A

SARV U.P. GRAMIN BANK

v.

MANOJ KUMAR SINHA

(Civil Appeal No. 1639 of 2010)

B

FEBRUARY 09, 2010

[B. SUDERSHAN REDDY AND SURINDER SINGH NIJJAR, JJ.]

C *Service Law – Misconduct – Punishment – Bank employee – Found guilty of charges of misappropriation, fraud and financial irregularities – Disciplinary Authority imposed punishment of "reduction of pay" – Order upheld by appellate authority – High Court allowed the writ petition of employee on ground that he had not been served with the enquiry report* D *– Justification of – Held: Not justified – Order of punishment was not vitiated since no prejudice was shown to have been caused to respondent-employee by non-supply of the enquiry report – In any event, considering the gravity of the charges proved, the punishment imposed was lenient enough –* E *Administrative Law – Natural justice.*

Respondent, a bank employee, allegedly committed various acts of omission and commissions relating to financial irregularities, fraud and misappropriation. F **Departmental enquiry was held whereafter, taking into consideration the enquiry report, the Disciplinary Authority imposed the punishment of "reduction of pay" after giving an opportunity of personal hearing to the respondent.**

G **Respondent challenged the order of the Disciplinary Authority, but the order was upheld by the appellate authority (i.e. the Board of Directors of the Bank). Respondent filed writ petition. The High Court held that since a copy of the enquiry report had not been served**

H

on the respondent, the action of the appellant-bank was violative of the principles of natural justice, and accordingly allowed the writ petition. Hence the present appeal. A

Allowing the appeal, the Court B

HELD:1.1. The plea of the respondent before the High Court that no proceedings had taken place in the enquiry is clearly false and belied by the contents of the enquiry report. From the perusal of the enquiry report, it become apparent that the respondent has incorrectly stated that C no date was fixed by the enquiry officer and straightaway the show cause notices were issued. This apart, it is also noticed in the enquiry report that for proving the charges levelled against the respondent in the charge sheet, the presenting officer tendered management exhibits. The D Branch Manager, appeared as a witness. It is also recorded that the respondent himself presented his defence and upon completion of the evidence the presenting officer and the respondent were granted time for giving their respective briefs. Thereafter there is a E detailed discussion of the evidence given on behalf of the Bank as well as the respondent. Respondent did not make any protest before the enquiry officer of not being permitted to cross examine the witness. Thus the enquiry proceedings have been conducted in accordance with F the principles of natural justice. In case the respondent felt genuinely aggrieved he would have raised the issue at the earliest possible stage. [Paras 25 and 26] [526-D-H; 527-A-B-E-F]

1.2. The charges which have been proved against G the respondent are all pertaining to financial irregularities, fraud and misappropriation. At the personal hearing, the respondent had clearly stated that efforts have been made by him for effecting recovery. He had also offered that the amounts may be adjusted from other loan H

A **accounts which were found to be not feasible. The issue with regard to the non-supply of the enquiry report is raised for the first time in appeal. Even at that stage the appellant does not state as to what prejudice was caused by the non-supply of the enquiry report. He also did not**
B **seek any adjournment of the personal hearing on the ground that he be supplied the enquiry report. [Para 25] [527-B-D]**

1.3. At the time when the plea was raised before the
C **High Court that the impugned orders are vitiated on account of the non-supply of enquiry report, it would have been appropriate for the High Court to examine the averments made in the writ petition. A perusal of the writ petition would show that the petitioner has failed to lay any foundation to establish that any prejudice has been**
D **caused by the non-supply of the enquiry report. No prejudice was actually caused to the respondent. There was no failure of justice in the facts and circumstances of this case by non-supply of the enquiry report to the respondent. The punishment imposed on the respondent**
E **cannot be said to be disproportionate to the gravity of the charges proved against the respondent. The charges related to the conduct of the respondent in a financial institution whereby taking advantage of the official position he attempted to procure unlawful pecuniary**
F **benefits for himself. The charges related to misappropriation, fraud and irregularities with regard to the maintenance of accounts. He had been siphoning off money belonging to the account holders. He was holding a position of trust in the Bank, which he betrayed. The**
G **Bank has already been sympathetic and lenient enough. [Paras 27, 31 and 32] [527-F-H; 528-A; 535-C-F]**

ECIL v. B.K. Arunakar, **(1993) 4 SCC 727 – followed.**

Haryana Financial Corp. and Anr. v. Kailash Chandra
H

Ahuja, **(2008) 9 SCC 31 – relied on.** A

Union of India v. Mohd. Ramzan Khan, **(1991) 1 SCC 588 and** *Kailash Chandra Asthana v. State of U.P.* **1988 (3) SCC 600, referred to.**

Case Law Reference: B

(1991) 1 SCC 588	**Para 2**	**referred to**
(1993) 4 SCC 727	**Para 11**	**followed**
(2008) 9 SCC 31	**Para 11**	**relied on** C
1988 (3) SCC 600	**Para 28**	**referred to**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1639 of 2010.

