bankers had not been obtained and that in one case even the marked report had not been obtained. It was held that when payment was not forthcoming on arrival of the steamer on 18th November, 1986 the petitioner should have taken immediate steps for recovery of the dues and having failed to do so had jeopardised the interest of Respondent No. 1 in respect of the said amounts. A further finding against the petitioner was that he did not disclose the close linkage between the said firms and sanction of the cash credit limits in his statements. As stated above, this order was passed three days

prior to the petitioner's retirement.

20. We shall subsequently deal with the order dated 30-7-1988 and 19-4-1989 dismissing the petitioner's appeal and application for review respectively. At this stage it would be convenient to refer to the relevant provisions of the Punjab National Bank Officer Employees Discipline and Appeal) Regulations, 1977 (hereinafter referred to as "the Regulations") and examine the question as to whether the petitioner was entitled to be heard before the order dated 21-3-1988 was passed.

21. Under Regulation 4(d) the recovery from pay or such other amount as may be due to an employee of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders constitutes a "minor" penalty. The penalty imposed against the petitioner falls under Regulation 4(d), Regulation 6 prescribes a detailed procedure for imposing major penalties. Under Regulation 6(1) no order imposing a major penalty shall be made except after an enquiry is held in accordance with the Regulations, Under Regulation, 6(2) whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself enquire into or appoint any other public servant (inquiring authority) to enquire into the truth thereof. Further sub-regulations of Regulations 6 provide in detail the procedure for hearing, pleadings, submission and inspection of documents, framing of articles of charges, appointment of the inquiring authority, and examination and cross-examination of witnesses. Under sub-regulation 21(i)(c) and (d) on the conclusion of the inquiry the Inquiring Authority is required to prepare a report giving an assessment of the evidence in respect of each article of charge, the findings on each article of charge and the reasons thereof. Regulation 8(i) and 8(2) which fall for our consideration are as under:--

"8. Procedure for imposing minor penalties. -- (1) Where it is proposed to impose any of the minor penalties specified in Clauses (a) to (d) of Regulation 4, the Officer employee concerned shall be informed in writing of the imputations of lapses against him and given an opportunity to submit his written statement of defence within a specified period not exceeding 15 days or such extended period as may be granted by the Disciplinary Authority and the defence statement, if any, submitted by the officer employee shall be taken into consideration by the Disciplinary Authority before passing orders.

(2) Where, however, the Disciplinary Authority is satisfied that an enquiry is necessary, it shall follow the procedure for imposing a major penalty as laid down in regulation 6."

22. The question that falls for our consideration, therefore, is whether in the facts and circumstances of this case, the Disciplinary Authority ought, in exercise of his power under Regulation 8(2), to have held an enquiry following the procedure for imposing a major penalty as laid down in Regulation 6. We have no

hesitation in deciding this question in the affirmative.

23. Before going any further, we may mention that Mr. Dharap wanted to raise several contentions before us including challenging the validity of Regulations 4 and 8. We, however, restricted him to the submissions on the basis of which we allow this petition viz.:--

(a) The Disciplinary Authority failed to apply his mind and decide the question as to whether or not in the facts of this case it was necessary for him to order an enquiry and follow the procedure under Regulation 6.

(b) Assuming that a decision was taken by the Disciplinary Authority not to order an enquiry under Regulation 8(2) it was not an informed and reasoned one based on objective criteria.

(c) In the facts of this case the Disciplinary Authority ought to have ordered an enquiry in accordance with the procedure under Regulation 6.

24. It is regrettable that the Disciplinary Authority did not even apply his mind and decide the question as to whether or not in the facts of the present case it was necessary for him to follow the procedure for imposing a major penalty as laid down in Regulation 6. We find it even more regrettable that despite the fact that this issue was squarely raised by the petitioner in the appeal the Appellate Authority merely recited the petitioner's submission but avoided dealing with the same. This leaves us with no alternative but to come to the conclusion that the Appellate Authority avoided deciding this question because he found it inconvenient to do so. This petition is entitled to succeed even on this limited preliminary ground itself.

