

Before G. R. Majithia, J.

D. C. AGGARWAL,—Petitioner.

versus

STATE BANK OF INDIA AND OTHERS,—Respondents.

Civil Writ Petition No. 15874 of 1989.

9th April, 1991.

State Bank of India (Supervising Staff) Service Rules, 1975—Rls. 32(3) & (4) & 51(2)—Constitution of India, 1950—Arts. 12, 14, 16 and 226—Misconduct—Enquiry Penalty—Enquiry Officer exonerating delinquent of all major charges except two minor procedural lapses—*Mens rea* not established—Disciplinary authority relying on report of Central Vigilance Commission while imposing major penalty of reduction in rank—Report not communicated to delinquent employee—Non-supply of report violates principles of natural justice—Disciplinary authority not finding delinquent employee taking financial advantage or causing financial loss to Bank—Penalty of reduction is unwarranted—Punishment imposed is disproportionate to the charges proved—Order of reversion/reduction is liable to be quashed—State Bank of India is an 'authority' under Art. 12 and subject to constitutional obligations—Appeal against order—Required to be heard by Central Board including members of Executive Committee—Non-participation of members of Executive Committee—No effective consideration of appeal—Remedy of appeal should be effective and not mere formality.

Held, that from the Enquiry Officer's report, it can be deduced that the procedural irregularities were not intentionally committed by the petitioner. The findings of the Enquiry Officer with regard to the procedural irregularities committed by the petitioner are rendered nugatory since these were not dishonestly done. The Enquiry Officer although technically found that Charge No. I(2) stood proved and Charge No. II(1) stood partly proved, yet in view of his finding that there was no *mens rea*, none of the charges stood proved. (Para 14)

Held, that respondent-Bank is, therefore, subject to constitutional obligations under Articles 14 and 16 of the Constitution of India. The Disciplinary Authority could not deprive the petitioner of the benefit of the principle of *audi alteram partem*. The respondents did not deny that the Disciplinary Authority/Respondent No. 3 took into account the comments and opinion of Central Vigilance Commission before differing with the report of the Enquiry Officer. Any material that is employed against a delinquent official to his prejudice has to be brought to his notice so that he may have his own say in this regard. It is possible that the Central Vigilance Commission might have given its own reason and expressed wrong opinion against the petitioner. (Para 17)

Held, that the Disciplinary Authority did not communicate the reasons for differing with the report of the Enquiry Officer to the petitioner. In judicial and *quasi* judicial enquiry, any material that is employed against a delinquent to his prejudice has to be brought to his notice so that he may have his own say in that regard. Similarly, the preliminary enquiry report, which was the basis of the regular departmental enquiry, was never supplied to the petitioner. The petitioner was prejudiced by non-compliance of the principal of *audi alteram partem*. The Executive Committee accepted the report of the Disciplinary Authority. The acceptance of the report by the Executive Committee does not validate the report of the Disciplinary Authority. (Para 17)

Held, that the disciplinary authority disagreed with the findings arrived at by the Enquiry Officer and held that some charges stood proved and in coming to that conclusion, it also took into consideration the report of the Central Vigilance Commission. The disciplinary authority did not communicate the report of the Central Vigilance Commission or the reasons of disagreement with the Enquiry Officer's report to the petitioner for making effective representation against the proposed punishment. Thus, apart from the reasons stated above, even on the basis of this judgment, there is no escape from the conclusion that the principles of natural justice were violated. (Para 21)

Held, that an executive authority must rigorously observe the standards by which it professes its actions to be judged. (Para 22)

Held, that the right to file appeal against the order of the Executive Committee of the Central Board of the respondent-Bank has to be an effective remedy and not merely a formality. The appeal has to be heard by the Central Board of the Bank and the members of the Executive Committee also constitute the Central Board. Non-participation of the members of the Executive Committee at the time of hearing of the appeal by the Central Board will not be an effective consideration of the appeal. In the instant case, it transpires that the members of the Executive Committee and of the Central Board met on the same day and when the time for consideration of the appeal filed by the petitioner came up, the members of the Executive Committee withdrew from the meeting and the other members deliberated and disposed of the appeal. This course cannot be appreciated. (Para 27)

Held, that the reasons for holding that the petitioner will be entitled to payment of only subsistence allowance are wholly illegal. The Enquiry Officer held *ex-parte* proceedings against the petitioner and refused to adjourn the proceedings when he was admitted to the Intensive Care Unit of Dr. Ram Manohar Lohia Hospital, New Delhi. The action of the Enquiry Officer was unsuccessfully challenged in Writ Petition No. 1955 of 1983 in the Delhi High

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Court. In appeal to the Supreme Court, the order of the Delhi High Court was quashed and it was directed that an Enquiry Officer be appointed afresh in consultation with the Central Vigilance Commission, who will dispose of the enquiry. Delay, if any, in concluding the enquiry proceedings, cannot be attributed to the petitioner; rather the blame lies with the respondents (Para 31)

Writ petition under Articles 226 of the Constitution of India, praying that a writ in the nature of mandamus, certiorari or any other suitable writ direction or order be issued:—

- (i) *summoning the complete records of the case ;*
- (ii) *Quashing the orders at Annexure P-9, P-11, P-19; P-20; P-22 and P-24 and rules 50(I) (ii) and 50A(7) (ii);*
- (iii) *Directing the respondent bank to grant all consequential reliefs such as fixation of seniority, arrears of pay etc. with interest at the rate of 10 per cent per annum.*
- (iv) *any other relief which this Hon'ble Court may deem fit in the circumstances of the case ;*
- (v) *Costs of the petition may also kindly be awarded ;*
- (vi) *Condition regarding filing of certified copies of Annexures and service of advance notice may kindly be dispensed with;*

V. K. Bali, Sr. Advocate, with Rajiv Atma Ram and Anil Khetarpal, Advocates, for the Petitioner.

R. K. Chhibbar, Sr. Advocate, with Anand Chhibbar, Advocate, for the Respondents.

Rajiv Atma Ram and Anand Chhibbar at the time of pronouncement.

JUDGMENT

(1) In this petition under Articles 226/227 of the Constitution of India, the petitioner has impugned the suspension order dated July 11, 1981; charge-sheet dated August 31, 1981; Memorandum to the Executive Committee dated October 31, 1987, submitted by the Managing Director (Disciplinary Authority); memorandum dated November 4, 1987, containing the extract of the Minutes of the Meeting of the Executive Committee of the Central Board prepared by the Managing Director; order dated March 20, 1989 passed by the Executive Committee of the Central Board on appeal preferred

by the petitioner and memorandum dated September 9, 1982 for the Executive Committee (approved in its meeting held on October 13, 1982).

(2) Factual matrix is as under :—

(3) The petitioner has brilliant academic career; he is a Gold Medalist from the Punjab University with First Class Master's Degree in Economics; he is a certified Associate of the Indian Institute of Bankers and a Diploma-holder in Co-operation and Industrial Finance; he published large number of research papers on rural development, some of which have been published by the Planning Commission, New Delhi and also published in various reputed financial magazines such as the Economic Times and the Financial Express. He joined the service of respondent No. 1 as a Probationary Officer in January 1960; that he was promoted as Staff Officer Grade-III with effect from November, 1969, as Staff Officer Grade-II in December, 1973 and as Staff Officer Grade-I in December, 1976 and was posted at Dhanbad as Branch Manager in the Status of Regional Manager; that he was promoted to top Executive Grade VI with effect from August 27, 1980 and posted as Chief Regional Manager (re-designated as Deputy Manager) of the State Bank of India for the State of Haryana and Union Territory of Chandigarh; that the Bank premises at Dhanbad were on lease with it for the last 60 years and were in deplorable condition because of the litigation between the landlords and Trustees; that the petitioner was directed by the controlling authority at Patna Local Head Office to solve the premises, problems on war footing basis and to make renovations and additions; that the petitioner accomplished the task entrusted to him to the entire satisfaction of the local Head Office, the Bank and the customers; that he was awarded Roll of Honours and Staff Associations of Officers and Clerical Staff passed various resolutions in general body meeting at State level appreciating the work done by him; that a complaint dated February 13, 1980, filed by Mohd. Ishaque, a petty contractor, containing allegations regarding additional construction of the bank premises was received in the Head Office of the Bank; that during the enquiry the complainant did not appear before the Enquiry Officer despite repeated opportunities to confirm the allegations in the complaint and the complaint was dismissed as unsubstantiated and baseless by the Enquiry Officer; that the petitioner was asked to send his comments on the complaint which he did, whereupon the matter was closed; that thereafter the petitioner was selected and promoted to the top Executive Grade VI by the Executive Committee of the Central Board of