From the Judgment & Order dated 16.9.2008 of the High Court of Judicature at Allahabad sitting at Lucknow in Writ Petition No. 1753 (S/B) of 2002. D

Dhruv Mehta, Yashraj Singh Deora, Mohit Abraham and T.S. Sabarish (for K.L. Mehta & Co.) for the Appellant. E

Sunil Kumar Jain, Aneesh Mittal, A.K. Soni and Jaya Tomar for the Respondent.

The Judgment of the Court was delivered by F

SURINDER SINGH NIJJAR, J. 1. Leave granted.

2. Sarv U.P. Gramin Bank has filed this appeal against the judgment and order dated 16.9.2008 of the High Court of U.P. (Lucknow Bench) in Writ Petition No.1753 (SB) of 2002. By the G aforesaid judgment the High Court relying upon judgment of this Court in *Union of India vs. Mohd. Ramzan Khan* (1991) 1 SCC 588 quashed the impugned orders dated 3.4.2000, annexure P-4; 3.4.2002, annexure P-5 and 9.9.2002 annexure P-6 to the writ petition with consequential benefits. Liberty has been H

granted to the Bank to serve fresh show cause notice along with copy of the enquiry report on the writ petitioner (respondent herein) and to pass fresh orders in accordance with law.

3. We may notice here the essential facts leading to the passing of the aforesaid judgment/order of the High Court. The writ petitioner (hereinafter referred to as the respondent) joined Devi Pattan Kshetria Gramin Bank, Gonda (now Sarva U.P. Gramin Bank) as an officer. He was served with two charge sheets dated 9.11.2000 and 8.3.2001 for various acts of omissions and commissions while working at branches Khorhansa and Mahrajganj, Trai district Gonda respectively. He was suspended by Order dated 1.3.2001. Respondent submitted reply to the chargesheet. He denied the charges mentioned therein. Thereafter two separate departmental enquiries were held, in which the respondent fully participated. On 19.5.2001 the Enquiry Officer submitted the enquiry report with regard to chargesheet dated 9.11.2000. Charge No.1 has been split up into Charge 1-A and Charge 1-B respectively. Charge No.1-A has been held to be proved whereas Charge 1-B has been held to be partially proved. Similarly Charges No.2 to 3 have been split up into two parts each, i.e., Charges 2-A, 2-B; 3-A and 3-B. Here also Charge 2-A has been held to be proved, Charge 2-B is held to be partially proved; Charge 3-A is said to be proved, 3-B is held to be partially proved.

4. In chargesheet dated 8.3.2001, the Enquiry Officer in its report dated 13.5.2001 also found the same to be proved. The disciplinary authority examined the Enquiry reports and all the relevant documents forming part of the enquiries. Agreeing with the findings of the Enquiry Officer the Disciplinary Authority issued two show cause notices to the respondent proposing the punishment of reduction of pay by six stages permanently.

5. Thereafter the respondent was given an opportunity for a personal hearing by disciplinary authority on each of the Enquiry Reports. Taking into consideration the explanation given by the respondent, the disciplinary authority passed two orders

on 3.4.2001 imposing the punishment of "reduction of pay by six stages permanently" and "reduction of pay by four stages" in relation to charge sheets 9.11.2000 and 8.3.2001 respectively.

6. The appeals filed by the respondent against the aforesaid orders of punishment were dismissed by the Board of Directors of the Bank in its meeting dated 4.9.2002. The decision of the Board was communicated to the respondent vide letter dated 9.9.2002.

