

(2002) 03 BOM CK 0100
In the Bombay High Court
Case No : Writ Petition No. 602 of 1999

Y.P. Sarabhai

APPELLANT

Vs

Union Bank of India and Another

RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Union Bank of India Officer Employees (Discipline and Appeal) Regulations, 1976 — Regulation 7, 7(2), 7(3)

Citation : (2002) 3 ALLMR 43 : (2002) 4 BomCR 715 : (2002) 3 BOMLR 583 : (2002) 3 LLJ 435 : (2002) 2 MhLj 882

Hon'ble Judges : S.J. Vazifdar, J; R.M. Lodha, J

Bench : Division Bench

Advocate : J.P. Cama and K.P. Anilkumar, for the Appellant; M.N. Bhatkal and S.S. Dube, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—By means of this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks to impugn the order dated 4th September, 1998 passed by the Disciplinary Authority dismissing him from the service of the first respondent-bank and the order dated 16th February, 1998 passed by the Appellate Authority affirming the order of dismissal passed by the Disciplinary Authority.

2. The petitioner joined Union Bank of India-first respondent (for short "the Bank") initially as a security officer in the Junior Management Cadre on 7th May, 1980. On 1st April, 1985 the petitioner was promoted as a Deputy Manager (Security). Thereafter the petitioner was given an ad hoc promotion in Middle Management Grade, Scale-III in the Zonal Office, Mumbai. By order dated 26-5-1997 the petitioner was transferred from Mumbai to Chennai- The said order of transfer was served upon the petitioner on 3-6-1997. According to the Bank instead of carrying out the order of transfer, the petitioner remained absent from his duties. On 3-6-1997 the petitioner made representation for deferring his

transfer order by one year on the ground of ill-health of his wife and his son's education. The petitioner simultaneously made an application for leave on the ground that he was unwell. By letter dated 17th June, 1997, the Bank informed the petitioner that his request for deferment of transfer could not be granted and that he should report on duty on 23rd June, 1997 for being relieved. The petitioner did not report as directed and hence he was issued a memorandum dated 28th June, 1997 advising him to report for duty immediately and carry out transfer order to Chennai failing which disciplinary action would be initiated against him. However, the petitioner did not report for work and he made another representation on 16-7-1997 for extension of leave on the ground that he was suffering from Cervical Spondylises and Arthritis (Knees) and was undergoing treatment at Mumbai. The petitioner's leave was not extended. On 1-8-1997 the petitioner filed writ petition No. 1261 of 1997 before this court challenging his transfer from Mumbai to Chennai. The petitioner was issued the Articles of charge on 24-9-1997. The charges levelled against the petitioner were; (i) Contravention of Regulation 13 of Union Bank of India Officer Employees (Conduct) Regulations, 1976; (For short "Conduct Regulations, 1976"); (ii) Failure to discharge his duties with devotion and diligence; and (iii) Acting in a manner unbecoming of a Bank Officer. The petitioner upon receipt of the chargesheet did not file reply initially but instead submitted a letter dated 10th October, 1997 to the effect that the matter of chargesheet might not be proceeded with as against the order of the High Court rejecting his writ petition challenging the transfer order, he was going to file Special Leave Petition. Thereafter, on 21-11-1997 the petitioner submitted his statement of defence. The Enquiring Authority was appointed to enquire into the Articles of Charges levelled against the petitioner. The petitioner participated in the enquiry along with his assisting officer. After recording the evidence the Enquiring Authority submitted her report holding that the charges levelled against the petitioner were proved. The copy of the enquiry report was served upon the petitioner and he was directed to have his say. The petitioner by his letter dated 6-4-1988 submitted his comments. The Disciplinary Authority, thereafter, by order dated 4-9-1998 imposed upon petitioner major penalty of dismissal from service. Aggrieved thereby, the petitioner preferred appeal before the Appellate Authority. The Appellate Authority gave personal hearing to the petitioner on 28-1-1999 and by order dated 16-2-1999 rejected the petitioner's appeal. The order of Disciplinary Authority dismissing the petitioner from service and the order of the Appellate Authority confirming the said order are under challenge in this writ petition.