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Directors of the respondent-Bank with effect from August, 27, 1980 and was posted as Chief Regional Manager (later re-designated as Deputy General Manager), Haryana and Union Territory, Chandigarh; that the complaint dated February 13, 1980 by Mohammad Ishaque (which was filed after receipt of the comments of the petitioner) was reopened on August 29, 1980 and Mr. M. S. Kapuswami, Chief Manager, Patna was appointed to conduct a preliminary enquiry and submit his report; that as a consequence of Mr. Kapuswami's report the petitioner's promotion was withheld on October 31, 1980 by respondent No. 3 and he was directed not to exercise the powers/functions of his new appointment; that the petitioner was asked to hand over emergency charge of Dhanbad Office and remain attached to the said office without any duties and under the officer who was far junior to him; that the petitioner was transferred to Local Head Office, Patna as Officer on Special Duty and he reported there despite the fact that there was no post of Officer on Special Duty; that,—vide letter dated December 5, 1980 issued by the Chief General Manager, State Bank of India, Local Head Office, Patna, he was asked to furnish an explanation to the report submitted by Mr. M. S. Kapuswami, Chief Manager, Patna but was not supplied copy of the preliminary report despite requests; that he gave comprehensive reply to the respondent Bank on December 23, 1980 with advance copies to the Chairman and Managing Director of the Bank; that the explanation was duly examined and accepted; that the order dated October 31, 1980 by which the petitioner's promotion had been kept in abeyance was rescinded through Central Office, Bombay's telegram dated January 2, 1981 and the petitioner was permitted to join his new assignment as Chief Regional Manager at Chandigarh in terms of that order; that the petitioner was relieved from Patna on January 6, 1980 and he took over the new assignment on the following day; that this decision of the Central Office, Bombay indicates that the complaint dated February 13, 1980, which formed the basis of the action against the petitioner had been looked into in depth and examined from all angles before permitting him to take over as Chief Regional Manager at Chandigarh; that the work of the petitioner was appreciated at Chandigarh Local Head Office of the respondent-Bank and the following note was recorded by the General Manager (Operations) :—

“The Chief Regional Manager maintains good liaison with Government authorities and he is known to most of the important government officials including Ministers. Due to his endeavours and good contacts with the Government

authorities, the Haryana Region has been able to secure good deposits”

Mr. R. P. Goyal took over as Deputy Managing Director of the Bank on February 17, 1981; that he was biased against the petitioner because of the fact that in February, 1977, he had administered a warning to him and had to withdraw it on the basis of the petitioner's representation; that while posted as Chief General Manager, New Delhi, he had refused to consider the petitioner's name for promotion as Staff Officer First Grade for three years; that the petitioner made a detailed representation to the Chairman of the Bank, who after personally interviewing him and going through his representation, promoted him on April 17, 1978 retrospectively as Staff Officer, Grade-II and Staff Officer Grade-I respectively with all consequential benefits and perquisites and while doing so, the Chairman passed strictures against Mr. Goyal, which were conveyed to him, and also expressed his displeasure to him; that on taking over as Deputy Managing Director (Personnel) in February, 1981, Mr. Goyal reopened the closed chapter of complaint dated February 13, 1980 filed by Mohammad Ishaque and the petitioner's explanation was again called,—*vide* letter dated April 23, 1981 that the petitioner,—*vide* letter dated April 10, 1981 requested the Bank to permit him to inspect the record on which the allegations were based; that without permitting the petitioner to inspect the record, the Bank made a reference to the Central Vigilance Commission,—*vide* its letter dated April 30, 1981, with a list of allegations (including some not even included in the Bank's letters dated December 5, 1980 and March 23, 1981) for its advice as to whether the disciplinary proceedings should be initiated or not; that according to the Vigilance Manual, the defence version of the officer charge-sheeted is required to be sent to the Central Vigilance Commission while seeking its advice, which was withheld; that the Bank in its communication dated April 30, 1981, misled the Central Vigilance Commission by stating that “the petitioner had no explanation to offer” and the Commission in its letter dated July 7, 1981 advised the Bank that if such was the case, the petitioner should be placed under suspension; that this tailored advice was collected personally by the respondents from the Central Vigilance Commission's office and the order of suspension dated July 11, 1981 was passed within four days of the issue of the said advice; that although the petitioner was permitted to go to Patna to inspect the record, but he was offered to inspect only such documents as the authorities at Patna deemed proper and even in those cases, he was told that he would not be allowed to make copies of the inspected documents; that the

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petitioner was even refused the services of a Typist or a Stenographer; that some notes which the petitioner had taken down in long hand were destroyed under the instructions of the General Manager (Planning) Mr. K. C. Thimayya; that the inspection came to a halt on the same day i.e. June 5, 1981; that the petitioner on return to his headquarters at Chandigarh on June 8, 1981, brought all these facts to the notice of his controlling authority, viz. Chief General Manager, Chandigarh Local Head Office, —vide his letter No. CRM/1203, dated June 8, 1981; that the suspension order was passed on July 11, 1981, after serving upon the petitioner an ultimatum,—vide letter dated July 8, 1981 that if no explanation was given within 7 days, the Bank would presume that he had nothing to say in the matter; that the petitioner could submit his explanation upto July 16, 1981, but the Disciplinary Authority hastened to pass the order of suspension on July 11, 1981 without waiting for his explanation; that after suspension the petitioner was asked to vacate his official residence but he refused to do so on the ground that the charges against him had not been substantiated and were still at the enquiry stage and he continues to be an employee of the Bank; that on the petitioner's refusal, the Bank authorities directed that Rs. 1750 per month be recovered from the petitioner's provident fund for purported unauthorised occupation of the official residence; that,—vide letter dated August 31, 1981, a charge-sheet was served upon the petitioner and he was asked to submit his reply thereto within 15 days failing which the Bank would proceed on the basis that he had no explanation to offer; that Shri Davinder Singh was appointed as the Inquiry Officer in January 1981, but he was replaced by one Smt. Jyotsna Deish and the enquiry proceedings commenced on May 27, 1982.

(4) The petitioner challenged the suspension order and the charge-sheet in this Court in Civil Writ Petition No. 208 of 1982, but the same was dismissed *in limine*,—vide judgment dated April 13, 1983; that the judgment dated April 13, 1983 was challenged in the Supreme Court by way of Special Leave Petition and the Supreme Court set aside that same,—vide order dated October 31, 1983, with the following observations :—

“The special leave petition is dismissed. All the points taken before us will be open to the petitioner to take before the concerned authority before passing the final order.”

that in pursuance of this order, the petitioner submitted detailed representation dated November 8, 1983 to the appointing authority,

viz., Executive Committee; that when the enquiry proceedings were going on, the petitioner suffered a heart attack in July, 1983 and was kept in the Intensive Care Unit in Dr. Ram Manohar Lohia Hospital, New Delhi; that the petitioner's request for adjournment was turned down by the Inquiry Officer, who proceeded *ex parte* against him and closed the defence evidence and submitted *ex parte* enquiry report; that the Managing Director refused to intervene in the matter; that the petitioner challenged the action of the Inquiry Officer in the Delhi High Court through Writ Petition No. 1955 of 1983, which was dismissed; that the petitioner challenged the order of the Delhi High Court passed in Writ Petition No. 1955 of 1983 in the Supreme Court through Spl. Leave to Appeal No. 10139 of 1984 and the following order was passed on December 20, 1984:-

"The Central Vigilance Commission is directed to appoint an enquiry officer who will reopen the enquiry from the stage it was closed. He will allow the State Bank of India to lead such fresh evidence as it may desire. Any further witnesses so produced by State Bank of India shall be allowed to be cross-examined by the petitioner. Thereafter the said enquiry officer will fix four consecutive dates for enabling the petitioner to lead his defence and present his case. The entire proceeding must be concluded by 31st March, 1985. It is distinctly understood that there will be no adjournment of the proceedings for any reason whatsoever. Upon conclusion of enquiry, the said enquiry officer will submit a fresh report to the Disciplinary Authority which will be in supersession of the earlier report submitted by Shrimati Jyotsna Diesh.

