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Court : Karnataka

Decided On : Jul-12-1996

Reported in : ILR1996KAR3228; 1996(6)KarLJ163

Judge : H.L. Dattu, J.

Acts : Vijaya Bank Officers Employees' (Discipline & Appeal) Regulations, 1981 - Regulation 6(7)

Appeal No. : WP. 12539/88

Appellant : B.A. Prabhakar Rai

Respondent : The General Manager, Vijaya Bank and anr.

Disposition : Petition dismissed

Judgement :
ORDER

H.L. Dattu, J.

1. Petitioner, Sri Prabhakar Rai, while working as Divisional Manager in respondent-Bank was proceeded against departmentally by issuing a charge memo dated 16,10.1986. In that, it was alleged that:

(1) submission of leave application on grounds of feigned sickness;

(2) unauthorisedly absenting himself from duty from 28.6.1986 and onwards, without complying with the rules; and

(3) disobedience of instructions of the official superiors.

2. The above omissions and commissions according to the respondent-Bank would amount to misconduct under Regulation 3(1) read with Regulations 24 and 13(1) of the Vijaya Bank Officer Employees' (Discipline and Appeal) Regulations 1981 (hereinafter referred to as 'the Regulations 1981). Denial of these allegations in the charge memo by the officer resulted in appointing an enquiry officer and Sri Richard Goveas, Manager, Personnel Department as Presenting Officer.

3. Earlier to the commencement of the enquiry proceedings, petitioner requested the Disciplinary Authority to accord permission to engage a lawyer to defend the charges. The Disciplinary Authority by his letter dated 11th December, 1986, informed the petitioner, since the Presenting Officer is not a legal practitioner and that after considering the circumstances of the case there is no justification to permit the petitioner to engage a lawyer to defend the charges, his request for assistance of legal practitioner is rejected. During the enquiry proceedings, petitioner once again requested the enquiry officer to permit him to engage a legal practitioner to defend the charges since management is represented by a legally trained person as a Presenting Officer. Even this request was rejected by the enquiry officer relying on the letter of Disciplinary Authority dated 11.12.1986. In the enquiry proceedings, petitioner himself appeared and defended the charges alleged Management examined only three witnesses and against him in the charge memo got marked several correspondence as exhibits in the enquiry proceedings. At this stage, it is relevant to state that the charge sheeted officer was Divisional Manager in the respondent-Bank and the enquiry Officer was only Assistant General Manager and the Presenting Officer was only Manager in the Personnel Department in the Bank.

4. After completion of the enquiry proceedings, the enquiry officer submitted his report together with the records of the enquiry proceedings and other documents to the Disciplinary Authority. That after considering the report of the enquiry officer and records of the proceedings, the Disciplinary Authority passed an order dated

11.2.1988, reducing the pay scale of the petitioner to a lower stage in the time scale by one stage and thereby his basic pay was fixed at Rs. 3345/- in the Senior Management Grade Scale IV with immediate effect. The petitioner preferred an appeal against the order of Disciplinary Authority before the second respondent who is the Appellate Authority. In that appeal, petitioner apart from raising various legal issues had requested the appellate Authority to offer an opportunity of hearing before deciding the appeal on merits. However, second respondent without granting such an opportunity dismissed the appeal by his order dated 8.7.1988. It is these orders which has brought the petitioner to this Court being aggrieved by the same.