3. Mr. Cama, learned senior counsel appearing for the petitioner urged that punishment of dismissal is totally illegal and unsustainable being in contravention of the service Regulations applicable to the petitioner. The learned senior counsel submitted that the dismissal of the petitioner is on the basis of his misconduct for remaining absent from duty but it is well established from the material on record that during the period mentioned in the chargesheet, he was on sick leave

and he had also submitted the medical certificates. According to Mr. Cama the genuineness of the sickness of the petitioner could not have been doubted as there were medical certificates to that effect and if at all, the Bank suspected the genuineness of petitioner's sickness or the certificates produced by him, as per the circular No. 2311, dated 2nd June, 1981, the Bank ought to have directed the petitioner to appear before the medical practitioner of Bank's choice for medical examination. Mr. Cama contended the allegations levelled against the petitioner cannot be said to constitute misconduct under Regulation 13(2) of Conduct Regulations of 1976, read with Circular No. 2311 of 2nd June, 1981. Mr. Cama took us through the various medical certificates produced before the Enquiring Authority by the petitioner to demonstrate that much before the order of transfer dated 26-5-1997 the petitioner was suffering from various ailments including Cervical Spondylises and Arthritis (Knees) problem and he had taken treatment from various doctors and, therefore, no reasonable inference could be drawn that the petitioner remained absent from duty since 3rd June, 1997 to avoid his transfer from Mumbai to Chennai. The learned senior counsel for the petitioner strenuously urged that the petitioner was never on unauthorised leave or absence and the absence of the petitioner was due to sickness which is not a misconduct and petitioner could not be charged of insubordination or indiscipline. Mr. Cama also argued that after the copy of enquiry report was furnished to the petitioner, it was mandatorily required of the Disciplinary Authority to afford personal hearing to the petitioner and having not done that the order of punishment passed by Disciplinary Authority is vitiated being in utter disregard of the principles of natural justice. In this connection Mr. Cama relied upon the judgment of Apex Court in Institute of Chartered Accountants of India Vs. L.K. Ratna and Others, . The learned senior counsel also submitted that even the Appellate Authority did not give personal hearing to the petitioner and for want of proper personal hearing by Appellate Authority, the order passed by the Appellate Authority is also rendered illegal.

4. On the other hand, Mr. Bhatkal, the learned senior counsel appearing for the Bank supported the order of the Disciplinary Authority as well as the order of the Appellate Authority and submitted that the order of dismissal was passed by the Disciplinary Authority after enquiry was instituted by him to go into the allegations levelled against the petitioner and upon receipt of the enquiry report from the Enquiring Authority, copy thereof was furnished to the petitioner and he was called upon to have his say and in fact, in response thereto, the delinquent officer did file his objections to the enquiry report. Thus, according to the learned senior counsel appearing for the Bank, after following the principles of natural justice, the Disciplinary Authority passed the order of dismissal. According to the learned senior counsel for the Bank, it was not necessary for the Disciplinary Authority to afford personal hearing to the petitioner after service of the enquiry report. The learned senior counsel for the Bank submitted that insofar as the Appellate Authority is concerned, he issued a notice of personal hearing to the petitioner and in response thereto the petitioner appeared personally and in the

light of the oral submissions made by him and the written submissions filed, the Appellate Authority passed a reasoned order which does not suffer from any infirmity warranting interference by this court in extraordinary jurisdiction under Article 226 of the Constitution of India.