7. The respondent, therefore, filed writ petition challenging the orders dated 3.4.2002 and 9.9.2003. The Division Bench of the High Court allowed the writ petition only on the ground that since a copy of the enquiry report was not served on the respondent; the action of the petitioner Bank is violative of the principles of natural justice in view of the judgment of the case in *Mohd. Ramzan Khan case* (supra). It is observed by the High Court as follows:

> "Sri. Virendra Misra learned counsel for the respondents Bank has not placed any material on record to show that the enquiry report was served on the petitioner. Sri Virendera Misra further argued that the regular enquiry was conducted in which the petitioner had participated. However, the copy of show cause (Annexure-2) which had been served on the petitioner, does not indicate that the enquiry report was served alongwith show cause notice. Accordingly to learned counsel for the petitioner, the enquiry officer has not fixed any date, time and place of the enquiry and the petitioner was not allowed to cross examine the witness. However learned counsel for the petitioner submits that straight way after reply to the show cause notices the punishment order was passed hence it is violative of principles of natural justice.
>
> The submission of learned counsel for the petitioner is that non service of enquiry report is violative of principles of

A natural justice in view of judgment of Hon'ble Supreme Court in the case, reported in 1991 Vol.1 SCC 588 *Union of India Vs. Mohammad Ramzan Khan service* of show cause notice is a part and parcel of proceedings. It is settled law passed in *Ramzan Khan* case (supra). B Accordingly, the impugned order seems to be substantially illegal. The appeal preferred by the petitioner against the order of punishment, was also dismissed by an order dated 9.9.2002 (Annexure-6).

C In view of the settled proposition of law, the writ petition deserves and is hereby allowed. A writ in the nature of certiorari is issued quashing the impugned orders dated 3.4.2002 (Annexure-4), 3.4.2002 (Annexure-5) and 9.9.2002 (Annexure-6) with consequential benefits. However, liberty is given to the respondents to serve fresh D show cause notice alongwith copy of the enquiry report forthwith by giving reasonable time to the petitioner to submit the response and thereafter pass fresh orders in accordance with law."

E 8. The Bank has questioned the legality of the aforesaid judgment of the High court on a number of grounds. Primarily it is argued that the High Court committed a serious error in not examining the issue as to whether any prejudice has been caused to the respondent by non-supply of the enquiry reports. F It is further the submission of the learned counsel for the petitioner Bank that it was incumbent on the respondent to plead and establish before the High Court the prejudice that has been suffered by him. According to the learned counsel the respondent had substantially raised only two grounds in the writ G petition. First ground is in paragraph 5 of the writ petition wherein the respondent had made an assertion as follows:

"That separately a Chargesheet was issued to the petitioner against which the petitioner has submitted his reply, denying the charges mentioned therein, and H thereafter no other proceedings took place in the said

enquiry, but on the basis of the petitioner's reply the said enquiry was said to have been concluded & straight away the Show Cause Notices were issued to the petitioner, even without supplying a coy of any enquiry-report, if submitted in the matter." A

9. According to the learned counsel, this ground pertains to the procedural irregularities in conducting the departmental enquiries. The claim is that since the respondent has been denied opportunity to cross examine the witnesses, there is a breach of rules of natural justice. Respondent claims denial of reasonable opportunity to defend himself, in the enquiry proceedings. B C

10. The second ground is with regard to the non-supply of the enquiry reports which is pleaded in paragraph 9 of the petition as follows: D

"It is also submitted that in the circumstances not only the enquiry has been conducted against the petitioner in a most illegal & arbitrary manner, but the order of the punishment has also been passed illegally and without following the norms and procedure prescribed under the law and as declared by the Apex Court through its so many decisions on the question of supplying the copy of the enquiry report to the delinquent-employee before awarding any punishment to him." E F

11. According to the learned counsel, the Division Bench erred in such circumstance in quashing the orders of punishment as well as the order of the appellate authority without enquiring into the question whether any prejudice has been caused to the respondent. According to the learned counsel, the respondent was found guilty of charges of fraud and misappropriation. In normal course in such cases punishment of dismissal from service would be imposed. The Board has, however, imposed a much lesser punishment. Therefore, the writ petition ought to have been dismissed by the High Court. G H

A 12. Learned counsel relied on judgments of this Court in *ECIL vs. B.K Arunakar* (1993) 4 SCC 727; and in *Haryana Financial Corp. and Anr. vs. Kailash Chandra Ahuja* 2008 (9) SCC 31. According to the learned counsel even if copy of the enquiry report is not given, it was necessary for the High Court B to record a finding as to what prejudice had been caused to the respondent. Mere non-supply of the Enquiry Report would not justify quashing of the entire disciplinary proceedings. The writ petition is completely silent as to what prejudice has been caused to the respondent. The respondent did not raise the C issue at the personal hearings. He only mentioned it in the memorandums of appeal. Even then he did not specify as to what prejudice has been caused to him. Therefore, the High Court has passed a wholly erroneous order contrary to the law laid down by this Court.