25. In our view, the proceedings are vitiated for non-compliance of Regulation 8(2). Regulation 8(2) requires the Disciplinary Authority to satisfy himself on cogent, objective and legal principles. His must be an informed and reasoned decision. It is not left to his whim or fancy to decide whether or not the procedure laid down in Regulation 6 requires to be followed. We are supported in this view by the judgment of a learned Single Judge of the Karnataka High Court in the case of G. Sundaram v. General Manager (D.A.) Canara Bank, Bangalore and Ors. reported in (1999) L IC 88 . Regulation 8(2) of the Canara Bank Officer Employees (Discipline and Appeal) Regulation, 1976 is identical to Regulation 8(2) of the present Regulations. The learned Judge after setting out the facts observed as follows :--

"In my view the proceedings are vitiated for non-compliance of sub- Clause (2) of Regulation 8 of Bank's Regulations. I hasten to add that there can be no manner of doubt that where a minor punishment is imposed, the procedure for holding an enquiry, need not be followed unless otherwise desired by the disciplinary authority. But surely it does not mean that the enquiry is wholly barred or that it is entirely subject to the pleasure of the disciplinary authority. Sub-clause (2) provides that if disciplinary authority is satisfied if an enquiry is

necessary, then he will follow the procedure prescribed for imposing a major penalty as laid down in Regulation 6. The expression satisfied such an enquiry is necessary clearly suggests that the disciplinary authority must apply its mind to the facts and circumstances of the case as disclosed by the delinquent officer and give his reasoned finding whether an enquiry is necessary or not. The duty to give satisfactory reasons for coming to a decision is a duty of importance which cannot be lawfully disregarded. Since reasons are the links between the materials on which certain conclusions are based and the actual conclusions and they disclose how the mind is applied to the subject matter and it excludes the chances to reach arbitrary, whimsical or capricious decision. It also aids the appellate or revisional authority or the supervisory jurisdiction of this Court under Article 226 of the Constitution to see whether the authority concerned acted fairly and justly to meet out justice to the aggrieved person. In my view in the instant case the disciplinary authority while framing the impugned order does not require any enquiry much less summary enquiry. In the absence of such a finding either in the note or order sheet maintained by the disciplinary authority or in the order itself, the order imposing penalty would be invalid. More so in the present case that the delinquent officer employee in his reply to the charge memo requests the disciplinary authority to hold an impartial enquiry, if he is not satisfied with the explanation offered by him. There is no express provision in the regulation for the disciplinary authority either to accede or reject the demand of the delinquent but when such a request is made by the delinquent officer it is for the disciplinary authority to consider the same and pass appropriate orders. This unwritten duty is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the parties. Since he is required to decide in the spirit and with a sense of responsibility of a quasi judicial authority with a duty to meet out even handed justice. The omission of this express requirement in my view is supplied by rules of justice which is considered as an integral part of the judicial process which also governs quasi judicial authorities when deciding controversial points affecting rights of parties. In the instant case disciplinary authority has not indicated anywhere in his order that whether an enquiry was required or not in spite of such a demand by the delinquent officer. The Appellate Authority though notices this omission but glosses over the same. No material has been placed on record to show that the omission has caused no material prejudice to the petitioner."

We are in respectful agreement with the judgment of the Karnataka High Court which squarely applies to the case before us. As in the present case the petitioner in the above case also denied the allegations.

26. However, in G. Sundaram's case the Officer requested that an enquiry be held. The decision, however, did not rest merely on the ground that the Officer requested an enquiry. It is for the Disciplinary Authority after all to decide the merits of the case. He, therefore, must examine the rival contentions and decide whether he can arrive at rational and just findings without holding an enquiry. If he comes to a conclusion on this aspect in the negative he must order an enquiry

on his own. If thereafter parties do not participate in such an enquiry he would be at liberty to draw such inferences as he may for the same. But order an enquiry he must. Moreover, in his appeal the Petitioner challenged the order dated 21st March, 1988 on the ground that the procedure adopted by the Disciplinary Authority was in breach of the principles of natural justice. The Appellate Authority did not even care to deal with this submission except to state that the Regulations did not oblige the Disciplinary Authority to order an enquiry. As we shall demonstrate this stand is erroneous.