5. There appears to be no dispute that by order dated 26-5-1997 the petitioner was transferred from Mumbai to Chennai and the said order of transfer was served upon the petitioner on 3rd June, 1997. On that day itself the petitioner gave sick leave application and also made a representation to the Bank for withholding his transfer for one year on the ground of his wife's illness and son's education. On 17-6-1997 the Bank informed the petitioner that his request for withholding the transfer could not be accepted and he was advised to report on 23rd June, 1997 for being relieved to Chennai. Again by communication dated 8th July, 1997, the Bank advised the petitioner to carry out transfer order and join his duty at Chennai. He was further advised that the treatment, if any, could be continued at Chennai. It is admitted by the petitioner that on 30th July, 1997 he was declared fit to resume duties from 31st July, 1997 by the Director of All India Institute of Physical Medicine & Rehabilitation where he was undergoing treatment. However, the petitioner's case is that on 30th July, 1997 he got viral fever in the afternoon and was advised rest on 31st July, 1997 by Chief Medical Officer, Central Government Health Scheme. This is too much of a co-incidence meriting acceptance. On 30th July, 1997, the petitioner is declared fit to resume his duties on the next day i.e., 31st July, 1997. But in the afternoon of 30th July, he gets viral fever. This time he goes to CMO, Central Government Health Scheme who advises him rest on 31st July. The petitioner gets well next day and filed Writ Petition No. 1261 of 1997 before this court challenging his transfer from Mumbai to Chennai. The petitioner claims to have reported for duty at Mumbai on 4th August, 1997 but he was not allowed to sign muster roll. In our view, rightly so because by order dated 3rd June, 1997 the petitioner was already transferred from Mumbai to Chennai but he did not report for duty when prior thereto on two occasions by communication dated 17-6-1997 and 28-6-1997 he was advised to carry out transfer order. The petitioner's writ petition No. 1261 of 1997 was dismissed on 6th October, 1997 by this court and the SLP filed by him challenging the order of the High Court also came to be dismissed by the Supreme Court on 17-11-1997. It was only thereafter that on 24-11-1997 the petitioner reported at his place of transfer i.e. Chennai. The question arises in the backdrop of these facts whether the petitioner was rightly charged of the misconduct under Regulation 13 of Conduct Regulations, 1976 for having remained absent from duty and failure to discharge his duty with devotion and diligence and acting in a manner unbecoming of a Bank Officer.

6. In exercise of the powers conferred by Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, Board of Directors of Union Bank of India in consultation with the Reserve Bank of India and with the previous sanction of the Central Government made the Regulations titled as Union Bank of India Officer Employees (Conduct) Regulations, 1976 ("Conduct

Regulations, 1976"). The Conduct Regulations, 1976 apply to all officer employees of the Bank save and except those who are specifically excluded in Clause 3 of Regulation 1. Regulation 3 provides for general conduct and discipline of the officer employee which reads thus --

"3. General. -- (1) Every Officer Employee shall at all times take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost integrity, honestly, devotion and diligence and do nothing which is unbecoming of a Bank Officer.

(2) Every Officer Employee shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations.

(3) No Officer Employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior.

(4) Every Officer Employee shall take all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control and authority.

7. Regulation 13 deals with absence from duty by the officer employee. As much debate centered round Regulation 13 we deem it fit to reproduce the said provision :

"13. Absence from duty. -- (1) No Officer Employee shall absent himself from his duty or be late in attending office or leave the station without having first obtained the permission of the Competent Authority;

Provided that in the case of unavoidable circumstances where availing of prior permission is not possible or is difficult, such permission may be obtained later subject to the satisfaction of the Competent Authority that such a permission could not have been obtained.

(2) No Officer Employee shall ordinarily absent himself in case of sickness or accident without submitting a proper medical certificate : Provided that in the case of temporary indisposition or sickness of a casual nature, the production of a medical certificate may, at the absolute discretion of the Competent Authority, be dispensed with."

8. Regulation 24 provides that breach of any of the provisions of Regulations shall be deemed to constitute a misconduct punishable under the Union of India Officer Employees (Discipline and Appeal) Regulations, 1976 (For short "Discipline Regulations, 1976").

9. It would be seen from Clause (1) of Regulation 13 that no officer employee shall remain absent without prior permission of the Competent Authority. In the case of unavoidable circumstances where it is not possible to obtain prior permission or is difficult to obtain prior permission such permission may be obtained later subject to the satisfaction of the Competent Authority that in the