The directions will not be construed as implying the acceptance of any of the contentions of the SLP before us. The SLP is disposed of in these terms."

Pursuant to the Supreme Court's order dated December 20, 1984, Mr. A. K. Rastogi, an IAS Officer (Tamilnadu Cadre), was appointed Commissioner for Departmental Inquiries (Enquiry Officer) to go into the charges against the petitioner; that the Enquiry Officer,—*vide* his enquiry report dated March 30, 1985, exonerated the petitioner of all the charges (except two minor procedural errors which were alleged to have been committed by him); that in contravention of the Supreme Court's order dated December 20, 1984, the Bank directed the Enquiry Officer to submit the report through the Central Vigilance Commission; that respondent No. 3 received

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the enquiry report from the Central Vigilance Commission under its covering letter dated September 18, 1985, containing a counter report to the effect that except two charges (No. 9 and 10), all other charges had been fully or partly established and directed the Bank that a penalty of "not less than removal from service be imposed upon the petitioner"; that the Central Vigilance Commission's report though mentioned in the Disciplinary Authority's memorandum/punishment order dated October 31, 1987, has not been conveyed to the petitioner; that respondent No. 3 (who is an authority subordinate to the appointing authority, i.e., Executive Committee), considered the report of the Enquiry Officer as also the report of the Central Vigilance Commission and stated that charges No. I, II, V to VII and XI were proved; that while disagreeing with the findings of the Enquiry Officer, respondent No. 3 recorded a positive finding that there was no proof that the petitioner had either misappropriated the Bank funds or obtained pecuniary gains for himself or caused any loss to the Bank; that respondent No. 3 disagreed with the findings recorded by the Central Vigilance Commission in respect of four charges and sought a revised opinion from the Central Vigilance Commission, who however reiterated its earlier advice; that on receipt of the Central Vigilance Commission's reply reiterated its earlier advice, respondent No. 3 proceeded to pass final order dated October 31, 1987 recommending that the petitioner be reduced in rank to the cadre of officer in Senior Management Grade IV and placed at the bottom of the new grade; that respondent No. 3 also recommended that since delay in the Enquiry proceedings was due to the stay orders arising out of court cases filed by the petitioner against the Bank, the period spent during suspension from July 1981 to April 1986 be treated as "suspension period" disentitling him to the payment of full salary and allowances and housing accommodation; that these recommendations of respondent No. 3 contained in memorandum dated October 31, 1987, were placed before the Executive Committee of the Bank in its meeting held on November 4, 1987; that the recommendations of respondent No. 3 and the record of the enquiry proceedings which were placed before the Executive Committee in its meeting are claimed to have been circulated to the Members; this is stated to be so despite the fact that three out of the five members who constituted the Executive Committee were out of Bombay during three days prior to the Managing Director's memo; that it is impossible that voluminous records of the enquiry proceedings (consisting of 74 page memorandum, 108 pages of Enquiry Report and evidence running into four files of documents, Central Vigilance Commission's report running into 48 pages and two reference files to Central Vigilance Commission) could

have been actually circulated to the Members of the Executive Committee; that what to talk of deliberations by the Members, even a perusal of the enquiry record was not possible; that the meeting lasted barely one hour and the Executive Committee recorded that it had carefully gone through the arguments advanced by the parties, the Enquiry Officer and the Managing Director (disciplinary authority) and it agreed with the arguments advanced by the Managing Director; it, however, agreed with the Managing Director to the following effect :—

“that there was nothing on record to suggest that the petitioner derived pecuniary gains himself or caused any monetary loss to the bank and that no *mala fide*/ulterior motive could be established.”

that despite this, the Executive Committee agreed with the punishment recommended by the Managing Director (Disciplinary Authority) that a perusal of the Executive Committee's decision dated November 4, 1987 reveals that the Executive Committee neither applied its own mind, nor considered or dealt with the pleas raised by the petitioner as directed by the Supreme Court,—*vide* its order dated October 31, 1983 which were to be decided before passing the final orders; that to the contrary, it can be seen from Memorandum dated October 31, 1987 that the Managing Director (Disciplinary Authority) himself decided the pleas raised by the petitioner against him; that aggrieved against the orders of the Managing Director (Disciplinary Authority) and the Executive Committee, the petitioner filed appeal to the Central Board of Directors of the Bank (Appellate Authority); that the appeal was dismissed and the order was conveyed by respondent No. 3.—*vide* its letter dated March 20, 1989.

(5) Written statement has been filed on behalf of respondents No. 1 to 4. A preliminary objection was taken that the State Bank of India (Supervising Staff) Service Rules, 1975 (hereinafter referred to as the “Service Rules”) are non-statutory and the petitioner can seek no relief in a writ petition. On merits it is averred that the petitioner was promoted to Senior Management Grade Scale V with effect from August 27, 1980 and was appointed as Chief Regional Manager (now re-designated as Deputy General Manager), Haryana and Union Territory of Chandigarh in September 1980; that the petitioner has been rated as “Average” and Above “Average” by different reporting authorities; that the Service Rules do not provide for supplying a copy of the preliminary enquiry report which was

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purely for subjective satisfaction of the Bank authorities; that issuance of appreciation letter to the petitioner was not denied, but such appreciation letters do not absolve an employee of any act of his misconduct when it comes to light subsequently; that promotion of the petitioner on April 17, 1978 is admitted, but it is denied that the Chairman passed any strictures against Shri R. P. Goyal; however, the Chairman expressed his displeasure against New Delhi Local Head Office authorities; that the petitioner was afforded sufficient opportunity to inspect the records at Patna Office; that initiation and completion of disciplinary proceedings against the petitioner for certain serious acts of misconduct/irregularities was in conformity with Rule 50 of the Service Rules; that the Bank awarded lesser penalty than the one proposed by the Central Vigilance Commission; that the petitioner cannot agitate the matter in writ proceedings; that respondent No. 3 was the competent authority to initiate disciplinary action against the petitioner in pursuance of the Executive Committee's resolution dated March 31, 1977 and he continues to be so even after the order dated September 9, 1982; that from the fact that the petitioner has himself annexed with the writ petition a copy of the order of respondent No. 1, dated October 31, 1987, an inference can be drawn that the assertion of the petitioner that the decision of respondent No. 3 (Disciplinary Authority) differing with the findings of the Enquiry Officer was not conveyed to him is incorrect; that the departmental proceedings cannot be quashed merely on the ground that these were initiated by an incompetent authority; that the memorandum dated October 31, 1987, issued by the Managing Director (Disciplinary Authority) was circulated to the members of the Executive Committee who, after applying their mind, gave the decision; that the Appellate Authority disposed of the appeal by passing a reasoned order and the Managing Director and the members of the Executive Committee, who passed the original order, withdrew from the Central Board's meeting on March 7, 1989 when the Central Board considered and rejected the petitioner's appeal.

(6) Before I deal with the respective submissions of the learned counsel for the parties, it will be relevant to reproduce the Articles of Charges framed against the petitioner, the findings recorded in the enquiry report dated May 30, 1985, by the Enquiry Officer, who was appointed by the Central Vigilance Commission pursuant to the directions of the Supreme Court in its order dated December 20, 1984, passed in S.L.P. No. 10239 of 1984, and the relevant extract from the Memorandum to the Executive Committee dated October

31, 1987 by the Managing Director (Disciplinary Authority) differing with the findings of the Enquiry Officer given in the enquiry report dated May 30, 1985.

(7) The articles of charges as framed against the petitioner are as under:—

“Charge I:

1. That during your incumbency as Branch Manager, Dhanbad Branch, you, actuated by *mala fide* motive, with a view to pass an unlawful and undue benefit to M/s. Bharat Electrical Stores, Dhanbad, placed an order for 118 ceiling fans at DGS & D rates without making any assessment at your level of the actual needs. Further, you misused your position as Branch Manager, Dhanbad and handed over the relevant documents to M/s Bharat Electricals for their taking delivery of 93 fans supplied to the Bank at DGS & D rates and surplus to its requirement.
2. The said order was placed by you without the approval of your Controlling Authority and was far in excess of the financial powers vested in you.
3. You also deliberately misled your Controlling Authority to believe that you had only placed an order for 25 fans.