D 13. Learned counsel for the respondent, however, submitted that entire amount which has been misappropriated has been recovered, therefore the punishment imposed on the respondent was wholly unjustified. Relying on the judgment of *Mohd. Ramzan Khan* (supra) learned counsel has submitted E that prejudice has to be presumed as the respondent has been denied reasonable opportunity by non-supply of the enquiry report.

14. We have considered the submissions made by the F learned counsel for the parties. When the matter came up for initial hearing we passed the following order:

> "Learned counsel for the petitioner submits that the judgment of the High Court is contrary to the decision of this Court in *Managing Director, ECIL vs. B. Karunakar,* G 1993 (4) SCC 727 and decision in Haryana *Financial Corporation and another vs. Kailash Chandra Ahuja*, 2008(9) SCC 31. Instead of sending the matter back to the High Court we are of the view that an opportunity whether there was any prejudice on account of the inquiry

H

report not being furnished along with the show cause notice, may be given to the respondent before us. Accordingly, we direct the respondent to show cause whether any prejudice was caused by non-receipt of inquiry report along with show cause notice issued by the Bank. Call after four weeks." A B

This course has been adopted by us to avoid the matter being remanded back to the High Court or the Disciplinary Authority.

15. Pursuant to the aforesaid order, the respondent has filed an additional counter affidavit, in which he has emphasized the desirability of remanding the matter back to the disciplinary authority for re-determination of the matter. He has emphasized that failure to supply the enquiry report to the delinquent deprives him of making a proper representation to the disciplinary authority, before that authority arrives at its own findings with regard to the guilt or otherwise of an employee. This admittedly not having been done, clearly the respondent was prejudiced in submitting his defence. C D

16. Even if this Court concludes not to remand the matter back to the disciplinary authority, at least it has to be remanded back to the High Court. He has stated that a number of points were raised before the High Court which have not been considered on merits, as the High Court decided the writ petition only on the ground of non-furnishing of the enquiry report. Since the Enquiry Officer and the disciplinary authority had concluded that some of the charges have been partially proved and others completely proved it was necessary to supply the findings of the enquiry reports. Only on knowing the reasoning of the Enquiry Officer, could the respondent give an effective explanation. It is further pointed out that with regard to the charges relating to Maharajganj, the entire amount has been recovered. This fact is noticed by the disciplinary authority. But quite illegally, it still proceeded to impose punishment, on the ground of proved misconduct. Since the disciplinary authority arrived at the decision on the basis of charges which E F G H

A were partially/completely proved it was not possible to defend, during personal hearings. According to the respondent, this was stated by him at the personal hearing, but it was ignored. In fact the disciplinary authority was adamant to punish the respondent. All these issues could have been highlighted if the High Court
B had decided the writ petition on merits. Therefore, matter needs to be remanded back to the High Court for a decision on merits, on all the issues raised by the respondent.

17. In our opinion, the aforesaid grievances of the
C respondent are without any factual basis. The petitioner has placed on the record of this Court the translated copy of the chargesheet dated 9.11.2000 and 8.3.2001; reply of the respondent dated 13.12.2000 to the chargesheet dated 9.11.2000 and reply dated nil to chargesheet dated 8.3.2001, translated copy of the enquiry report 19.5.2001, translated copy
D of the personal hearing proceedings on 20.7.2001 and 1.4.2002 and translated copy of the appeal dated 17.5.2003.