circumstances, prior permission could not have been obtained. Clause (2) of Regulation 13 provides that officer employee shall not ordinarily remain absent in case of sickness or accident without submitting a proper medical certificate. However, in the case of temporary indisposition or a sickness of a casual nature, it is open to the Competent Authority to dispense with the production of a medical certificate. Regulation 13 cannot be read to mean that the Bank is bound by the medical certificate produced by the officer employee justifying his absence from duties. The Bank can, in the circumstances, discard the medical certificate produced by the officer employees for remaining absent. It can refuse to accept medical certificate produced by the officer employee if it finds that this is only device for remaining absent. As a matter of fact, this position is not disputed by Mr. Cama, learned senior counsel appearing for the petitioner but his contention is that in that event it is obligatory on the part of the Bank or for that matter the Competent Authority to ask such officer employee to appear before the medical practitioner of Bank's choice for medical examination in view of the staff circular No. 2311 dated 2nd June, 1981. What is provided by staff circular No. 2311 dated 2nd June, 1981 is that, an employee remaining absent on the ground of sickness for over four days, must submit medical certificate immediately on the fifth day, if not already done earlier. Such medical certificate should indicate the nature of sickness and specific recommendations for the period the employee was not in a position to attend duties. It further provides that the Management is not bound by the certificate produced by the employee and may require the employee to appear before the medical practitioner of Bank's choice for medical examination. Under circular No. 2311 dated 2nd June, 1981 even if the medical certificate is furnished by the employee for remaining absent, the Bank may not accept such certificate and may also require the employee to appear before the medical practitioner of Bank's choice for medical examination. The circular makes it very clear that failure to follow the prescribed procedure will result in treating absence as unauthorized and hence on loss of pay without prejudice to the Bank's right to take disciplinary action. Thus, for absence on the ground of illness, if the medical certificate is not accepted by the Bank, it is always open to the Bank to take disciplinary action against such employee for having remained absent. That is what has been done in the present case as after the petitioner was transferred from Mumbai to Chennai by order dated 26th May, 1997 which was served upon the petitioner on 3rd June, 1997, the petitioner remained absent for months together. The petitioner submitted leave application but he was informed on 17th June, 1997 that his request has not been acceded to and he should report on 23rd June, 1997 for being relieved. By further letter dated 28th June, 1997 the petitioner was advised to carry out transfer order by joining his duties at Chennai but despite that when he did not join his duties, he was served with the Articles of Charge. The statement of allegations read thus --

"Shri Y.P. Sarabhai, Manager (Security) is not reporting for his duties since 3rd June, 1997 onwards, Shri Sarabhai's service are transferred to Chennai. But he has, till date, not carried out his transfer orders to Chennai and is remaining

absent without sanction of leave. Shri Sarabhai was informed vide memorandum No. CO:IRD:4526/97 dated 28th June, 1997 to report for his duties immediately at Chennai, where he can continue the treatment which he presently taking with All India Institute of Physical Medicine and Rehabilitation, Mumbai for his illness. Shri Sarabhai has sent a letter dated 16th July, 1997 seeking extension of leave on medical grounds. However, in the absence of the Bank's medical officer certifying the reasons given by him as justified, the reasons given by Shri Sarabhai cannot be accepted by the Management as convincing Shri Sarabhai's failure to carry out his transfer orders to Zonal Office, Chennai and remaining absent without leave is in contravention of Regulation 13 of Union Bank of India Officer Employees" (Conduct) Regulations. 1976."

10. The statement of allegations afore-referred, if proved, is a misconduct without doubt under Regulation 13 of the Conduct of Regulations, 1976. In the enquiry instituted against the petitioner, the petitioner was assisted by Chief Manager (Officiating) and oral as well as documentary evidence was produced by the Bank as well as the petitioner. The Bank produced two witnesses and accepted 13 documents. The petitioner examined himself and produced 23 documents. Thereafter, both the parties were advised by Enquiring Authority to submit their written briefs and in compliance thereof, the Bank as well as the petitioner submitted written briefs. The Enquiring Authority considered the material elaborately and recorded findings; (i) That the transfer order dated 26-5-1997 was issued to the petitioner transferring from Mumbai to Chennai which was received by the petitioner on 3-6-1997; (ii) The petitioner remained absent on the ground of illness but the real reason was that he was reluctant to carry out his transfer to Chennai; (iii) Though the petitioner was certified fit to resume duties on 30th July, 1997 by AIIPM & R, he obtained another certificate on 30th July, 1997 itself from CGHS Dispensary that he was unfit to attend duties for another three days; (iv) Despite being certified by AIIPM & R to be fit to resume duties, the petitioner again addressed a letter dated 4th August, 1997 to the General Manager, Mumbai requesting permission to continue the treatment for two months in Mumbai. Though he had been advised vide memorandum dated 28-6-1997 to resume duties at Chennai and continue the required treatment at Chennai but once again he used dilatory tactics; (v) Reason by petitioner for not reporting for duties at Chennai was other than the reason of illness; (vi) No medical certificate advising rest from duties has been produced by the petitioner after 2-8-1997 and also there is no certificate/advise of any doctor to the petitioner not to undertake any travel; (vii) The AIIPM & R certificate did not even state that treatment could only be availed at Mumbai; (viii) Though the petitioner had deposed about various illnesses he was suffering since 31-12-1996 and the treatment taken by him from various doctors including the treatment from AIIPM & R but during that period prior to the transfer order, the petitioner had not remained absent from duties and therefore, he could have attended his duties at Chennai on transfer; and (ix) The illness such as arthritis, cervical Spondylitis, backache etc. are not uncommon and/or such that cannot

be treated in any city other than Mumbai and do not justify the petitioner remaining away from duties.