27. Mr. Dharap further submitted that bearing in mind the nature of the punishment, imposed on the Petitioner as also the fact that the petitioner had disputed all the allegations and charges, both on facts as well as on law, this was an eminently fit case where the disciplinary authority ought to have been satisfied that it was necessary to hold an enquiry as provided under Regulation 6. We are entirely in agreement with him. The Disciplinary Authority ought, on examining the petitioner's reply, which indeed was exhaustive and clear, to have ordered an enquiry under Regulation 6.

28. Mr. Talsania, the learned Counsel appearing on behalf of the Respondents disputed this submission on the ground that no useful purpose would have been served by holding an enquiry as the result would have been the same anyway. We are unable to agree with Mr. Talsania on two grounds - the first is based on law and the second on facts.

29. To demonstrate the fallacy of Mr. Talsania's submissions, we can do no better than refer to the words of Megarry J. in *John v. Rees* reported in (1970) 1 Ch. 345 ;--

"It may be that there are some who would decry the importance which the Courts attach to the observance of the rules of natural justice. "When something is obvious," they may say, "why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start". Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in "the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence, the course of events."

30. Referring with approval to the above extract the Supreme Court in *S.L. Kapoor Vs. Jagmohan and Others*, , went on to observe :

"24. The matter has also been treated as an application of the general principle that justice should not only be done but should be seen to be done. JACKSON'S

NATURAL JUSTICE (1980 Edn.) contains a very interesting discussion of the subject. He says:

The distinction between justice being done and being seen to be done has been emphasised in many cases.....

The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the observance of the rules of natural justice or as itself forming one of those rules. Both explanations of the significance of the maxim are found in Lord Widgery C. J.'s judgment in *R. V. Home Secretary, Ex. p. Hosenball*, where after saying that "the principles of natural justice are those fundamental rules, the breach of which will prevent justice from being seen to be done" he went on to describe the maxim as "one of the rules generally accepted in the bundle of the rules making up natural justice."

It is the recognition of the importance of the requirement that justice is seen to be done that justifies the giving of remedy to a litigant even when it may be claimed that a decision alleged to be vitiated by a breach of natural justice would still have been reached had a fair hearing been given by an impartial tribunal. The maxim is applicable precisely when the Court is concerned not with a case of actual injustice but with the appearance of injustice of possible injustice."

31. We now proceed to consider whether in the facts and circumstances of the case an enquiry was necessary. Though we do not intend adjudicating upon the merits of the rival contentions, we shall indicate only a few important aspects which certainly required serious consideration by the disciplinary authority at a properly instituted enquiry. This could by no stretch of imagination have been done by the disciplinary authority without holding an enquiry. We shall mention only a few such aspects which are by no means exhaustive.

(a) As we have seen, one of the charges against the petitioner was that he exceeded the limit of his authority while granting the facility if the aggregate amount advanced to the said firms was to be taken into consideration. This was on the basis that the proprietors thereof were closely associated. The petitioner's case in this regard was two fold. Firstly it was his case that each of the Proprietary concerns was independent and did business independently. Secondly the petitioner stated more than once that in a number of cases higher authorities at different levels had sanctioned loan facilities to firms belonging to a family with the same business address. We do not find any consideration of this aspect in the impugned order. It was necessary for, the disciplinary authority to permit the petitioner to adduce evidence and make submissions in this regard. Had the petitioner established his case on facts in this respect, the Disciplinary Authority may well have dismissed the charges against the petitioner. At the very least in such circumstances the Disciplinary Authority would almost certainly not have imposed the punishment of recovery of the alleged loss caused to Respondent No. 1 in view of such facilities having been granted earlier by higher authorities

in similar circumstances.