18. In the counter affidavit filed by the petitioner Bank in the High Court, the allegations made in the writ petition have
E been denied. It is stated that as the replies submitted by respondent were not found to be satisfactory, departmental proceedings were initiated against him. It is further stated that "the entire enquiry proceedings were attended by petitioner. He was given full opportunity of being heard and a copy of the
F enquiry report and show cause notice regarding proposed punishment was also proved in compliance of principles of natural justice. The entire proceedings were held fairly, properly in which the petitioner also participated." In paragraph 7 it is also stated that "the orders were passed after taking into
G consideration the reply submitted and the views expressed by the petitioner. After considering overall facts, circumstances, material on record, findings of the enquiry officer as also the defence taken by the petitioner the order of punishment dated 3.4.2002 was passed." Similarly, in paragraph 8 the Bank stated that "the petitioner had filed two appeals to the Appellate
H

Authority against the final order dated 3.4.2002. It is specifically and categorically denied that the appellate authority i.e. the Board of Devi Pattan Kshetria Gramin Bank dismissed the appeal without considering the grounds taken by the petitioner. This allegation is wholly misconceived and without any basis. In fact the Board of Directors the appellate authority after taking into account overall facts and grounds taken by the petitioner in the memo of appeals dismissed the appeal."

19. These averments are borne out by conduct of the respondent at personal hearings on 30.7.2001 and 1.4.2002. In the proceeding on 30.7.2001 the respondent was asked by the Chairman of the Bank whether he had anything to say with regard to the proposed punishment. The respondent replied as follows:

> "In the charge sheet dated 9.11.2000 all out efforts were made by me to remove the deficiencies mentioned in the charge-sheet dated 9.11.2000. Efforts were made for the recovery also. I request to you that in the accounts FDR and in the Savings accounts, where money is there, those may be adjusted in the loan accounts. By me, efforts shall be made in future also for recovery in the accounts. You are requested that in case in future, accounts are regularized, then kindly reconsider on the proposed penalty."

20. Pursuant to the aforesaid request of the respondent, the Chairman discussed the matters with the Branch Manager, Khorhansa over the telephone. The Branch Manager, however, informed that the amount could not be adjusted as "the self accounts of the debtors not being there; that of the relation, husband, wife etc. about which order was given to them for furnishing the written details.

In future not merely in the regularization of account-rather the interest of the bank may be completely safe, or complete recovery be made, on this item also in today's date no

A assurance can be given. The personal hearing concludes with the following remark."

"During the course of the personal hearing no such concrete matters/documents etc. came to limelight, on the basis thereof, we propose punishment could be re-considered. Hence
B the punishment proposed is confirmed."

21. Again in the personal hearing on 1.4.2002 in the head office at 4 p.m., the Chairman asked the respondent whether he had anything to say with regard to the proposed punishment
C in the chargesheet dated 8.3.2001. The respondent merely stated "you are requested that kindly lessen up the proposed punishment showing sympathy. To this the Chairman replied, that "your acts are to be observed in Vigilance view in regard to the above case/chargesheet. In our view, what other
D punishment than this could be lesser punishment? We have already shown you so much sympathy". To this the respondent merely replied that "Whatever decision is taken by you, is fine." The hearing is concluded with the observation "during the course of personal hearing, no such strong evidence and fact
E have been produced on the basis of which proposed punishment could be reconsidered. Thus proposed punishment is confirmed. No additional amount is to be paid for suspension period."

22. The aforesaid exchange between the Chairman of the
F Bank and the respondent makes it abundantly clear that grievances of respondent were addressed with an open mind. He did not make any protest about being handicapped by non-supply of the Enquiry Report.

G 23. In the appeal filed by the respondent against the order dated 3.4.2002, it is stated that whatever is stated in the appeal was also stated by him during the course of enquiry proceedings. He has further stated that the presenting officer has not produced any evidence in regard to the facts in his
H presentation. Facts could not be deemed proved merely on

presentation. The respondent emphasized that necessary postings were made in all the registers as per rule. Entire amount was deposited in the branch along with interest. Thus any sort of financial or social loss has not been suffered by the banks nor it is going to occur in the future. It was emphasized by the respondent that the entire amount was deposited before the date of suspension. Therefore, no amount has been misappropriated. According to the respondent, it was just procedural irregularity which has been rectified in time. The justification of procedural irregularity is reiterated by the respondent time and again. After concluding the appeal on merits respondent also highlighted the following facts:

- *"Report of Enquiry Officer has not been given and, therefore, I have not got the opportunity to state everything during the course of my personal hearing.*

- No witness has been produced during the course of enquiry proceedings.

- Presenting Officer has stated so many things without any documentary evidence.

- Entire amount with interest has been deposited before the date of suspension. Any sort of financial or social loss has not been suffered by the Bank nor it going to occur in future.