By doing the above acts you have, in performance of your official duties and in exercise of the powers conferred on you, acted otherwise than in your best judgment and have not also discharged your duties with utmost integrity, honesty, devotion and diligence, thereby committing acts of misconduct under Rule 32(3) and 32(4) of the State Bank of India (Supervising Staff) Service Rules.

Charge II :

1. You having placed an order on 14th May, 1979 with M/s Jay Engineering, Patna for supply of 25 fans on the plea of meeting immediate requirements failed to cancel or modify to that extent your earlier order of 1st January, 1979 and further having received 25 fans in pursuance of your order dated 1st January, 1979 deliberately and with *mala fide* intentions failed to take steps to cancel the order dated 14th May, 1979.

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2. Further, in reply to the advice of your Controlling Authority not to place large orders without reference to them, you deliberately stated falsehood with a view to mislead them.
3. You have thereby in the performance of your official duties and in the exercise of powers conferred on you acted otherwise than in your best judgment and did not also discharge your duties with utmost integrity, honesty, devotion and diligence, thus committing acts which amount to misconduct under Rules 32(3) and 32(4) of the State Bank of India (Supervising Staff) Service Rules.

Charge III :

1. You, while posted as Branch Manager, Dhanbad Branch, with *mala fide* intentions, having entrusted the contract of the construction of the generator room at Dhanbad Branch to M/s Eastern Electrical Works, unauthorisedly paid the sub-contractor Shri Mohd. Ishaque entrusted only with the civil portion of the construction work for a total sum of Rs. 12,500 against the bills submitted by Shri Mohd. Ishaque amounting to only Rs. 5,696.70. You thus want only and purposely made an excess payment of Rs. 6,803.30 to Shri Mohd. Ishaque, passing on an undue benefit to a third party at the expense of the Bank.
2. In doing so you have in performance of your official duties and in exercise of the powers conferred on you acted in gross disregard of the Bank's interests thereby committing an act amounting to misconduct in terms of Rule 32(3) and 32(4) of the State Bank of India (Supervising Staff) Service Rules.

Charge IV :

1. You while posted as Branch Manager, Dhanbad Branch, unauthorisedly supplied electricity from the Bank's generator to two private shops adjoining the Bank's premises. By doing so, you acted in violation of the provisions of the Electricity Act and thereby acted in gross disregard of the Bank's interests.
2. You further purposely and deliberately concealed certain facts from your Controlling Authority while reporting the matter to them.

3. In doing the above acts you have acted otherwise than in your best judgment and in exercise of the powers conferred on you, acted in gross disregard of the Bank's interests thereby committing misconduct in terms of Rule 32(3) and 32(4) of the State Bank of India (Supervising Staff) Service Rules.

Charge V :

1. You, in gross disregard of the Bank's interest and safety of the Bank's records, unauthorisedly retained in your possession even after being relieved from Dhanbad Branch two bunches of vouchers of Dhanbad Branch and handed over the said bunches of vouchers in a surreptitious manner to an employee of Dhanbad Branch at the latter's residence, after about three months of your relief from Dhanbad Branch.
2. You, further with *mala fide* intentions and with a view to suppress material evidence against yourself while handing over the said bunches of vouchers to the employee at his residence, retained in your possession three individual vouchers.
3. In doing so, you have in the performance of your official duties, acted in gross disregard of the Bank's interests and without utmost integrity, honesty, diligence and devotion, thereby committing misconduct in terms of Rule 32(3) and 32(4) of the State Bank of India (Supervising Staff) Service Rules.

Charge VI :

1. You, having obtained the approval of your Controlling Authority to incur an expenditure of only Rs. 4,010 for the construction of a cycle stand at Dhanbad Branch premises, with *mala fide* intention to pass on an undue benefit to M/s. Arvind Steel Traders and Shri V. C. Jain.
 - (a) Placed an order for steel at controlled rates of the total value of Rs. 17,300 which was far in excess of the actual requirement of the Bank.
 - (b) Failed to ensure the proper utilisation of the steel, obtained and unlawfully allowed Shri V. C. Jain to retain the excess quantity of steel not used in the Bank's construction and obtain an unlawful gain.

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2. You have thus misutilised your position as Branch Manager, thereby, not discharging your duties with utmost integrity, honesty, devotion and diligence and thereby committing misconduct under Rule 32(3) and 32(4) of the State Bank of India (Supervising Staff) Service Rules.

Charge VII :

1. You, with *mala fide* intentions to benefit third parties—
 - (a) placed an order for 13 tonnes of steel with M/s SAIL, Dhanbad at controlled rates for the purpose of construction of big Banking Hall, stationery room, canteen room, cycle shed and extension of strong room—
 - (i) making any *bona fide* assessment of the requirements of steel for the Bank's construction activities, and
 - (ii) knowing fully well that you had no approval of your Controlling Authority for construction of stationery room, canteen room and extension of strong room.
 - (b) knowingly and deliberately allowed Shri K. C. Jain, who was not given any contract for construction of the Bank's premises, to deposit the value of the steel with M/s Steel Authority of India Ltd. and take delivery of the same.
 - (c) failed to ensure the proper utilisation of steel obtained and unlawfully allowed Shri K. C. Jain to retain the entire quantity of steel so obtained and make an unlawful gain.
2. By your above acts you have, in the performance of your official duties and in the exercise of powers vested in you, acted *mala fide* and you have not taken all possible steps to protect the interests of the Bank. You have not also discharged your duties with utmost integrity, honesty, diligence and devotion. You have thus committed acts of misconduct in terms of Rule 32(3) and 32(4) of the State Bank of India (Supervising Staff) Service Rules.

Charge VIII :

1. With *malafide* intentions and with a view to cause unlawful gain to third parties you—
 - (a) without making any *bona fide* assessment of the requirement of steel of the Bank and knowing well that there was no approval of your Controlling Authority for the construction of shops along the boundary wall and that there was no approval for constructions of a garage and scooter stand other than the cycle shed for which you had already procured steel, directed the Manager Accounts of Dhanbad Branch to place an order of 11 tons of steel with M/s SAIL, Dhanbad at controlled rates.
 - (b) knowingly and deliberately allowed Shri Mohd. Ishaque of Jharia to deposit the value of steel and one Shri Shankerlal Sharma to take delivery of the steel, despite the fact that neither of them had been given any contract to undertake any of the above mentioned construction activities on the Bank's premises.
 - (c) failed to ensure the proper utilisation of the steel so obtained and unlawfully allowed Shri Mohd. Ishaque and Shri Shankerlal Sharma to retain the entire quantity of steel so obtained and make an unlawful gain.
2. You have thus misutilised your official position as Branch Manager, Dhanbad Branch and not acted with honesty, integrity, devotion and diligence, in the performance of your official duties. You have thereby committed acts amounting to misconduct in terms of Rule 32(3) and 32(4) of the State Bank of India (Supervising Staff) Service Rules.

Charge IX :

1. You, with *mala fide* intentions, knowing fully well that your proposal for construction of strong room was not approved by your Controlling Authority and not having drafted any plans for having entrusted the work to any contractor, made an application to SAIL, Dhanbad, on 13th November,

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1979, for issue of 3 MTS of steel in the name of Shri Mohd. Ishaque (Co SBI, Dhanbad), stating that the steel was required for construction of the strong room.

2. You have, therefore, misutilised your position as Branch Manager and have not acted with honesty, integrity, devotion and diligence in the performance of your official duties, thereby committing acts of misconduct in terms of Rule 32(3) and 32(4) of the State Bank of India (Supervising Staff) Service Rules.

Charge X :

1. Misusing your official position as Branch Manager, Dhanbad Branch, you, actuated by *mala fide* motives and with a view to benefit a third party, knowingly and wilfully allowed misappropriation of a cheque issued by M/s SAIL, Bokaro for Rs. 778.70 in favour of Branch Manager, SBI, Dhanbad.
2. You have thus, in the performance of your official duties and in exercise of the powers conferred on you, acted in gross disregard of the Bank's interests and not acted with utmost integrity, honesty, diligence and devotion.
3. You have, therefore, committed an act amounting to misconduct in terms of Rule 32(3) and Rule 32(4) of the State Bank of India (Supervising Staff) Service Rules.

