Similarly, in the other authority cited by the learned counsel for the appellant (1977 (2) R.C.J. 147) the tenant had been given a right to construct a factory on the lease land and also to construct buildings to sublet them. In these circumstances, it was held that the land had been let out principally for business or trade. As observed above, there is no such stipulation in the lease deed in question in this case. This authority has no applicability.

(8) The Courts are to see the terms of the lease and not the actual user in case of a rented land. As observed above, in the present case, the lease of the land was not separately for being used principally for business or trade.

(9) So far as the argument that the lessors had themselves filed a case under the Act describing the land to be 'rented land' and are, therefore, estopped from taking the stand that the suit land is not 'rented land', the same has no merit. There cannot be any estoppel against Statute or the interpretation of a document as to whether the same falls under a particular definition of a document under a Statute. The lessors might not have been properly advised whether the land was 'rented land' or not. Moreover, before the Rent Controller no issue was decided as to whether the land was 'rented land' or not. There is no estoppel against the lessors as a misinterpretation of a document on an advice is not binding. It may also be noticed here that in the statement of the appellant before the trial Court, we do not find that he had at any time stated that through the lease deed, the land was separately let out principally for the purpose of business or trade. The land was let out for a specific period and the lessess had no right to continue after the termination of the lease by efflux of time.

(10) For the foregoing reasons, we find no merit in this appeal, which is hereby dismissed with no order as to costs.

S.C.K.

Before Jawahar Lal Gupta & B. Raj. JJ

STATE BANK OF PATIALA,—*Applellant*

versus

RAM GOPAL GUPTA & OTHERS,—*Respondents*

R.S.A. 640 of 89

9th July, 1997

State Bank of Patiala (Officers) Service Regulations, 1979—Regs. 67 and 68—Enquiry Officer exonerated an employee—Disciplinary authority disagrees with its findings—Imposition of penalty on employee by disciplinary authority—Whether employee entitled to a notice from the disciplinary authority—Held, yes.

Held, that a perusal of Regulation 68 of the State Bank of Patiala (Officers) Service Regulations, 1979 shows that a penalty can be imposed on an employee only for 'good and sufficient reason'. In case, the disciplinary authority disagrees with the findings of the enquiring authority on any article of charge, it has to record its reasons for such disagreement. The purpose of recording the reasons for disagreement is to indicate to the employee as to why the disciplinary authority has differed with the view expressed by the enquiry officer. Otherwise, the recording of reasons would be an exercise in futility. The requirement of recording reasons implies a need for communication thereof.

(Para 4)

Further held, that a perusal of Regulation 68 further shows that the procedure is intended to ensure that the employee has an effective opportunity to meet the material that is likely to be taken into consideration by the disciplinary authority before arriving at the final decision. The evidence has to be recorded in the presence of the employee. He is to be given an opportunity to effectively cross-examine the witnesses. He has a right to lead evidence in defence and to explain all the circumstances that are brought on record against him. That being the underlying purpose of the regulation, it would not be fair to assume that the disciplinary authority shall be entitled to disagree with the enquiry officer and impose a penalty on the employee without even giving him an opportunity to explain the reasons which have persuaded the authority for differing with the enquiry officer.

(Para 5)

R.K. Chhibar, Senior Advocate with Anand Chhibar, Advocate, *for the appellant*

Ravinder Chopra, Advocate, *for the respondent.*

JUDGMENT

Jawahar Lal Gupta, J.

(1) Is an employee entitled to a notice where the disciplinary

authority disagrees with the findings of the Enquiry Officer exonerating him in spite of the facts that the relevant rules under which the enquiry is being held do not specifically provide for it? This is the question that arises for consideration in this case. On account of conflict in judicial opinion, the learned single Judge has referred the matter to a Division Bench. A few facts may be noticed.