On the basis of the aforesaid findings, the Enquiring Authority held that charges levelled against the petitioner were proved and held him guilty of the said charges.

11. The copy of the enquiry report was furnished to the petitioner and his comments were called for by the Disciplinary Authority. After receipt of the written submissions filed by the petitioner and upon consideration thereof the Disciplinary Authority did not find any justifiable reason for not accepting the findings of the Enquiring Authority. The Disciplinary Authority, accordingly, accepted the findings of the Enquiring Authority and held that the charges levelled against the petitioner were proved. The Disciplinary Authority, thus, ordered petitioner's dismissal from service with immediate effect. We have no hesitation in holding that the facts proved against the petitioner do constitute misconduct under Regulation 13 of the Conduct of Regulations, 1976.

12. Now we deal with the submission raised by the learned senior counsel appearing for the petitioner that it was incumbent upon the Disciplinary Authority to give personal hearing to the petitioner after the enquiry report was served upon him. In this connection we may first refer to the Discipline Rules, 1976. Regulation 3 defines various expressions while Regulation 4 provides for penalties, minor and major, that may be imposed upon the officer employee for acts of misconduct or for any other good and sufficient reasons. Regulation 5 provides for Authority to institute disciplinary proceedings and impose penalties. Procedure for imposing major penalties is provided in Regulation 6 which is quite elaborate. Rule 6 reads thus :--

"6. Procedure for imposing major penalties. -- (1) No order imposing any of the major penalties specified in Clauses (e), (f), (g) and (h) of Regulation 4 shall be made except after an inquiry is held in accordance with this Regulation.

(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 Officer Employee, it may itself inquire into, or appoint any other public servant (hereinafter referred to as the Inquiring Authority) to inquire into the truth thereof.

Explanation. -- When the Disciplinary Authority itself holds the inquiry any reference in sub-regulation (8) to sub-regulation (21) to the Inquiring Authority shall be construed as a reference to Disciplinary Authority.

(3) Where it is proposed to hold an inquiry, the Disciplinary Authority shall frame definite and distinct charges on the basis of the allegations against the Officer Employee and the Articles of Charges, together with a Statement of the allegations, on which, they are based, shall be communicated in writing to the Officer Employee, who shall be required to submit within such time as may be

specified by the Disciplinary Authority, (not exceeding 15 days) or within such extended time as may be granted by the said Authority, a written statement of his defence.

(4) On receipt of the written statement of the Officer Employee, or if no such statement is received within the time specified, an inquiry may be held by the Disciplinary Authority itself, or if it considers it necessary to do so appoint under sub-Regulation (2) an Inquiring Authority for the purpose :

Provided that it may not be necessary to hold an inquiry in respect of the Articles of Charge admitted by the Officer Employee in his written statement but shall be necessary to record its findings on each such charge.

(5) The Disciplinary Authority shall, where it is not the Inquiring Authority, forward to the Inquiring Authority :--

(i) a copy of the Articles of Charge and Statements of imputations of misconduct or misbehavior:

(ii) a copy of written statement of defence, if any, submitted by the Officer Employee:

(iii) a list of documents by which and list of witnesses by whom the Articles of Charge are proposed to be substantiated;

(iv) a copy of statements of the witnesses, if any;

(v) evidence proving the delivery of Articles of Charge under sub-Regulation (3);

(vi) a copy of the order appointing the "Presenting Officer" in terms of sub-Regulation (6).

(6) Where the Disciplinary Authority itself inquires or appoints an Inquiring Authority for holding an inquiry, it may, by an order, appoint a public servant to be known as the "Presenting Officer" to present on its behalf in case in support of the Articles of Charge.