Charge XI :

1. Misusing your official position as Branch Manager, Dhanbad Branch, you actuated by *mala fide* motives and with a view to benefit a third party, arranged to collect a refund cheque for Rs. 2,826.91 issued by M/s SAIL, Dhanbad in favour of Shri Mohd. Ishaque from the office of M/s SAIL, Dhanbad, and knowingly and wilfully allowed misappropriation of the said cheque.
2. You have thus, in the performance of your official duties and in exercise of the powers conferred on you, acted in gross disregard of the Bank's interests and not acted with utmost integrity, honesty, diligence and devotion.

3. You have, therefore, committed an act amounting to misconduct in terms of Rule 32(3) and 32(4) of the State Bank of India (Supervising Staff) Service Rules.

Charge XII :

1. You did not make genuine and sustained efforts for obtaining any equitable mortgage from the landlady of the Bank's building as security for the overdraft granted to her but instead drafted a reply for her to the effect that she is not willing to execute an equitable mortgage.
2. In doing so, you have, in the performance of your official duties and in exercise of the powers conferred on you, acted in gross disregard of the Bank's interests and thereby committed an act amounting to misconduct in terms of Rule 32(3) and 32(4) of the State Bank of India (Supervising Staff) Service Rules.

Charge XIII :

1. On learning the nature of the investigations which were being conducted against you by Patna LHO with regard to various unauthorised acts and irregularities alleged to have been committed by you, you tried to obtain a letter signed by landlady of the Bank's building with a view to extricate yourself if possible of the charges.
2. You have thereby acted in a manner totally unbecoming of a Bank official and thereby committed misconduct in terms of Rule 32(3) and 32(4) of the State Bank of India (Supervising Staff) Service Rules."

(8) The Enquiry Officer's findings on the charges are as under:—

Charge I(1) and (3)	... Not proved.
Charge I(2)	... Proved.
Charge II(1)	... Only first part proved.
Charge II(2) & (3)	... Not proved.
Charges III to XIII	... Not proved.

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(9) The findings of the Enquiry Officer under charges I(2) and, II(1) read as under:—

“4.3.3. While I find adequate justification about the assessment of requirement of ceiling fans arrived at by SW-5,—*vide* Ex. D-3 taking into account new branches, extension of bank's premises, etc., I find a clear procedural lapse on the C.O.'s part in not having obtained approval/sanction of the controlling authority for the placement of the order of 118 fans and hence charge I(2) is held proved. However, I am unable to see any *mala fides* in the non-observance of procedure on the part of the C.O. The prosecution have not adduced any evidence which would even feebly point to its presence. Hence the charge that the C.O. was 'actuated by *mala fide* motives' is not found proved and, therefore, charge I(1) (first part) is not held proved.

4.3.4. Though there is nothing on record to show that the suppliers had expressed their inability to execute the impugned order (Ex. S-1), the delay of 5 months on the part of the suppliers is quite evident. A reference may also be invited to Ex. D-10 in this regard. I also appreciate the anxiety of Shri Aggarwal to avoid discomfort to his staff and the visitors as the summer had already set in. His argument about the shrinking of the total requirement from the original 118 fans to 25 fans is also justifiable, but no reasonable explanation has been forthcoming as to why did he not cancel the original order, Ex. S-1 before going in for an alternate source of supply by way of his order dated 14th May, 1979 for 25 Usha fans on M/s Jay Engineering Works (Ex. S-18). As very rightly pointed out by the prosecution, he could have at least modified the earlier order to the extent of the subsequent order placed for 25 Usha fans. I am not at all convinced by the doctrine of lapse advanced by the C.O. in respect of the original order dated 1st January, 1979. Further once the supply of 25 Orient fans against the first order (Ex. S. 1) had been received on 26th May, 1979, the C.O. ought to have cancelled the second order of 14th May, 1979 (Ex. S-18). Since none of this was done by C.O. I find the charge II(1) proved to this extent. I, however, do not find any ulterior motive on the part of the C.O. in not having cancelled/modified the said orders (placed for 118 and 25 fans) and in the absence of any evidence to the contrary, the charge

of *mala fide* and deliberate intention on the part of C.O. is not established. In the result, Charge II(1) is only partly proved."

(10) The analysis of the evidence by the Enquiry Officer reads thus :—

"It may be very clearly understood that an allegation of *mala fide* cannot be sustained on mere assertions and cooked up evidence. Shri Aggarwal can certainly be said to have been rather irresponsible in not having followed the procedure in his enthusiasm to carry out immediate improvements to the working conditions and environment of his branch, but he cannot certainly be accused of having been actuated by *mala fide* intentions. In result, Charges I and II are held only partly proved to the extent of procedural irregularities not in respect of alleged *mala fides* or causing undue benefit to the private party in question."

(11) On the point of *mens rea*, the Enquiry Officer came to the following conclusion :—

"12.3 '*Mens rea*' means a guilty mind, an evil intention or a knowledge of wrongfulness of the act or improper motive. It is a well established principle of Common Law that the inference of guilty mind or pre-mediated ill-conceived motives cannot be assumed unless there are sufficient circumstances warranting such a (sic.—ought to be 'an') inference. The entire prosecution case is built upon allegations of '*mala fide*' intentions 'with deliberate knowledge, etc.'. It was required of them to establish by direct evidence and by un-tenable (sic.—ought to be 'tenable') facts and circumstances that the impugned acts were deliberately done with MENS-REA and *mala fide* intentions. In fact there is a blatant attempt to make innocuous and honest actions appear dishonest by abundant use of phrases, like 'deliberately', 'actuated by *mala fide* intention', etc. As has been proved by me through the analysis of the oral/documentary evidence on record, in none of the 13 articles of charge, this vital element of MENS-REA has been established. In other words, there is nothing on record warranting to conclude any colourable exercise of power with ulterior objectives or for

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achieving personal gain by Shri Aggarwal. Therefore, once this essential element has not been found substantiated in any of the charges, *the rest of the imputations relating to procedural lapses etc. must also fail.*"

(12) The Disciplinary Authority disagreed with the finding of, the Enquiry Officer and the disagreement is annexed as 'B' to the Memorandum dated October 31, 1987, submitted by him to the Executive Committee of the Central Board of the respondent-Bank. The conclusions arrived at by the Disciplinary Authority are as under :—

"17. The facts brought out during the enquiry revealed the propensity of Shri D. C. Aggarwal to misuse his official position for allowing third parties to make undue gains. While the wrongful acts indulged in by the official are no doubt grave, the facts brought out during the enquiry do not show that the Bank sustained any monetary loss thereby. There is also no conclusive proof that the official in all the transactions for procurement of steel, fans, etc. had misappropriated bank's funds or obtained pecuniary gains for himself. Considering the totality of the circumstances, therefore, in my opinion, the imposition of the extreme penalty of cessation of service as advised by the Central Vigilance Commission would be too harsh. I, therefore, did not agree with the views of the Central Vigilance Commission in this regard and decided that the ends of justice would be met by imposing on Shri Aggarwal the penalty of reduction to the cadre of Officer Senior Management Grade Scale IV and placing him at the lowest stage of that cadre. Since there was a difference of opinion with the CVC, we had approached the CVC for seeking revision of their opinion in terms of the existing procedure. Our letter No. VIG/2312, dated 6th June, 1987, in this regard is flagged. In its reply, the CVC have not agreed with the findings of the Disciplinary Authority and have reiterated their earlier advice for imposition of the penalty of removal from service on Shri Aggarwal. The material part of their opinion is quoted hereunder :—

"There is no doubt whatsoever that though no charge of corruption as such was levelled against the officer or of his having caused any monetary loss to the bank, the

misconduct of the officer and *mala fide* intention and ulterior motives in his action acquiring fans and steel without having made due and proper assessment and not keeping the Local Head Officer informed are serious charges which positively warrant imposition of a severe major penalty on an officer who is expected to exercise due care and caution and set an example to his subordinates, being at such a high level of hierarchy in the bank. No person without any ulterior motive would do or omit to do something which would lead to any undue benefit to a 3rd party unless he was interested in some manner in the said transactions. In the Commission's earlier advice dated 18th September, 1985 all such factors which prove *mala fide* and ulterior motives and show the misconduct of the official to a very large degree have been conveyed to the bank. As such, there is no case for reconsideration of the Commission's earlier advice for imposition of a major penalty of removal from service on Shri Aggarwal and the Commission would, therefore, reiterate the same.'