(2) The plaintiff-respondent was working as an Assistant Accountant with the State Bank of Patiala. On august 28, 1979, a charge sheet was served upon him. It was *inter alia* alleged that he had committed a serious forgery. On July 18, 1972, he was suspended. Even a criminal case under sections 411/420/467/468/489 read with sections 201 and 120-B IPC was registered against him. After about seven years, the charge sheet dated August 28, 1979 was served on him. On May 25, 1982, the enquiry officer submitted a report exonerating the respondent. On April 26, 1983, the disciplinary authority recorded an order holding that the petitioner was guilty of the charges levelled against him. The period of suspension from July 18, 1972 to February 14, 1979 was treated as extra ordinary leave and without pay. A penalty of stoppage of four increments with comulative effect was also imposed on him. A copy of this order is Ex.P.5. The respondent filed an appeal which was dismissed,—*vide* order dated August 18, 1983. On December 30, 1983, even his revision petition was rejected. Copies of these two orders are Exhibits P. 7 and P.9. Irrespective of that, the plaintiff-respondent was acquitted by the Court of Chief Judicial Magistrate,—*vide* judgment dated April 27, 1984. Thereafter, he filed a suit for a declaration that the orders passed by the disciplinary authority and the orders rejecting his appeal and revision were illegal, arbitrary and void. The suit was decreed by the learned trial court. The appeal filed by the defendants having been dismissed, the Bank has filed the present second appeal.

(3) Mr. Chhibbar, learned counsel for the appellant has contended that the penalty of stoppage of four increments with comulative effect is one of the minor penalties enumerated under Regulation 67 of the State Bank of Patiala (Officers) Service Regulations. 1979. Such a penalty can be imposed even without holding a regular enquiry. In any event, according to the procedure prescribed under Regulation 68, the disciplinary authority is competent to disagree with the findings of the enquiring authority and to impose a penalty. It is not required under any regulation to grant an opportunity. On these premises, learned counsel submitted that the courts below have erred in taking the view that the

plaintiff-respondent was entitled to show cause against the reasons recorded by the disciplinary authority for disagreeing with the findings recorded by the enquiry officer and that the action in not giving such an opportunity was violative of the principles of natural justice. The claim made on behalf of the appellant was controverted by Mr. Chopra who appeared for the plaintiff-respondent. Both sides placed reliance on different decisions.

(4) First, the Regulations may be briefly noticed. Regulation 67 enumerates the minor and major penalties which may be "imposed on an officer, for an act of misconduct or for any other good and sufficient reason." Clause (b) of this regulation mentions the "withholding of increments of pay with or without cumulative effect" as one of the minor penalties. Regulation 68 lays down the procedure which has to be followed before any of the penalties can be imposed. some of the provisions contained in clauses (3) and (4) are relevant. These may be usefully extracted. These are as under:—

(3) "(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 its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in regulation 67 should be imposed on the officer, it shall, notwithstanding anything contained in sub-regulation (4), make an order imposing such penalty."

(4) (i) Where it is proposed to impose any of the minor penalties specified in clause (a) to (d) of regulation 67 the officer shall be informed in writing of the imputations of lapses against him and be 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. The defence statement, if any, submitted by the officer shall be taken into consideration by the Disciplinary Authority before passing orders.

(ii) 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 sub-regulation (2)."

A perusal of the above provisions shows that a penalty can be imposed on an employee only for "good and sufficient reason". In case, the disciplinary authority disagrees with the findings of the enquiring authority on any article of charge, it has to record its reasons for such disagreement. The purpose of recording the reasons for disagreement is to indicate to the employee as to why the disciplinary authority has differed with the view expressed by the enquiry officer. Otherwise, the recording of reasons would be an exercise in futility. The requirement of recording reasons implies a need for communication thereof. This is the rule which was enunciated by their Lordships of the supreme Court in*Bhagat Raja* v. *Union of India* (1) and *M/s Mahabir Prasad Santosh Kumar* v. *State of Uttar Pradesh* (2).

(5) "A perusal of the regulation further shows that the procedure is intended to ensure that the employee has an effective opportunity to meet the material that is likely to be taken into consideration by the disciplinary authority before arriving at the final decision. The evidence has to be recorded in the presence of the employee. He is to be given an opportunity to effectively cross-examine the witnesses. He has a right to lead evidence in defence and to explain all the circumstances that are brought on record against him. That being the underlying purpose of the regulation, it would not be fair to assume that the disciplinary authority shall be entitled to disagree with the enquiry officer and impose a penalty on the employee without even giving him an opportunity to explain the reasons which have persuaded the authority for differing with the enquiry officer." It can happen that the reasons recorded by the disciplinary authority are totally contrary to the evidence on record. The conclusions may be based on reasons which are not supported by the evidence produced during the enquiry. The reasons recorded by the disciplinary authority are a material which is going to be used against the employee. There is no justifiable reason for with-holding it from him. He must get a chance to meet it.