- I have given my full cooperation in the enquiry proceedings. Date of my personal hearing was fixed for 10.08.2001 vide letter dated 04.08.2001, but Disciplinary Authority without any strong reason while showing only unavoidable circumstances, postponed the date fixed for my personal hearing and it was fixed for 01.04.2002 vide letter dated 23.03.2002 which led to extension of my suspension period and I suffered mental and

A financial hardships."

24. In the appeal against the Order dated 3.4.2002 relating to chargesheet 9.11.2000, the respondent again stated as follows:

B "The punishment has been given on the complete/partly proved charges.

Punishment has been given on the basis of possibility. It has not been intimated as to what is the grounds of the C possibility.

On which grounds, the Enquiry Officer has proved the charge completely/partly, its report has not been given to me, due to which I did not get the opportunity to state my own complete version, during the course of personal D hearing."

25. From the perusal of the enquiry report, it become apparent that following dates were fixed for the enquiry proceedings: 21.1.2001, 29.1.2001, 3.2.2001, 24.2.2001, E 7.3.2001, 21.3.2001, 11.4.2001 and 21.4.2001. Thus the petitioner has incorrectly stated that no date was fixed by the enquiry officer and straightaway the show cause notices were issued. This apart, it is also noticed in the enquiry report that for proving the charges levelled against the respondent in F charge sheet dated 9.11.2000 the presenting officer tendered management exhibits ME-1 to ME-13. The branch Manager, Shri K.P. Singh, appeared as MW-1. It is also recorded that the respondent himself presented his defence and in the form of defence side evidence DE-1 and DE-2. Upon completion G of the evidence the presenting officer and the respondent were granted time upto 30.4.2001 for giving their respective briefs. Thereafter there is a detailed discussion of the evidence given on behalf of the Bank as well as the respondent. Respondent did not make any protest before the enquiry officer of not being permitted to cross examine the witness. We have no hesitation H

in coming to the conclusion that the enquiry proceedings have been conducted in accordance with the principles of natural justice. We are of the opinion that these grievances have been subsequently aired just to influence the proceedings in Court. In case the respondent felt genuinely aggrieved he would have raised the issue at the earliest possible stage. The charges which have been proved against the respondent are all pertaining to financial irregularities fraud and misappropriation. At the personal hearing the respondent had clearly stated that efforts have been made by him for effecting recovery. He had also offered that the amounts may be adjusted from other loan accounts which were found to be not feasible. The issue with regard to the non-supply of the enquiry report is raised for the first time in appeal. Even at that stage the appellant does not state as to what prejudice was caused by the non-supply of the enquiry report. He also did not seek any adjournment of the personal hearing on the ground that he be supplied the enquiry report.

26. It appears that without taking into consideration the aforesaid facts and circumstances and without scrutinizing the counter affidavit filed by the petitioner Bank, the High Court accepted that non-supply of the enquiry report has rendered the orders of punishment dated 3.4.2002 and the orders and appeal *noest* and void. The plea of the respondent before the High Court that no proceedings had taken place in the enquiry is clearly false which is belied by the contents of the enquiry report.

27. At the time when the plea was raised before the High Court that the impugned orders are vitiated on account of the non-supply of enquiry report, it would have been appropriate for the High Court to examine the averments made in the writ petition. A perusal of the writ petition would show that the petitioner has failed to lay any foundation to establish that any prejudice has been caused by the non-supply of the enquiry report. In the case of *ECIL (supra)* a constitution bench of this

A Court reiterated the ratio of law in Mohd. Ramzan Khan case (supra) as follows:

> "As held by this Court in Union of India v. Mohd. Ramzan Khan, when the inquiring authority and the disciplinary authority are not one and the same and the disciplinary authority appoints an inquiring authority to inquire into charges levelled against a delinquent officer who holds inquiry, finds him guilty and submits a report to that effect to the disciplinary authority, a copy of such report is required to be supplied by the disciplinary authority to the delinquent employee before an order of punishment is imposed on him. It was also held that non-supply of report of the inquiry officer to a delinquent employee would be violative of principles of natural justice. The Court observed that after the Constitution (Forty-second Amendment) Act, 1976, second opportunity contemplated by Article 311(2) of the Constitution had been abolished, but principles of natural justice and fair play required supply of adverse material to the delinquent who was likely to be affected by such material. Non-supply of report of the inquiry officer to the delinquent would constitute infringement of the doctrine of natural justice."