18. The undersigned as Disciplinary Authority has again considered the matter in its entirety and still does not agree with the views expressed by the CVC. The main plank of CVC's argument appears to be that *mala fides* of personal gain of the officer as ulterior motive has been conclusively proved. On the other hand, the Inquiry Officer having reported charges not being found proved at the enquiry the Disciplinary Authority has given fresh look to the arguments and has come to his own conclusion differing with the views of the IO's finding in respect of certain charges to the extent that facts/evidences produced proved the contents regarding irregular practices adopted by the CO. However, it has not been possible for the prosecution to prove conclusively that the officer derived any monetary gain or that ulterior motive was apparent in the transactions entered into by him with outside parties. I am free to deduce that there are enough circumstances to suspect that personal gain must be behind all these transactions. However, mere suspicion cannot take place of proof. The only accusation that can be proved with certainty is that the CO voluntarily went out of the way to pass on undue benefit to some outside parties without causing any loss to

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the Bank thereby. As such, I do not agree with the CVC's advice and still consider that *the ends of justice would be met by imposing on Shri Aggarwal the major penalty of reduction to the cadre of Officer Senior Management Grade Scale IV and placing him at the lowest stage of that scale.* As regards the suspension period, the records show that delay in the enquiry proceedings were mainly due to the Court cases initiated by CO against the Bank till April 1986. Thereafter, Shri D. C. Aggarwal has not placed any obstructions in the processing of the case. I, therefore, recommend that *the period spent by him under suspension until end of April 1986 be treated as such entitling him only to payment of subsistence allowance already received by him and the suspension period from May 1986 to the date of receipt of final order by him be treated as on duty.* I recommend accordingly.

19. The Executive Committee is requested to peruse the papers relating to this case and pass such orders as may be considered necessary."

(13) After so holding, the Disciplinary Authority found Charges No. I, II, V, VI, VII, VIII and XI as proved, while charges No. III, IV, IX X, XII and XIII as not proved against the petitioner.

(14) From the Enquiry Officer's report, it can be deducted that the procedural irregularities were not intentionally committed by the petitioner. The findings of the Enquiry Officer with regard to the procedural irregularities committed by the petitioner are rendered nugatory since these were not dishonestly done. The Enquiry Officer although technically found that Charge No. I(2) stood proved and Charge No. II (1) stood partly proved, yet in view of his finding that there was no *mens rea*, none of the charges stood proved.

(15) The learned counsel for the petitioner made following submissions:—

- (i) that the Enquiry Officer exonerated the petitioner of all the charges except two minor procedural errors alleged to have been committed by him. The Disciplinary Authority/Respondent No. 3, after consulting the Central Vigilance Commission and taking into consideration its

report, differed with the findings recorded by the Enquiry Officer and held the petitioner guilty of various charges of which he had been exonerated by the Enquiry Officer. The Disciplinary Authority ought to have communicated to the petitioner the reasons for differing with the findings of the Enquiry Officer before taking the final decision;

- (ii) Preliminary enquiry report, which was the basis of the charges against the petitioner, was not supplied to him;
- (iii) Punishment awarded is too severe and disproportionate to the alleged articles of charge proved against the petitioner;
- (iv) The Appellate Authority did not afford an opportunity of hearing to the petitioner before disposing of the statutory appeal ;
- (v) The State Bank of India (Supervising Staff) Service Rules, 1975, which regulate the service conditions of officers, staff officers and senior staff officers of the Bank, although non-statutory, have to be followed while taking disciplinary action against the delinquent employee in letter and spirit in order to avoid arbitrariness and to ensure that these were not violated in the instant case ;
- (vi) The Appointing Authority of the petitioner is the Executive Committee of the Central Board of Directors and the Disciplinary Authority/Respondent No. 3 which is lower in status than the Appointing Authority, could not initiate departmental proceedings against the petitioner or recommend punishment; and
- (vii) The Disciplinary Authority/Respondent No. 3 could not recommend that the petitioner would be entitled to subsistence allowance only during the period he remained under suspension from July 1981 to April 1986.

(16) The principal plank of the counsel for the respondent-Bank is that the petitioner is not a civil servant and, thus, the provisions of Article 311 of the Constitution of India are not attracted in his case. Respondent/Bank is not obliged to comply with the principles of natural justice except where specifically provided in the

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Service Rules. Service Rules are non-statutory and infringement of these Rules is not justiciable.

(17) I shall first deal with points (i) and (ii) raised by the petitioner and the objection raised on behalf of the respondent-Bank together. Indisputably, the respondent-Bank being a statutory authority is an "authority" within the purview of Article 12 of the Constitution of India. The word "State" has a different connotation in Part III of the Constitution relating to Fundamental Rights; it includes the Government and the Parliament of India; Government and Legislature of each of the State and all local or "other authorities" within the territory of India. Respondent-Bank is, therefore, subject to constitutional obligations under Articles 14 and 16 of the Constitution of India. The Disciplinary Authority could not deprive the petitioner of the benefit of the principle of *audi alteram partem*. The respondents did not deny that the Disciplinary Authority/Respondent No. 3 took into account the comments and opinion of Central Vigilance Commission before differing with the report of the Enquiry Officer. Any material that is employed against a delinquent official to his prejudice has to be brought to his notice so that he may have his own say in this regard. It is possible that the Central Vigilance Commission might have given its own reason and expressed wrong opinion against the petitioner. It is equally possible that some other record might have been made available to the Central Vigilance Commission in the form of earlier confidential record of the employee concerned. The opinion of the Central Vigilance Commission would obviously carry great weight with the Disciplinary Authority in reaching a final conclusion. But, at any rate, the possibility of such an inference cannot be negatived. The petitioner's complaint that the Disciplinary Authority took the report of the Central Vigilance Commission into consideration without affording an opportunity to him to have benefit of what was stated by the Central Vigilance Commission and resultantly he was deprived of the benefit of the principle of *audi alteram partem*, has substance. The Disciplinary Authority did not communicate the reasons for differing with the report of the Enquiry Officer to the petitioner. In judicial and quasi judicial enquiry, any material that is employed against a delinquent to his prejudice has to be brought to his notice so that he may have his own say in that regard. Similarly, the preliminary enquiry report, which was the basis of the regular departmental enquiry, was never supplied to the petitioner. The petitioner was prejudiced by non-compliance of the principle of *audi alteram*

partem. The Executive Committee accepted the report of the Disciplinary Authority. The acceptance of the report by the Executive Committee does not validate the report of the Disciplinary Authority. In *Union of India and others v. Mohd. Ramzan Khan* (1), their Lordships of the Supreme Court held as under :—

“We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the enquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.”

(18) Learned counsel for the respondents submitted that there is no requirement under the Service Rules that the Disciplinary Authority has to furnish the reasons for differing with the report of the Enquiry Officer to the delinquent official before proposing punishment. He further highlighted that the Disciplinary Authority/Appointing Authority has to comply with the principles of natural justice only when it is so enjoined by the Service Rules. If the Service Rules are silent for providing an opportunity of hearing to the delinquent official by the Disciplinary Authority while differing with the report of the Enquiry Officer, it is not necessary to comply with the principle of *audi alteram partem* and the action will not be invalidated. In support of his submission, he principally relied upon the judgment of the apex Court in *K. L. Tripathi v. State Bank of India and others* (2), and a Single Bench Judgment of this Court in *State bank of India, Chandigarh and another v. B. R. Vaid* (3).

(19) In *K. L. Tripathi's* case, the appellant, who was an employee of the State Bank of India, after investigation was charge-sheeted. The enquiry was held with regard to those charges and the charges were found proved. The appellant was given an opportunity to show cause against the proposed punishment. The Executive Committee of the Central Board, after considering the material placed

(1) J.T. 1990(4) S.C. 456.

(2) A.I.R. 1984 S.C. 273.

(3) 1987(5) S.L.R. 314.