(6) In *Narayan Misra* v. *State of Orrissa* (3) three charges had been levelled against the employee. The enquiry officer had

1. AIR 1967 SC 1606
2. AIR 1970 SC 1302
3. 1969 SLR 657

exonerated him of the first two charges but found him guilty of the third. The punishment was imposed by the disciplinary authority by differing from the findings of the enquiry officer. The employee was dismissed. On appeal, the order was modified by the Government and converted into that of discharge from service. The delinquent challenged even the order of discharge under Article 226 of the Constitution. The High Court dismissed the petition. In appeal, one of the contentions raised before the court was that the disciplinary authority "ought to have given him an adequate opportunity to explain. . . ." before it punished him on account of the charges of which he had been exonerated by the enquiry officer. Their Lordships accepted the contention. Hon'ble Mr. Justice Hidayatullah was pleased to observe as under :—

> "Now if the Conservator of Forests intended taking the charges on which he was acquitted into account, it was necessary that the attention of the appellant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words, the conservator of Forests used against him the charges of which he was acquitted without warning him that he was going to use them. This is against all principles of fair play and natural justice."

(7) In *Brij Nandan Kansal* v. *State of U.P. and another*(4) the State Government had framed charges against the employee. The matter was referred to the Administrative Tribunal for enquiry. The Tribunal had ultimately exonerated the employee of all the charges. Thereupon, the matter was referred to the Legal Remembrancer. On the basis of his opinion, the Government disregarded the findings recorded by the Tribunal and imposed the penalty on the employee. The action was sustained by the High Court. However, their Lordships of the Supreme Court reversed the decision with the following observations :—

> "The State Government did not record any reasons as to why it ignored the findings recorded by the Tribunal. If the State Government chose to pass the impugned order of dismisal, in all fairness it should have recorded reasons for the same and in order to afford reasonable opportunity to the appellant it was necessary for the State Government to communicate the reasons for disagreement with the Tribunal's report to the

4. AIR 1988 SC 908

appellant. The report submitted by the Legal Remembrancer to the Government on the basis of which the impugned order was passed had never been disclosed or communicated to the appellant and he was denied opportunity to meet the same."

(8) In *Managing Director, ECIL, Hyderabad* v. *B. Karunakar* (5), it was *inter alia* observed 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." It was also observed 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 . . . ."

(9) Lastly, in *Ram Kishan v. Union of India and Others* (6) one of the contentions raised before the court was that "the disciplinary authority had not given any reason in the show cause notice to disagree with the conclusions reached by the enquiry officer and that, therefore, the findings based on that show cause notice are bad in law". Their Lordships were pleased to observe as under :—

"The next question is whether the show cause notice is valid in law. It is true, as rightly contended by the counsel for the appellant, that the show cause notice does not indicate the reasons on the basis of which the disciplinary authority proposed to disagree with the conclusions reached by the inquiry officer. The purpose of the show cause notice, in case of disagreement with the findings of the enquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the inquiry officer for the reasons given in the inquiry report or he may offer additional reasons in support of the finding by the inquiry officer. In that situation, unless the disciplinary authority gives specific reasons in the show cause on the basis of which the findings of the inquiry officer in that behalf is based, it would be

5. JT 1993(6) SCI
6. JT 1995(7) SC 43

difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the inquiry officer. In the absence of any ground or reason in the show cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect."

(10) In a nut-shell, it can be said that no material can be relied upon against an employee without giving him an opportunity to controvert it. The reasons which may be recorded by the disciplinary authority for disagreeing with the conclusions recorded by the enquiry officer form a part of the material which has to be taken into consideration. It cannot be used against the employee unless he gets an opportunity to controvert it. The failure of the disciplinary authority to afford such an opportunity to the employee would be violative of the principles of natural justice. The fact that the rule does not specifically provide for the grant of such an opportunity, is of no consequence. It is implicit in the provision that the reasons recorded by the disciplinary authority shall be communicated to the empoloyee.

(11) Mr. Chhibbar submitted that the decisions given by the Apex Court in case of civil servants cannot be used in support of the claim of a bank employee because the protection of Article 311 is not available to such a person.