5. Sri P.S. Rajagopai, Learned Counsel appearing for petitioner unusually curtails his submissions by raising only three issues before this Court for consideration, being fully aware of the powers of judicial review in so far as truth and correctness of the charge is concerned except in cases where they are based on no evidence and further this Court can only examine the procedural correctness of the decision making process. Some grievances have been made by the Learned Counsel touching upon the illegalities in conducting of the proceedings, such as denial of an opportunity to engage an Advocate for defending the charges before the enquiry officer inspite of regulations providing for it and according to the Learned Counsel, such an action not only is in violation of principles of natural justice but also opposed to statutory regulations and the same would vitiate the entire enquiry proceedings. In support of this contention, reliance was placed on Sub-regulation (7) of Regulation 6 of Regulations, 1981 and also on the decision of the Supreme Court in J.K. AGGARWAL v. HARYANA SEEDS DEVELOPMENT CORPORATION LTD AND ORS., 1993 (II) LLJ 412. The second issue that was raised is, failure to give a fresh notice to the delinquent by the Disciplinary Authority when he disagreed with the findings of the enquiry officer on some of the charges and hence, non-observance of this mandatory requirement would vitiate the entire enquiry proceedings. In support of this contention, the Learned Counsel would rely upon the decision of this Court in the case of KARNATAKA AGRO INDUSTRIES CORPORATION LTD., v. K. VITTAL DAS, W.A. 2809 & 2810/1991 dt.20.10.1995 Lastly, the Learned Counsel would submit that the Appellate Authority in not giving a personal hearing inspite of demand made by delinquent

would be nothing but denial of an opportunity of hearing and would be in violation of rules of natural justice. It was therefore contended that the impugned orders may be set aside.

6. Mr. Ramadas, the Learned Counsel appearing on behalf of the Bank first contended that it cannot be said that if the request for representation by an Advocate before the enquiry officer is disallowed, this will in all cases result in denial of reasonable opportunity and thereby contravenes the statutory provisions and violates of rules of natural justice. Unless it is shown, prejudice is caused to the person proceeded against in the domestic enquiry and if no prejudice is caused to the delinquent, no interference is called for by this Court, To reinforce his submission he relies on the decisions of Apex Court in the case of STATE BANK OF PATIALA AND ORS. v. S.K. SHARMA, : (1996)IILLJ296SC , THE CHAIRMAN, BOARD OF MINING EXAMINATION AND CHIEF INSPECTOR OF MINES v. RAMJEE, : [1977]2SCR904 and CRESCENT DYES & CHEMICALS LTD., v. RAM NARESH TRIPATHI, : (1993)ILLJ907SC . Nextly, it was contended by him that in the absence of regulations providing for issuance of a notice to the delinquent official before Disciplinary Authority disagrees with the findings of the enquiry officer, it is neither obligatory nor mandatory on the part of Disciplinary Authority to issue any such notice and at any rate this by itself would not vitiate the enquiry proceedings. In support of this submission, the Learned Counsel relies on the decision of Supreme Court in the case of S.B.I. BHOOPAL v. S.S. KOSHAL, 1995(5) SLR 181. In reply to the last contention raised by the Learned Counsel for the petitioner, he would submit that the Regulations, 1981 do not obligate the Appellate Authority to afford an opportunity of hearing to the delinquent official before deciding the appeal and assuming thus by necessary implication, the regulation requires the Appellate Authority to give such an opportunity when demanded, the delinquent official has not shown the non-observance of this rule has caused any prejudice to his case. In support of this contention, the Learned Counsel once again relies on the decision of State Bank of Patiala.

7. Having heard the Learned Counsels, I have carefully considered the issues raised in this petition. Petitioner at the time of issuing the charge memo was working as Divisional Manager in the respondent-Bank. In the Charge memo,

there were only three charges. In my view, they do not involve any complicated questions of either facts or law. The enquiry officer appointed by the Disciplinary Authority was only Assistant General Manager in the Central Accounts Department of respondent-Bank and the Presenting Officer was only the Manager in the Personnel Department. Petitioner was not pitted against any legal luminaries. The enquiry was taken up by the enquiry officer for the first time on 16.10.1986 and on that date, petitioner pleaded not guilty to the said charges and after furnishing the list of witnesses and documents enquiry was adjourned to 16.1.1987. Petitioner by his letter dated 6.12.1986 addressed to the Disciplinary Authority requested him to grant permission to engage a lawyer to defend the charges. The letter reads as under;

'I acknowledge receipt of the Captioned letter dated 14.11.1986, delivered to me on 5.12.86 at 2.30 p.m. i.e. after a gap of 3 weeks. In this connection, I request that I may be permitted to engage a lawyer to defend my case.'