(7) The Officer Employee may take the assistance of any other Officer Employee but may not engage a Legal Practitioner for the purpose unless the Presenting Officer, appointed by the Disciplinary Authority is a Legal Practitioner or the Disciplinary Authority, having regard to the circumstances of the case so permits.

NOTE : The Officer Employee shall not take the assistance of any other Officer Employee who has two pending disciplinary cases on hand in which he has to give assistance.

(8)(a) The Inquiring Authority shall by notice in writing specify the day on which the Officer Employee shall appear in person before the Inquiring Authority.

(b) On the date fixed by the Inquiring Authority, the Officer Employee shall appear before the Inquiring Authority at the time, place and date specified in the

notice.

(c) The Inquiring Authority shall ask the Officer Employee whether he pleads guilty or has any defence to make and if he pleads guilty to any of the Articles of Charge, the Inquiring Authority shall record the plea, sign the record and obtain the signature of the Officer Employee concerned thereon.

(d) The Inquiring Authority shall return a finding of guilt in respect of those Articles of Charge to which the Officer Employee concerned pleads guilty.

(9) If the Officer Employee does not plead guilty, the Inquiring Authority shall adjourn the case to a later date not exceeding 30 days or within such extended time as may be granted by the Inquiring Authority:

(10)(a) The Inquiring Authority shall, where the Officer Employee does not admit all or any of the Articles of Charges, furnish to such Officer Employee a list of documents by which, and a list of witnesses by whom, the Articles of Charge are proposed to be proved.

(b) The Inquiring Authority shall also record an order that the Officer Employee may for the purpose of preparing his defence.

(i) inspect within five days of the order or within such further time not exceeding five days as the Inquiring Authority may allow, the documents listed:

(ii) submit a list of documents and witnesses that he wants for the enquiry :

(iii) be supplied with copies of statement of witnesses, if any, recorded earlier and the Inquiring Authority shall furnish such copies not later than three days before the commencement of the examination of the witnesses by the Inquiring Authority;

(iv) give a notice within ten days of the order or within such further time not exceeding ten days as the Inquiring Authority may allow for the discovery or production of the documents referred to item (ii).

NOTE : The relevancy of the documents and the examination of the witnesses referred to in item (ii) shall be given by the Officer Employee concerned.

(11) The Inquiring Authority shall, on receipt of the notice for the discovery or production of the documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept with a requisition for the production of the documents on such date as may be specified.

(12) On the receipt of the requisition under sub-regulation (11), the authority having the custody or possession of the requisitioned documents, shall arrange to produce the same before the inquiring Authority on the date, place and time specified in the requisition : Provided that the authority having the custody or possession of the requisitioned documents may claim privilege if the production of such documents will be against the public interest or the interest of the Bank. In that event, it shall inform the Inquiring Authority accordingly.

(13) On the date fixed for the inquiry, the oral and documentary evidence by which the Articles of Charge are proposed to be proved shall be produced by or on behalf of the Disciplinary Authority. The witnesses produced by the Presiding Officer shall be examined by the Presenting Officer and may be cross-examined by or on behalf of the Officer Employee. The Presenting Officer shall be entitled to re-examine his witnesses on any points on which they have been cross-examined, but not on a new matter, without the leave of the Inquiring Authority. The Inquiring Authority may also put such questions to the witnesses as it thinks fit.

(14) Before the close of the case, in support of the charges, the Inquiring Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the charge-sheet or may itself call for new evidence or recall or re-examine any witness. In such case the Officer Employee shall be given opportunity to inspect the documentary evidence before it is taken on record, or to cross-examine a witness, who has been so summoned. The Inquiring Authority may also allow the Officer Employee to produce new evidence if it is of the opinion that the production of such evidence is necessary in the interest of justice.

(15) When the case in support of the charges is closed, the Officer Employee may be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Officer Employee shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(16) The evidence on behalf of the Officer Employee shall then be produced. The Officer Employee may examine himself in his own behalf, if he so prefers. The witnesses produced by the Officer Employee shall then be examined by the Officer Employee and may be cross-examined by the Presenting Officer. The Officer Employee shall be entitled to re-examine any of his witnesses on any points on which they have been cross-examined, but not on any new matter without the leave of the Inquiring Authority.

(17) The Inquiring Authority may after the Officer Employee closes his evidence, and shall, if the Officer Employee has not got himself examined, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Officer Employee to explain any circumstances appearing in the evidence against him.