28. The ECIL matter was placed before the Constitution Bench as the attention of the Court was invited to a three-Judge Bench decision of this Court in *Kailash Chandra Asthana vs. State of U.P.* 1988 (3) SCC 600 wherein it was held that non-supply of the report would not *ipso facto* vitiate the order of punishment in the absence of prejudice to the delinquent. Upon a detailed consideration of the entire case law this court laid down certain principles which are as follows:

> "18. In this view of the matter, the Court dismissed the writ petition. It would thus be clear that the contention before this Court in that case was that the copy of the report of the inquiring authority was necessary to show cause at the second stage, i.e., against the penalty proposed. That was

also how the contention was understood by this Court. The contention was not and at least it was not understood to mean by this Court, that a copy of the report was necessary to prove the innocence of the employee before the disciplinary authority arrived at its conclusion with regard to the guilt or otherwise on the basis of the said report. Hence, we read nothing in this decision which has taken a view contrary to the view expressed in E. Bashyan case by a Bench of two learned Judges or to the view taken by three learned Judges in *Union of India v. Mohd. Ramzan Khan.*

19. In Mohd. Ramzan Khan case the question squarely fell for consideration before a Bench of three learned Judges of this Court, viz., that although on account of the Forty-second Amendment of the Constitution, it was no longer necessary to issue a notice to the delinquent employee to show cause against the punishment proposed and, therefore, to furnish a copy of the enquiry officer's report along with the notice to make representation against the penalty, whether it was still necessary to furnish a copy of the report to him to enable him to make representation against the findings recorded against him in the report before the disciplinary authority took its own decision with regard to the guilt or otherwise of the employee by taking into consideration the said report. The Court held that whenever the enquiry officer is other than the disciplinary authority and the report of the enquiry officer holds the employee guilty of all or any of the charges with proposal for any punishment or not, the delinquent employee is entitled to a copy of the report to enable him to make a representation to the disciplinary authority against it and the non-furnishing of the report amounts to a violation of the rules of natural justice. However, after taking this view, the Court directed that the law laid down there shall have prospective application and the punishment which is already imposed shall not be open to challenge on that

A ground. Unfortunately, the Court by mistake allowed all the appeals which were before it and thus set aside the disciplinary action in every case, by failing to notice that the actions in those cases were prior to the said decision. This anomaly was noticed at a later stage but before the
B final order could be reviewed and rectified, the present reference was already made, as stated above, by a Bench of three learned Judges. The anomaly has thus lent another dimension to the question to be resolved in the present case.

C

20. The origins of the law can also be traced to the principles of natural justice, as developed in the following cases: In A.K. Kraipak v. Union of India it was held that the rules of natural justice operate in areas not covered by any law. They do not supplant the law of the land but
D supplement it. They are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceedings also especially when it is not easy to draw the line that
E demarcates administrative enquiries from quasi-judicial ones. An unjust decision in an administrative inquiry may have a more far-reaching effect than a decision in a quasi-judicial inquiry. It was further observed that the concept of natural justice has undergone a great deal of change in
F recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or the body of persons
G appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that inquiry must be held
H in good faith and without bias and not arbitrarily or

unreasonably is now included among the principles of natural justice. A

21. In Chairman, Board of Mining Examination v. Ramjee the Court has observed that natural justice is not an unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. The Courts cannot look at law in the abstract or natural justice as a mere artifact. Nor can they fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with adverse order has not suffered from denial of reasonable opportunity, the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures. B C D

E

23. What emerges from the above survey of the law on the subject is as follows.

24. Since the Government of India Act, 1935 till the Forty-second Amendment of the Constitution, the Government servant had always the right to receive the report of the enquiry officer/authority and to represent against the findings recorded in it when the enquiry officer/authority was not the disciplinary authority. This right was however, exercisable by him at the second stage of the disciplinary proceedings viz., when he was served with a notice to show cause against the proposed penalty. The issuance of the notice to show cause against the penalty necessarily required the furnishing of a copy of the enquiry officer's report since, as held by the Courts, the right to show cause against the penalty also implied the right to represent F G H