8. To this letter of request, the Disciplinary Authority by his reply dated 11.12.1986 informed the delinquent that since Presenting Officer is not a legal practitioner and since the circumstances of the case does not warrant to permit the delinquent to engage a lawyer, his request cannot be granted. The letter dated 11.12.1986 of the Disciplinary Authority to the petitioner reads as under:

'Sri B.A. Prabhakar Rai,

Code No. 156, Divisional Manager,,

Divisional Inspectorate Vijaya Bank, ,

Calcutta.

Dear Sir,

Proposed domestic enquiry at Head Office into the charges framed against you vide charge sheet No. PER:IRS:CS:106:86 dated 16.10.1986.This has reference to your letter dated 6.12.1986 requesting for permission to engage a lawyer to defend you during the domestic enquiry.

In this connection, please note that under Sub-regulation 7 of Regulation 6 of the Vijaya Bank Officer Employees (Discipline and Appeal) Regulation, an officer employee may take the assistance of any other officer employee of the bank, but may not engage a legal practitioner unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner.

The Presenting Officer appointed in this case is not a legal practitioner. Further, after considering the circumstances of the case, I do not find any justification for permitting lawyer to defend you during the domestic enquiry. Therefore, your request to permit you to engage a lawyer to defend you in the proposed departmental enquiry is hereby rejected.

Hence, you may take the assistance of any of the officer employees of the bank to defend your case during the enquiry.'

9. Petitioner once again during the enquiry proceedings requested the enquiry officer to permit him to have the assistance of legal practitioner since Presenting Officer is a legally trained person. This request has been noticed by the enquiry officer in its proceedings and once again it is rejected by the enquiry officer mainly in view of the letter of the Disciplinary Authority dated 11.12.1986.

10. The Disciplinary Authority while rejecting the request of the delinquent official to permit him to be defended by a legal practitioner relies on the scheme of Discipline and Appeal Regulations of the Bank, in particular to Sub-regulation(7) of Regulation 6 of the Regulation, 1981. The said Sub-regulation(7) reads as under:

'(7) The officer employee may take the assistance of -any other officer employee but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner or the Disciplinary Authority, having regard to the circumstances of the case, so permits.'

11. Regulation 6 deals with the procedure for imposing major penalties. Sub-clause (6) of Regulation provides for appointment of Presenting Officer by the Disciplinary Authority to present on its behalf the case in support of the Articles of charge. Sub-regulation (7) of Regulation 6 lays down that an Officer employee

may take the assistance of any other officer Employee but may not engage a legal practitioner for the purpose of defending his case, unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner. An analysis of this regulation clearly indicates the following. They are - (1) as a matter of right, the charge sheeted officer employee may take the assistance of any other employee but he may not take the assistance of a legal practitioner; (2) The charge sheeted officer may take the assistance of legal practitioner when the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner; and (3) the discretion is vested in the Disciplinary Authority to permit the delinquent official in engaging the services of the legal practitioner depending on the facts and circumstances of each case which may include complicated nature of issues involved, voluminous evidence, number of documents etc.,

12. In my view, this regulation make a distinction from the normal rule/regulation and practice. In the absence of such a rule/regulation, it could not have been said that refusal to permit to be defended by a legal practitioner, even when demanded by a delinquent official would still be a denial of reasonable opportunity of hearing and thereby violating rules of natural justice. In the present case, the Disciplinary Authority has refused to have the assistance of a legal practitioner by the delinquent official by taking recourse to Sub-regulation (7) of Regulation 6 of the Regulations, 1981 by stating that the Presenting Officer appointed in this case is not a legal practitioner. However, the specific case of the petitioner before the enquiry officer was that the Presenting Officer in the inquiry proceedings is the manager in the Personnel Department, a Law Graduate and having experience in the field. This assertion is not denied either by the Presenting Officer or by the enquiry officer. The Presenting Officer may not be a legal practitioner but a legally trained person. In J.K. Aggarwal's case. Supreme Court was pleased to observe that 'a legal Adviser and lawyer are for this purpose some what liberally construed and must include whoever assists or advises on facts and in law must be deemed to be in the position of a Legal Adviser.' In this view of the matter, the distinction sought to be made out by the Disciplinary Authority by saying Presenting Officer not a legal practitioner and therefore, petitioner cannot have the assistance of legal practitioner does not stand to any sound reasoning. The other reason assigned by the Disciplinary Authority while refusing the request of the delinquent