(b) Further, as stated above, the petitioner had sent statements to the Regional Manager regarding the details of the transactions. These statements included the addresses of each of these firms which were the same. Curiously the Regional Manager at the relevant time did not think that there was any impropriety in the petitioner having granted the said loan on the ground that they were close associates. This was an important consideration in the impugned order. Respondent No. 1 took steps against the petitioner only because the D.R.I., carried out a random investigation into the transactions. The petitioner had nothing to do with the same. It is not even the case of the Respondents that the petitioner was connected with investigation. Had the petitioner been granted a personal hearing, it may have been necessary for the Regional Manager to explain why he did not raise any objection to the same at the relevant time i.e. in January, 1987. His answers may very well have been favourable to the petitioner. By depriving the petitioner an opportunity of being heard, this crucial aspect of the matter remained to be examined.

(c) Curiously no action has been taken by Respondent No. 1 against Mr. I. K. K. Rao, the Chief Inspector of Respondent No. 1, who recommended that the parties be granted the facilities. This evidence was crucial before any penalty could be levied on the petitioners. Mr. Talsania sought to explain this circumstance by stating that it was only a recommendation from the Chief Inspector. We do not know. Nor could the Disciplinary Authority have known this without examining the parties. Surely the Chief Inspector knew that the parties were "associated". Presumably he was also aware of the restrictions, if any, in granting facilities to such parties. It is probable that had he been examined his answers would have been favourable to the petitioner.

(d) The petitioner case was that the provisional balance sheet was certified by the Chartered Accountants of the parties. The impugned order holds that they were not. The order, however, does not clarify on what basis the Petitioner's statement was disbelieved. It does not even refer to his statement in this regard. We are left guessing.

(e) The impounding of the said consignment in the bonded warehouse by the Department of Revenue Intelligence in July, 1987 was a subsequent development which nobody could have foreseen. The investigation was a part of random checking by the D.R.I. The process of clearance by the D.R.I. naturally takes time. The value of the goods at that point of time was around Rs. 40 to 45 lakhs which was much more than the amounts due to the Bank. Even if a penalty was imposed by the Customs Authorities, the sale price was sufficient to take care of the Banks dues and even thereafter leave a surplus. The petitioner categorically stated that the Bank had the clear course of action open to it to secure delivery of the said goods by payment of the customs duty, if any, and disposing of the same in the open Market, after seeking necessary permission from the J.C.C.I. and E. The impugned order does not deal with these important aspects either.

This is indeed surprising as the basis of the punishment is the alleged loss to Respondent No. 1. Had an inquiry been held, Respondent No. 1 would have had to explain why it did not take any steps for recovery for over two years. On 8-2-1997 the petitioner was transferred from Opera House branch after which he did not have authority to deal with the matter anyway.

32. The least that could be said of the defences raised by the petitioner is that they created a real and substantial doubt about his guilt. In such circumstances it would be obligatory on the part of the Disciplinary Authority to exercise his discretion in favour of affording the accused an opportunity of proving his innocence at the enquiry rather than denying him the same.

33. By an order dated 30th July, 1988, the petitioner's Appeal before the General Manager of Respondent No. 1 who is constituted as the Appellate Authority under the said Regulations was dismissed. The petitioner's appeal extensively raised a grievance against the orders of the disciplinary authority for having failed to afford him an opportunity of being heard and of disproving the charges and establishing his innocence. The petitioner in his appeal also dealt with the facts. The appellate order unfortunately does not even deal with the petitioner's grievance regarding the breach of the principles of natural justice on the part of the disciplinary authority. This is despite the fact -that the Appellate Authority in its order mentions the same. The Appellate Authority dismisses this submission merely by stating that in terms of the said Regulations "there is no necessity to conduct the departmental enquiry for imposing the minor penalty." In view of what we have held above, the stand is totally unjustified. The Appellate Authority's order is also vitiated for the same reason. The petitioner's application for review dated 6th March, 1989 was dismissed by an order dated 19th April, 1989 and must be quashed for the same reasons.