(18) The Inquiring Authority may after the completion or the production of evidence, hear the presenting Officer, if any; appointed and the Officer Employee, or permit them to file written briefs of their respective case within 15 days of the date of completion of the production of evidence if they so desire.

(19) If the Officer Employee does not submit the written statement of defence referred to in sub-regulation (3) on or before the date specified for the purpose or does not appear in person, or through the Assisting Officer or otherwise fails

or refuses to comply with any of the provisions of these Regulation, the Inquiring Authority may hold the inquiry ex-parte.

(20) Whenever any inquiring Authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring Authority which has, and which exercises, such jurisdiction, the Inquiring Authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding, Inquiring Authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as herein before provided.

(21)(i) On the conclusion of the inquiry the Inquiring Authority shall prepare a report which shall contain the following :

(a) a gist of the Articles of Charge and the Statement of the Imputations of misconduct or misbehavior;

(b) a gist of the defence of the Officer Employee in respect of each Article of Charge;

(c) an assessment of the evidence in respect of each Article of Charge;

(d) the findings on each Article of Charge and the reasons therefore.

Explanation. -- If, in the opinion of the Inquiring Authority, the proceedings of the inquiry establish any Article of Charge different from the original Article of Charge, it may record its finding on such article of charge :

Provided that the findings on such Article of Charge shall not be recorded unless the Officer Employee has either admitted the facts on which such Article of Charge is based or has reasonable opportunity of defending himself against such Article of Charge.

(ii) The Inquiring Authority, where it is not itself the Disciplinary Authority, shall forward to the Disciplinary Authority the records of inquiry which shall include --

(a) the report of the inquiry by it under Clause (i);

(b) the written statement of defence, if any, submitted by the Officer Employee referred to in Sub-Regulation (15);

(c) the oral and documentary evidence produced in the course of the inquiry;

(d) written briefs referred to in Sub-Regulation (18), if any; and

(e) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry."

13. Rule 7 makes provision for action on the enquiry report which reads thus --

"7. Action on the inquiry report. -- (1) 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 for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of Regulation 6 as far as may be.

(2) 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.

(3) If the Disciplinary Authority, having regard to its findings on all or any of the Articles of Charge, is of the opinion that any of the penalties specified in Regulation 4 should be imposed on the Officer Employee it shall, notwithstanding anything contained in Regulation 8, make an order imposing such penalty.

(4) If the Disciplinary Authority having regard to its findings on all or any of the Articles of Charge, is of the opinion that no penalty is called for it may pass an order exonerating the Officer Employee concerned."

14. Under Clause (1) of Regulation 7, if the Disciplinary Authority is not the Enquiring Authority, he may remit the case to the Enquiring Authority for fresh or further enquiry for the reasons to be recorded in writing and the Enquiring Authority then has to proceed to hold further enquiry. If the Disciplinary Authority disagrees with the findings of the Enquiring Authority on any article of charge, under Clause (2) of Regulation 7, after recording reasons for such disagreement, the Disciplinary Authority may record its own findings on such charge if the evidence on record is sufficient for that purpose. Under Clause (3) of Regulation 7, the Disciplinary Authority may impose penalties specified in Regulation 4 having regard to the findings on all or any of the articles of charge and under Clause (4) of Regulation 7, if the Disciplinary Authority is of the view that no penalty is called for having regard to the findings on all or any of the articles of charge, exonerate the officer employee. Though the Regulations do not provide specifically the furnishing of the enquiry report to the delinquent officer employee before punishment is imposed, such requirement has to be necessarily read keeping in view the principles of natural justice. The legal position is no more *res integra* that an employee is entitled to a copy of the enquiry report even if statutory rules do not permit the furnishing of the report or are silent on the subject. It would also not be unjustified to read in the provisions contained in Regulation 7 that the delinquent officer employee needs to be called upon to have his say on the enquiry report. In other words when the enquiry officer is not the disciplinary authority, the delinquent employee has right to receive the enquiry officer's report and submit his objections. Once this procedure is followed, in our view, the principles of natural justice are fully met in a case such as the one before us where the Disciplinary Authority agrees with