official is that after considering the facts and circumstances of the case, there is no justification for permitting the lawyer to defend the delinquent official during domestic enquiry. Petitioner in fact in his objection before the enquiry officer has said that there are innumerable documents listed by the management as exhibits which require to be scrutinised and verified from all legal aspect for which lawyer's assistance is required. The enquiry officer does not assign any reasons for disallowing the request made by the delinquent official and merely relies on the letter of the Disciplinary Authority dated 11.12.86 to reject the request. It is not the case of the department that the charges are not complicated in nature and the delinquent official who is a Divisional Manager could defend himself. It is also not their case that documents are not numerous and evidence is not voluminous which may not require the delinquent official to have the assistance of a legal practitioner. In the absence of any regulation, then it would have been the sole discretion of the Disciplinary Authority and the officer holding the enquiry to allow or refuse to allow a legal practitioner to represent the delinquent official. Even here, it is expected of the Disciplinary Authority and the enquiry officer while exercising such discretion to consider the question of prejudice, nature of charges, voluminous records and evidence, educational qualification etc., etc., but in the presence of Regulation 6(7) of the Regulation, 1981 it is but mandatory on the part of Disciplinary Authority to permit the delinquent official to have the assistance of legal practitioner whenever the Presenting Officer appointed to defend the case of the management is a legally trained person or a legal practitioner. The Apex Court in the case of Crescent Dyes and Chemical's case, while considering the case, where Standing Orders of the Company permitted the delinquent official to be represented only by a clerk or workman working with him in the same department was pleased to observe as under:

'....that the right to be represented through counsel or agent can be restricted, controlled or regulated by a statute, rules, regulations or Standing Orders. A delinquent has no right to be represented through counsel or agent unless the law specifically confers such a right.'

13. In the present case, regulation specifically provides for securing the assistance of legal practitioner by a delinquent official, whenever a disciplinary authority

appoints a Presenting Officer who is a legally trained person to defend the case of the management immaterial of the gravity of charges etc.

14. In J.K. AGGARWAL's' case, the Supreme Court was dealing with more or less similar regulation as in the present case. After noticing the earlier decisions on this point, the Court was pleased to observe as under:

'7. In the present case, the matter is guided by the provisions of Rule 7(5) of the Haryana Civil Services (Punishment and Appeal) Rules, 1952 which says:

7(5) Where the punishing authority itself enquires into any charge or charges or appoints an enquiry officer for holding enquiry against a person in the service of the Government, it may, by an order, appoint a Government servant or a legal practitioner to be known as a 'presenting officer' to present on its behalf the case, in support of charge or charges.

The person against whom a charge is being enquired into, shall be allowed to obtain the assistance of a Government servant, if he so desires, in order to produce his defence before the enquiring officer. If the charge or charges are likely to result in the dismissal of the person from the service of the Government, such person may, with the sanction of the enquiry officer, be represented by Counsel.

8. It would appear that in the inquiry, the respondent-Corporation was represented by its Personnel and Administration Manager who is stated to be a man of law. The rule itself recognises that where the charges are so serious as to entail a dismissal from service the inquiry authority may permit the services of a lawyer. This rule vests a discretion. In the matter of exercise of this discretion one of the relevant factors is whether there is likelihood of the combat being unequal entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reasons of the appellant being pitted against a presenting officer who is trained in law. Legal Adviser and a lawyer are for this purpose somewhat liberally construed and must include 'whoever assists or advises on facts and in law must be deemed to be in the position of. a legal adviser'. In the last analysis, a decision has to be reached on a case to-case basis on the situational particularities and the special requirements of justice of the case. It is

unnecessary, therefore, to go into the larger question 'whether as a sequel to an adverse verdict in a domestic enquiry serious civil and pecuniary consequences are likely to ensue, in order to enable the person so likely to suffer such consequences with a view to giving him a reasonable opportunity to defend himself, on his request, should be permitted to appear through a legal practitioner' which was kept open in Board of Trustees of the Port of Bombay v. Dilipkumar, : (1983)ILLJ1SC . However, it was held in that case (P. 132):