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before it, directed that he be dismissed from service of the Bank. He challenged the order of dismissal in Writ Petition under Article 226 of the Constitution of India in the Allahabad High Court alleging contravention of the State Bank of India (Officers and Assistants) Service Rules. The writ petition was dismissed on the solitary ground that the Service Rules had no statutory effect. In appeal before the apex Court, it was submitted that the materials against the appellant were gathered in his absence and he was not allowed to cross-examine the witnesses; evidence against him was not recorded in his presence; he argued that only an opportunity to show cause after he had replied against the charges against him, which were based on material gathered behind him for imposition of penalty was given. The question as raised was answered with the following observations:—

“The concept of fair play in action must depend upon the particular *lis*, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no *lis* regarding the facts but certain explanation of circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination *per se* does not invalidate or vitiate the decision arrived at fairly.”

In view of the peculiar facts of that case, the contention that the principles of natural justice were violated was rejected.

(20) In *B. R. Vaid's case* (supra), the delinquent official was proceeded *ex parte* in the enquiry proceedings and the disciplinary authority disagreeing with some of the findings of the Enquiry Officer held the delinquent official guilty and the reasons for this disagreement were not communicated to him. The objection that the reasons for disagreement were not communicated to the delinquent official was repelled on the ground that Rule 51(2) of the Service Rules did not enjoin the furnishing of the reasons for disagreement by the

disciplinary authority. The learned Single Judge disposed of the point canvassed with the following observations:—

“Moreover, as observed earlier, the plaintiff was being proceeded *ex parte* throughout and, therefore, it was not at all necessary for the disciplinary authority to issue any fresh notice to him while reversing the findings of the enquiry officer on certain charges.”

The learned Judge also observed that the Civil Court cannot go into the question of sufficiency or insufficiency of the evidence on the basis of which the disciplinary authority has held that the charges against the delinquent official stood proved.

(21) The judgment in *B. R. Vaid's* case has not the remotest applicability to the facts of the instant case. The submission of the learned counsel is, thus, untenable. To the contrary, the judgment in *K. L. Tripathi's* case (*supra*), if examined in correct perspective, supports the petitioner's case and it will be apt to reproduce the following observations of their Lordships of the Supreme Court in support of my conclusions under points (i) and (ii) raised by the petitioner :—

“We are of the opinion that Mr. Garg is right that the rules of natural justice as we have set out hereinbefore implied an opportunity to the delinquent officer to give evidence in respect of the charges or to deny the charges against him. Secondly, he submitted that even if the rules had no statutory force and even if the party had bound himself by the contract, as he had accepted the Staff Rule, there cannot be any contract with a Statutory Corporation which is violative of the principles of natural justice in matters of domestic enquiry involving termination of service of an employee. We are in agreement with the basic submission of Mr. Garg in this respect, but we find that the relevant rules which we have set out hereinbefore have been complied with even if the rules are read that requirements of natural justice were implied in the said rules or even if such basic principles of natural justice were implied, there has been no violation of the principles of natural justice in respect of the order passed in this case. In respect of an order involving adverse or penal consequences against an officer or an employee of Statutory Corporations like the State Bank of India, there must be

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an investigation into the charges consistent with the requirements of the situation in accordance with the principles of natural justice as far as these were applicable to a particular situation. So whether a particular principle of natural justice has been violated or not has to be judged in the background of the nature of charge, the nature of the investigation conducted in the background of any statutory or relevant rules governing such enquiries. Here the infraction of the natural justice complained of was that he was not given an opportunity to rebut the materials gathered in his absence. As has been observed in 'On Justice' by J. R. Lucas, the principles of natural justice basically, if we may say so, emanate from the actual phrase '*audi alteram partem*' which was first formulated by St. Augustine (*De Duabus Animabus*, XIV, 22, J.-P. Migne, PL 42,110)."

There Lordships of the Apex Court further observed :

"The principles of natural justice will, therefore, depend upon the facts and circumstances of each particular case."

After so holding, the Bench found that in that particular case, "the appellant was associated with the preliminary investigation that was conducted against him. He did not deny or dispute that; information and materials undoubtedly were gathered not in his presence but whatever information was there and gathered, namely, the versions of the persons, the particular entries which required examination were shown to him. He was conveyed the information given and his explanation was asked for. He participated in that investigation. He gave his explanation but he did not dispute any of the facts nor did he ask for any opportunity to call any evidence to rebut these facts. He did ask for a personal hearing, as we have mentioned hereinbefore and he was given such opportunity of personal hearing. His explanations were duly recorded. He does not allege that his version has been improperly recorded nor did he question the veracity of the witnesses or the entries or the letters or documents shown to him upon which the charges were framed and upon which he was found guilty." In that view of the matter, it was held that the authorities in conducting the enquiry or framing of the charges or arriving at the decision did not violate the principles of natural justice. It was positively held that in view of Rule 49 the employee was to be given further opportunity to state in writing by a specified date why the proposed penalty should not be

imposed and for this purpose the charge or charges against him, together with a copy of the report of the officer who investigated the case and the specific penalty proposed shall be communicated to him by the Managing Director or the Secretary or the treasurer as the case may be. In the instant case, the Enquiry Officer exonerated the petitioner of all the major charges except two minor procedural lapses. The disciplinary authority disagreed with the findings arrived at by the Enquiry Officer and held that some charges stood proved and in coming to that conclusion, it also took into consideration the report of the Central Vigilance Commission. The disciplinary authority did not communicate the report of the Central Vigilance Commission or the reasons of disagreement with the Enquiry Officer's report to the petitioner for making effective representation against the proposed punishment. Thus, apart from the reasons stated above, even on the basis of this judgment, there is no escape from the conclusion that the principles of natural justice were violated.

(22) *K. L. Tripathi's* case is not an authority for the proposition that the Service Rules being not statutory are not justiciable. Even, otherwise, it is not open to the respondents to urge that the Services Rules being non-statutory, violation thereof will not be justiciable. An executive authority must rigorously observe the standards by which it professes its actions to be judged. This rule of administrative law was enunciated by Mr. Justice Frankfurter in *Vitarelli v. Seaton* (4), wherein the learned Judge said :—

“An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword.”

The aforesaid principle has been accepted as applicable in India by the apex Court in *A. S. Ahluwalia v. Punjab State* (5), and in subsequent decisions in *Sukhdev Singh and others v. Bhagat Ram*

(4) (1959) 359 U.S. 535: 3 LED 2 d 1012.

(5) (1975) 3 SCR 82.

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Sardar Singh Raghuvanshi and another (6), and *Ramana Dayaram Shetty v. International Airport Authority* (7), wherein the apex Court held thus :—

“It is well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in *Vitarelli v. Seaton*, (1959 359 US 535 : 3 LED 22 d 1012).”

This rule was again followed by the apex Court in *B. S. Minhas v. Indian Statistical Institute and others* (8). In the light of this rule of law, it is not open to the respondent Bank to urge that it is not supposed to comply with the Service Rules. However, I do not propose to express final opinion on the matter that the Service Rules being non-statutory, non-compliance thereof will not be justiciable in this petition. The matter will be examined in some other appropriate case.

(23) Learned counsel for the respondent-Bank also referred to some other authorities to point out that principle of natural justice as envisaged by Service Rules has to be complied with. In the instant case, proviso to rule 50(3) (iii) of the Service Rules does not enjoin on the disciplinary authority to convey the material relied upon by him while differing with the enquiry report to the delinquent officer. No reference is being made to those rulings in view of the latest pronouncement of the Supreme Court in *Mohd. Ramzan Khan's case* (supra), to which detailed reference has been made in the earlier part of this judgment. It would have been a sheer exercise in futility to refer to those rulings. Moreover, the service rule has to be so read that the principle of natural justice has been incorporated therein. The Disciplinary Authority will not use any material against the delinquent officer or official unless it has been conveyed to him and he has an opportunity to meet it.

(24) Point No. (iii) :

(25) As observed supra, the Enquiry Officer, who was appointed under the directions of the apex Court and who was a senior

(6) (1975) 3 SCR 619.

(7) (1979) 3 SCR 1014.