the findings of the Enquiring Authority. In such a case the Disciplinary Authority must proceed under Regulation 7(3). It does not seem to us to be a mandatory requirement keeping in view the procedure prescribed in Discipline and Appeal Rules, 1976 that in a case under Regulation 7(3) Disciplinary Authority must give personal hearing to the delinquent before imposition of major penalty as provided in Regulation 4 after the enquiry report is served upon such officer employee and he is called upon to have his say. It need not be over emphasised that in the enquiry before the Enquiring Authority, such delinquent officer employee gets full opportunity in setting up his defence. He has full opportunity to get complete material being used against him. He has right to cross-examine employer's witnesses, lead his evidence and also make oral submissions. Under the scheme of the Regulations, particularly Regulation 6 the elaborate procedure in conformity with the principles of natural justice is provided and that gives reasonable opportunity of being heard in respect of charges. Regulation 7(3) does not contemplate oral hearing being afforded by the Disciplinary Authority to the delinquent officer employee after service of enquiry report and calling for his say before the punishment is imposed by the Disciplinary Authority where the Disciplinary Authority agrees with the Enquiring Authority. The requirements of natural justice in a case under Regulation 7(2) i.e. where the Disciplinary Authority disagrees with the Enquiring Authority are different.

15. In *Institute of Chartered Accountants of India v. L.K. Ratna and Ors.* the Apex Court while taking into consideration Regulations 14 and 15 of Chartered Accountants Regulations, 1964 and the provisions contained in Section 21(4) of Chartered Accountants Act, 1949 observed thus --

"16. It is next pointed out on behalf of the appellant that while Regulation 15 requires the Council, when it proceeds to act u/s 21(4), to furnish to the member a copy of the report of the Disciplinary Committee, no such requirement is incorporated in regulation 14 which prescribes what the Council will do when it receives the report of the Disciplinary Committee. That, it is said, envisages that the member has no right to make a representation before the Council against the report of the Disciplinary Committee. The contention can be disposed of shortly. There is nothing in Regulation 14 which excludes the operation of the principle of natural justice entitling the member to be heard by the Council when it proceeds to render its finding. The principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary."

When the argument was advanced before the Apex Court that the member has no right to make a representation before the Council against the Court negatived the said contention observing that as there is nothing in Regulation 14 which excludes the operation of the principles of natural justice entitling the petitioner to be heard by the Council when it proceeds to render its finding, the principles of natural justice must be read therein. We have already quoted the procedure laid down in Regulations 6 and 7 of the Discipline and Appeal Regulations, 1976

and have also held that furnishing the copy of the report of the Enquiring Authority to the delinquent officer employee and enabling such officer employee to make representation to the Disciplinary Authority against the findings recorded by the Enquiring Authority must be read in Regulation 7 and upon compliance thereof principles of natural justice are fully met.

16. As regards the contention raised by the learned senior counsel for the petitioner that the Appellate Authority did not afford personal hearing to the petitioner and therefore, the order of the Appellate Authority is vitiated, we may straight away observe that this contention appears to have been raised without factual foundation. This court on 19-1-1999 in writ petition No. 2567 of 1998 directed the Appellate Authority to give personal hearing to the petitioner on 28-1-1999 and pass appropriate order in appeal within three weeks thereafter. In terms of the directions given by this court in the order dated 19-1-1999, personal hearing was in fact given to the petitioner on 28-1-1999 and thereafter, the appeal came to be decided. This is clearly reflected from the minutes of the personal hearing dated 28-1-1999 (Exhibit "H"). The Appellate Authority, thus, afforded personal hearing to the petitioner on 28-1-1999 and then passed order dated 16-2-1999, disposing of the appeal whereby it confirmed the order of Disciplinary Authority.

17. We do not find any legal infirmity in the order passed by the Disciplinary Authority and the order of the Appellate Authority warranting interference by this court in extraordinary jurisdiction under Article 226 of the Constitution of India. The petitioner was adamant in not carrying out the transfer order and he tried his best to avoid transfer until he finally failed upto the Supreme Court in challenging his transfer from Mumbai to Chennai. On various pretexts viz., his own sickness, sickness of his wife and the education of his child, he sought to avoid the transfer. It was only after his SLP was dismissed by the Apex Court on 17-11-1997 that he reported at Chennai on 24-11-1997. The petitioner was surely guilty of misconduct under Regulation 13 of Conduct Rules, 1976.

18. Writ Petition is accordingly, dismissed with no order as to costs. Certified copy expedited.