'... In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated...'9. On a consideration of the matter, we are persuaded to the view that the refusal to sanction the service of a lawyer in the inquiry was not a proper exercise of the discretion under the rule resulting in a failure of natural justice; Particularly, in view, of the fact that the Presenting Officer was a person with legal attainments and experience. It was said that the appellate was no less adept having been in the position of a Senior Executive and could have defended, and did defend himself competently; but as was observed by the Learned Master of Rolls in Pett v. Greyhound Racing Association 1968(2) ALL ER 545, 549 (CA) that in defending himself one may tend to become 'nervous' or 'tongue-tied'. Moreover, appellant, it is claimed has had no legal background. The refusal of the service of a lawyer, in the facts of this case, results in denial of natural justice.'

15. The Apex Court sums up the issue with a caution, only in the facts and circumstances of that case the refusal of service of a lawyer results in denial of natural justice. In the normal course only the order that was possible was, to quash the impugned order with liberty to respondents to redo the matter in accordance with law. Further, in view of the recent decision of Supreme Court in the case of STATE BANK OF PATIALA AND ORS. v. S.K. SHARMA where the Court was pleased to hold that it would not be correct to say that for any and every violation of a facet of natural justice or of a rule incorporating such a facet, the order passed is altogether void and ought to be set aside without further enquiry.

The Court after a detail analysis was pleased to observe that violation of a procedural rule or requirement governing the enquiry, the complaint should be examined on the touchstone of prejudice. While explaining this position, the Court was pleased to observe as under:

'Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise. These principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case.'

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'11. It is not brought to our notice that the State Bank of Patiala (Officers') Service Regulation contains provision corresponding to Section 99 CPC or Section 465 Cr.PC. Does it mean that any and every violation of the regulations renders the enquiry and the punishment void or whether the principles underlying Section 99 CPC and Section 465 Cr.PC is applicable to the case of disciplinary proceedings as well. In our opinion, the test in such cases should be one of prejudice, as would be later explained in this judgment. But this statement is subject to a rider. The regulations may contain certain substantive provisions, e.g. who is the competent authority to impose a particular punishment on a particular employee/officer. Such provisions must be strictly complied with. But there may be any number of procedural provisions which stand on a different footing. We must hasten to add that even among procedural provisions, there may be some provisions which are of a fundamental nature in the case of which the theory of substantial compliance may not be applicable. For example, take a case where a rule expressly provides that the delinquent officer/ employee shall be given an opportunity to produce evidence/ material in support of his case after the close of evidence of the other side. If no such opportunity is given at all in spite of a request therefore, it will be difficult to say that the enquiry is not vitiated. But in respect of many procedural

provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. The position can be stated in the following words;(1) Regulations which are of a substantive nature have to be complied with and in case of such provisions, the theory of substantial compliance would not be available. (2) Even among procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case, the theory of substantial compliance may not be available. (3) In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available. In such case, complaint/objection on this score have to be judged on the touchstone of prejudice, as explained later in this judgment. In other words, the test is: all things taken together whether the delinquent officer/employee had or did not have a fair hearing. We may clarify that which provision falls in which of the aforesaid categories is a matter to be decided in each case having regard to the nature and character of the relevant provision.'