(12) This contention cannot be accepted. The fact that the employee is serving in a bank or in a department of the Government would not really make any difference when the conditions of service are determined by rules or regulations. The protection given by the service regulations to the Bank employee is in no way different from that available to a civil servant under Article 311(2) of the constitution. Both provisions are aimed at providing a due and reasonable opportunity, Whenever there is denial of such an opportunity, the action shall be struck down in judicial proceedings irrespective of the fact that the employee is a civil servant or is working in a bank.

(13) Mr. Chhibbar placed firm reliance on the decision of their Lordships of the Supreme Court in *State Bank of India, Bhopal. S.S. Koshal,* (7) one of the grounds which had been accepted by the High

7. 1995(5) SLR 181

Court for quashing the impugned action was "the failure to give a fresh notice to him when the appellate authority disagreed with the findings of the enquiry officer on some of the charges . . ." (paragraph 3). This matter was considered by their Lordships of the Supreme Court in paragraph 6 in the following words :—

> "So far as the second ground is concerned, we are unable to see any substance in it. No such fresh opportunity is contemplated by the regulations nor can such a requirement be deduced from the principles of natural justice. It may be remembered that the Enquiry Officer's report is not binding upon the disciplinary authority and that it is open to the disciplinary authority to come to its own conclusion on the charges. It is not in the nature of an appeal from the Enquiry Officer to the disciplinary authority. It is one and the same proceeding. It is open to a disciplinary authority to hold the inquiry himself. It is equally open to him to appoint an Enquiry Officer to conduct the enquiry and place the entire record before him with or without his findings. But in either case, the final decision is to be taken by him on the basis of the material adduced. This also appears to be the view taken by one of us (B.P. Jeevan Reddy, J.) as a Judge of the Andhra Pradesh High Court in Mahendra Kumar v. Union of India, 1983(3) SLR 319, 324, and 325 (AP HC). The second contention accordingly stands rejected."

(14) Mr. Chhibbar contended that the observations clearly show that the enquiry Officer's report is not binding on the disciplinary authority and that it is free to arrive at its own conclusions. There is no quarrel with this proposition. However, the contention as noticed by their Lordships in paragraph 3 of the judgment was that the employee was entitled to a "fresh notice" when "the appellate authority disagreed with the findings of the enquiry officer on some of the charges". such is not the situation in the present case. Herein, the disciplinary authority itself had disagreed with the findings recorded by the enquiry officer. consequently, it appears that the issue is materially different.

(15) Mr. Chhibbar also placed reliance on the decision in *State Bank of India* v. *B.R. Vaid* (8) In para 10, it was *inter alia* observed

8. 1987(5) SLR 314

as under :—

> "It is true that the plaintiff was exonerated of certain charges by the enquiry officer, but the disciplinary authority did not agree with those findings of the enquiry officer and held that even the charges which were held to be unsubstantiated : by the enquiry officer stood proved against the plaintiff. The argument raised on behalf of the plaintiff that in that situation, notice should have been given to him has no substance. The plaintiff was proceeded *ex parte* throughout. Besides rule 50(3)(ii) of the State Bank of India (supervising Staff) Services Rules (hereinafter called the Rules) does not contemplate any such notice."

(16) We are unable to accept the view taken by the learned Judge. It is over-ruled.

(17) It was also submitted by Mr. Chhibbar that the penalty of stoppage of an increment with cumulative effect is one of the minor penalties. This contention is of no consequence in the present case because a perusal of the provision of regulation 68(4)(ii) shows that the disciplinary authority can hold an enquiry even when it does not intend to impose a major penalty. It is, however, not necessary to go into this question in detail, because we are satisfied that there was denial of reasonable opportunity to the plaintiff.

(18) Mr. Chopra, counsel for the respondent had referred to certain other decisions as well. One of these was the decision of a learned single Judge in *Sukhtej Singh Sidhu* v. *State of Punjab*, (9) We are in complete agreement with the view expressed by the learned Judge.

(19) No other point was raised.

(20) In view of the above, we find no merit in this appeal. It is, consequently, dismissed. The plaintiff-respondent shall be entitled to his costs which are assessed at Rs. 3000.

S.C.K.

9. 1995(2) RSJ 183