34. We have no hesitation, therefore, in holding that the impugned orders dated 21st March, 1988, 30th July, 1988 and 19th April, 1989 have been made in breach of the principles of natural justice and are liable to be quashed and set aside.

35. On 1st June, 1988 the Respondents released the petitioner's own contribution to the Provident Fund amounting to Rs. 81,668.79. The Respondent No. 1 also paid a sum of Rs. 48,750/- being the gratuity dues payable to the petitioner. The balance terminal benefits such as provident fund and salary in lieu of leave earned but not availed of were, however, withheld; The petitioner is now 73 years old. We have been informed by Mr. Dharap that he is extremely ill, having recently undergone a major surgery. We hope and trust that Respondent No. 1 will at least now relieve the petitioner of the pain and suffering it has subjected him to over all these years by forthwith releasing all the amounts that are due to him along with the interest as ordered by us.

36. We reiterate that we are not inclined to remand the matter for more than one reason. Firstly it would be a travesty of justice to do so in view of the above

circumstances. The petitioner is today 73 years old and in failing health. He has waited twelve years seeking justice. The impugned orders were passed in gross violation of the rules of natural justice and not once did the authorities afford him an opportunity of being heard till we heard the matter 12 years later. Moreover, we are not at all satisfied that the refusal to hold an enquiry was bona fide. We have grave reservations whether any enquiry against the petitioner will be just or fair. A remand would only prolong and indeed enhance the petitioner's agony. It would certainly make litigants such as the petitioner lose faith in our system of justice. For these reasons we reject the application for a remand. 37. In the circumstances, we pass the following order. (I) Rule is made absolute in terms of prayer Clauses (a), (b) and (bb) subject to modification that interest payable under prayer Clause (bb) (ii) shall be 9% instead of 18%. The said prayers read as under:--

(a) That this Hon'ble Court be pleased to issue a writ of certiorari or a writ direction or order in the nature of certiorari or any other appropriate order calling for the records and proceedings of the disciplinary proceedings held by the 1st Respondents against the petitioner and after examining the legality, validity and propriety thereof and of the orders passed therein, this Hon'ble Court be pleased to quash and set aside the order dated 21st March, 1988, a copy whereof is annexed as Exhibit "G" hereto and the order dated 30th July, 1988 in Appeal, a copy whereof is annexed as Exhibit "J" hereto: and the order dated 19th April, 1989 in Review proceedings as copy whereof is annexed as Exhibit "M" hereof:

(b) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ direction or order in the nature of mandamus or any other appropriate writ, direction or order directing the 1st Respondent to pay to the petitioner his balance dues as shown in Exhibit "N" hereto: excluding amounts mentioned at items 1 and 2 of Exhibit "N" to the petition referred to in prayer (bb) (i) below, (bb) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ, direction or order in the nature of mandamus or any other appropriate writ, direction or order directing the 1st Respondent.

(i) To pay to the credit of the petitioner's Pension Account the bank's contribution to the Provident Fund with interest thereon at the rate of 6% per annum in accordance with Punjab National Bank (Employees) Pension Regulations, 1995.

(ii) To pay to the petitioner the pension including arrears due to the petitioner with effect from 1st November, 1993 in accordance with the provisions of Punjab National Bank (Employees) Regulations, 1995, with interest thereon at the rate of 18% per annum from the end of each month for which the pension is due.

(iii) To give to the petitioner all the perquisites, benefits and facilities, including medical reimbursement, due to a retired Officer of the 1st Respondent with retrospective effect from the date of retirement of the petitioner, namely, 31st March, 1988 and reimburse to the petitioner charges wrongfully recovered by the

1st Respondent from the petitioner."

(II) Respondent No. 1 is further ordered and directed to comply with this order within four weeks from today.

(III) Respondent No. 1 shall pay to the petitioner Rs. 2,000/- as costs of this petition.

Respondents to act on an ordinary copy of this order duly authenticated by the Private Secretary of this Court.