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'28. The decisions cited above make one thing dear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v. Chief Election Commissioner.) The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India and Swadeshi Cotton Mills v. Union of India). As pointed out by this Court in A.K. Kraipak v. Union of India, the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable - a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Services where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing - applying the test of prejudice, as it may be called - that any and every complaint of violation of the rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding - which may result in grave

prejudice to public interest. Is for this reason that the rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g.Liberty Oil Mills v. Union of India. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the rule of audi alteram partem altogether (as in the case of situations contemplated by Clauses (b) and (c) of the proviso to Article 311(2) or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situation which it is not possible for any one to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries; a distinction ought to be made between violation of the principle of natural justice, audi alteram partem, as such and violation of a facet of the said principle. In other words, distinction is between' no notice'/'no hearing' and 'no adequate hearing' or to put it indifferent words, 'no opportunity' and 'no adequate opportunity'. To illustrate -take a case where the person is dismissed from service without hearing him altogether (as in Ridge v. Baldwin). It would be a case falling under the first category and the order of dismissal would be invalid - or void, if one chooses to use that expression (Calvin v. Carr). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (Managing Director, ECIL v. B. Karunakar) or without affording him a due opportunity of cross-examining a witness (K.L. Tripathi) it would be a case falling in the latter category - violation of a facet of the said rule of natural justice - in which case, the validity of the order has to be tested on the touchstone of prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct-in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar should govern all cases where the complaint is not that there was no hearing (no -notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.'

16. Keeping these principles in view let me now find out whether any prejudice had been caused to the delinquent by refusing to allow him to have the services of a legal practitioner to defend the charges. Petitioner was working in the respondent-Bank as Divisional Manager. It is a high ranking post in the organisation. He is sufficiently experienced having served the organisation for nearly two decades. Charges alleged against him in the charge memo was submission of leave application on grounds of feigned sickness, unauthorisedly absenting himself from 28.6.1986 to 24.9.1986 without complying with the leave rules of the Bank with a view to avoid duty and disobedience of instructions of the official superiors by not reporting for duty, thereby exhibiting lack of devotion to duty. To me charges look very simple. It does not involve either complicated questions of facts or law which requires the assistance of an expert in the legal field to defend the charges. Further documents that are marked during the evidence are only 34 in number and mostly they are official correspondence between the delinquent official and the Bank and lastly the number of witnesses examined by the Presenting Officer was only three to prove the charges. In so far as the enquiry officer is concerned, he is only an Assistant General Manager working in Central Accounts Department and the Presenting Officer is only a Manager in the Personnel Department of the respondent-Bank, may be had a stint of practice as a lawyer before joining the services of the Bank. In my view, by no stretch of imagination as observed in J.K. Aggarwala's case' that there is any likelihood of combat between unequals entailing a miscarriage or failure of justice and a denial of a real and reasonable opportunity for defence by reasons petitioner being pitted against a Presenting Officer who is trained in law. In fact, petitioner has cross-examined the witness on all aspects at length by making use of his experience and acumen derived as an Officer in the respondent-Bank. No prejudice nor any injustice is caused to the delinquent, in my view, by disciplinary authority by refusing to allow the assistance of legal practitioner to defend the charges in the domestic enquiry. There is contravention of a procedural regulation and since it has not caused any prejudice to the delinquent official, the impugned order passed cannot be characterised as void order which requires to be set aside. Taking into consideration the totality of the circumstances of the case, it cannot be said that the petitioner was not afforded a reasonable opportunity of hearing before the enquiry officer. In this view

of the matter, the first contention raised by the Learned Counsel for petitioner cannot be accepted and accordingly, it is rejected.

17. In so far as second contention raised by learned Counsel for the petitioner, the issue is now stands concluded by the decision of Apex Court in the case of STATE BANK OF INDIA BHOPAL v. S.S. KOSHAL In the said decision, the Court was pleased to observe as under:

'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 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 enquiry 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 1983 S.L.R. page 319 at 324 to 325. The second contention accordingly stands rejected.'

18. Now coming to the third contention raised, even this contention need not detain me for a long. In my view, since no prejudice is caused to the delinquent-official, by not affording an opportunity of hearing while disposing the appeal by the Appellate Authority, the order passed cannot be found fault with.

19. For the reasons stated above, petitioner is not entitled to any one of the reliefs sought in the Writ Petition. Accordingly, Writ Petition is liable to be dismissed and it is dismissed. In the facts and circumstances of the case, parties are directed to bear their own costs.

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