(8) 1983 (3) S.L.R. 150.

member of the Indian Administrative Service belonging to Tamilnadu Cadre, found that the charges against the petitioner were not proved (except two procedural irregularities). The Disciplinary Authority/Respondent No. 3 differed with the report of the Enquiry Officer and took into consideration the report of the Central Vigilance Commission while differing with the report of the Enquiry Officer, but it came to the conclusion that the petitioner voluntarily went out of the way to pass on undue benefit to some outside parties without causing any loss to the Bank thereby. As per the findings of the Disciplinary Authority, reproduced in the earlier part of the judgment, it is apparent that the petitioner did not make any personal gain out of the transactions. His act also did not cause any financial loss to the Bank. However, after coming to that conclusion, it recommended major penalty of reduction to the cadre of Officer Senior Management Grade Scale-IV and placing him at the lowest stage of that scale. The punishment is too severe. The petitioner, who was promoted to the top Executive Grade VI by the Executive Committee of the Central Board of the respondent-Bank on August 27, 1980, was reduced to the cadre of Officer Senior Management Grade Scale-IV and was placed at the lowest stage of that scale, thereby he was not only brought two grades lower to the grade to which he had been earlier posted but he also lost the benefit of his outstanding service. The punishment imposed is disproportionate to the charges proved against him, more particularly when the Disciplinary Authority/Respondent No. 3 has found that the petitioner did not gain any financial advantage out of the transactions or caused any financial loss to the Bank. In *Workmen of Bharat Fritz Werner (P) Ltd. v. Bharat Fritz Werner (P) Ltd. and another* (9), the apex Court observed that "it was open to the High Court to consider what would be adequate punishment for the misconduct found to have been committed by the workmen." These observations were in the context of the workmen whose services had been terminated. On an industrial dispute being raised, the matter was referred for adjudication to the Additional Industrial Tribunal, Bangalore, which framed the following issue which was taken as preliminary issue :—

"Whether the domestic enquiry conducted against the 15 workmen named in the order of reference has been fair and proper and in accordance with the standing orders of the II-party and principles of natural justice?"

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The Tribunal decided the preliminary issue against the Management and held that the enquiry was not fair and proper. The order of the Tribunal was assailed by the management in a writ petition before the High Court of Karnataka. During the pendency of the said writ petition, the Tribunal made an interim award,—*vide* order dated January 25, 1982 and directed the Management to pay to each of the concerned workmen three-fourth of the total emoluments which they were drawing at the time of their dismissal with effect from January 1, 1982 till the final disposal of the reference. The said interim award was challenged by the Management in a writ petition before the High Court of Karnataka. The learned Single Judge did not agree with the findings of the Tribunal that the *ex parte* enquiry held by the Enquiry Officer was in violation of the principles of natural justice, and held that the workmen have to blame themselves for their defiant attitude and it was not open to them to contend that the enquiry was violative of the principles of natural justice. He, however, held that the enquiry was bad in law. Feeling aggrieved by the judgment of the learned Single Judge, both the Management as well as the workmen filed appeals which were disposed of by a Division Bench and held that five of the workmen were guilty of wrongfully confining the President and compelling him to withdraw the notice. The learned Judges of the view that for these two acts of misconduct, the said five workmen did not deserve extreme penalty of dismissal and directed that they should be taken back on duty, but with payment of one half of the back wages. Feeling aggrieved by the Division Bench's decision of the Karnataka High Court, the Management as well as the workmen went up in appeal before the apex Court. The apex Court examined the quantum of punishment in the light of the provisions of Section 11-A of the Industrial Disputes Act and observed that the High Court could examine whether the punishment was justified on the proved facts of the case. On the same analogy, I hold that in the instant case, not only severe but very harsh punishment has been awarded to the petitioner and it was not warranted by the facts proved on the file. The petitioner has been made to suffer agony for more than eight years. It will meet the ends of justice if the agony is stopped now and for all times to come. All the proceedings taken by respondent No. 1 subsequent to the enquiry report are void in view of my finding under points No. (i) and (ii). The petitioner suffered agony for more than a decade for procedural irregularity committed by him. He deserved to be restored to the position occupied by him when enquiry recommenced against him. However, the decision under this point will not be of much consequence in view of my decision under points No. (i) and (ii).

(26) *Point No. (vi):*

(27) In view of my finding under points No. (i) and (ii), I am not expressing any opinion on this point and it will be dealt with in some other appropriate case. However, I make it clear that the right to file appeal against the order of the Executive Committee of the Central Board of the respondent-Bank has to be an effective remedy and not merely a formality. The appeal has to be heard by the Central Board of the Bank and the members of the Executive Committee also constitute the Central Board. Non-participation of the members of the Executive Committee at the time of hearing of the appeal by the Central Board will not be an effective consideration of the appeal. In the instant case, it transpires that the members of the Executive Committee and of the Central Board met on the same day and when the time for consideration of the appeal filed by the petitioner came up, the members of the Executive Committee withdrew from the meeting and the other members deliberated and disposed of the appeal. This course cannot be appreciated. However, since I am leaving the matter open for decision in some other appropriate case, I am not expressing any final opinion in the matter.

(28) *Points No. (v) and (vi) :*

(29) I am not expressing any final opinion on the point that the Disciplinary Authority/Respondent No. 3 being not the Appointing Authority could not initiate enquiry proceedings against the petitioner or propose punishment against him in this petition. The matter will be examined in some other appropriate proceedings. Consequently, points No. (v) and (vi) are left undecided.

(30) *Point No. (vii):*

(31) The Disciplinary Authority/Respondent No. 3 recommended that the period spent under suspension by the petitioner from July, 1981 till the end of April 1986 be treated as such entitling him to the payment of subsistence allowance already received by him. This finding was approved by the Executive Committee as under:—

4. As regards the suspension period, the Executive Committee orders as under :—

(a) The period spent by Shri D. C. Aggarwal under suspension from July 1981 to April 1986, during which

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time the inquiry proceedings could not be finalised due to the orders of restraint in court cases filed by him against the Bank, be treated as such and he be entitled to payment of only subsistence allowance which has already been received by him."

The reasons for holding that the petitioner will be entitled to payment of only subsistence allowance are wholly illegal. The Enquiry Officer held *ex parte* proceedings against the petitioner and refused to adjourn the proceedings when he was admitted to the Intensive Care Unit of Dr. Ram Manohar Lohia Hospital, New Delhi. The action of the Enquiry Officer was unsuccessfully challenged in Writ Petition No. 1955 of 1983 in the Delhi High Court. In appeal to the Supreme Court, the order of the Delhi High Court was quashed and it was directed that an Enquiry Officer be appointed afresh in consultation with the Central Vigilance Commission, who will dispose of the enquiry. Delay, if any, in concluding the enquiry proceedings, cannot be attributed to the petitioner; rather the blame lies with the respondents. The Inquiry Officer, who was appointed by respondent No. 2 to hold enquiry against the petitioner, did not act fairly. It was for this reason that the apex Court intervened in the matter and directed the appointment of a new Enquiry Officer. Pursuant to the apex Court's direction, the Bank appointed Shri A. K. Rastogi, a senior member of the Indian Administrative Service from the Tamilnadu cadre, who after recording evidence, not only exonerated the petitioner but also passed very serious strictures against the Bank. I am not expressing any opinion with regard to the conduct of the Bank in these proceedings although I do feel that the Bank has not acted as expected of the 'State', who, to say the least, is expected to deal with the citizen fairly and not arbitrarily. The direction that from July 1981 to April 1986 the petitioner will be entitled to payment of only subsistence allowance cannot be sustained in law.

(32) For the reasons aforementioned, the writ petition succeeds. The order dated October 31, 1987 passed by the Disciplinary Authority/Respondent No. 3 disagreeing with the Inquiry Officer's report and proposing imposition of major penalty of reduction to the cadre of Officer Senior Management Grade Scale-IV and placing him at the lowest of that scale and further recommending that during the suspension period from July 1981 till April 1986, the petitioner will be entitled to the payment of only subsistence allowance; the order of the Executive Committee conveyed,—*vide* letter dated November

4, 1987, imposing upon the petitioner the major penalty as recommended by the Disciplinary Authority/Respondent No. 3 and the appellate order of the Central Board passed on the appeal preferred by the petitioner conveyed,—*vide* letter dated March 20, 1989 are quashed. The order of reversion to the post of officer Senior Management Grade Scale IV having been set aside, the excess recovery of house rent sought to be made by order dated November 24, 1989 is also quashed with costs. Counsel's fee is assessed at Rs. 1,000. Respondent No. 1 is directed to give effect to this judgment with all consequential benefits within one month from the date of receipt of copy of this judgment.

R.N.R.