A against the findings on the charges. This was considered to be an essential part of the 'reasonable opportunity' incorporated earlier in Section 240(3) of the GOI Act and later in Article 311(2) of the Constitution as originally enacted. The right to receive the enquiry officer's report
B and to show cause against the findings in the report was independent of the right to show cause against the penalty proposed. The two rights came to be confused with each other because as the law stood prior to the Forty-second Amendment of the Constitution, the two rights arose
C simultaneously only at the stage when a notice to show cause against the proposed penalty was issued. If the disciplinary authority after considering the enquiry officer's report had dropped the proceedings or had decided to impose a penalty other than that of dismissal, removal or
D reduction in rank, there was no occasion for issuance of the notice to show cause against the proposed penalty. In that case, the employee had neither the right to receive the report and represent against the finding of guilt nor the right to show cause against the proposed penalty. The right to
E receive the report and to represent against the findings recorded in it was thus inextricably connected with the acceptance of the report by the disciplinary authority and the nature of the penalty proposed. Since the Forty-second Amendment of the Constitution dispensed with the issuance of the notice to show cause against the penalty
F proposed even if it was dismissal, removal or reduction in rank, some courts took the view that the Government servant was deprived of his right to represent against the findings of guilt as well. The error occurred on account of the failure to distinguish the two rights which were
G independent of each other."

29. The aforesaid ratio of law has been reiterated by this Court in *Haryana Financial Corp. and Anr.* (supra). This court again critically examined the entire issue and observed as

H

follows: A

"21. From the ratio laid down in B. Karunakar[1] it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer's report to the delinquent if such inquiry officer is other than the disciplinary authority. It is B also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order C of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside. D

22. In the instant case, it is not in dispute by and between the parties either before the High Court or before us that a copy of the report of the inquiry officer was not supplied to the delinquent writ petitioner. While the contention of the writ petitioner is that since failure to supply the inquiry E officer's report had resulted in violation of natural justice and the order was, therefore, liable to be quashed, the submission on behalf of the Corporation is that no material whatsoever has been placed nor is a finding recorded by the High Court that failure to supply the inquiry officer's F report had resulted in prejudice to the delinquent and the order of punishment was, therefore, liable to be quashed.

23. The High Court, unfortunately, failed to appreciate and apply in its proper perspective the ratio laid down in B. Karunakar[1], though the High Court was conscious of the G controversy before it. The Court also noted the submission of the Corporation that there was "no whisper" in the writ petition showing any prejudice to the delinquent as required by B. Karunakar[1], but allowed the writ petition and set aside the order of punishment observing that in such H

A cases, prejudice is "writ large".

24. In our considered view, the High Court was wrong in making the above observation and virtually in ignoring the ratio of B. Karunakar[1] that prejudice should be shown by the delinquent. To repeat, in B. Karunakar[1], this Court stated: (SCC p. 757, para 30)

B

"30. (v) ... Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case."

C

25. It is settled law that principles of natural justice have to be complied with. One of the principles of natural justice is audi alteram partem (hear the other side). But it is equally well settled that the concept of "natural justice" is not a fixed one. It has meant many things to many writers, lawyers, jurists and systems of law. It has many colours, shades, shapes and forms. Rules of natural justice are not embodied rules and they cannot be imprisoned within the straitjacket of a rigid formula."

D

E

30. Thereafter, this Court notices the development of the principle that prejudice must be proved and not presumed even in cases where procedural requirements have not been complied with. The Court notices a number of judgments in which the action has not been held *ipso facto* illegal, unlawful or void unless it is shown that non-observance had prejudicially affected the applicant. Ultimately, it is concluded as follows:

F

"44. From the aforesaid decisions, it is clear that though supply of report of the inquiry officer is part and parcel of natural justice and must be furnished to the delinquent employee, failure to do so would not automatically result in quashing or setting aside of the order or the order being declared null and void. For that, the delinquent employee has to show "prejudice". Unless he is able to show that

G

H

non-supply of report of the inquiry officer has resulted in prejudice or miscarriage of justice, an order of punishment cannot be held to be vitiated. And whether prejudice had been caused to the delinquent employee depends upon the facts and circumstances of each case and no rule of universal application can be laid down." A B

31. We have examined the factual situation in this case elaborately to see as to whether any prejudice has been caused to the respondent. We are unable to accept the submissions of the learned counsel for the respondent that any prejudice has been actually caused. We are of the considered opinion that there has been no failure of justice in the facts and circumstances of this case by non-supply of the enquiry report to the respondent. C

32. We are also of the opinion that the punishment imposed on the respondent cannot be said to be disproportionate to the gravity of the charges proved against the respondent. The charges related to the conduct of the respondent in a financial institution whereby taking advantage of the official position he attempted to procure unlawful pecuniary benefits for himself. The charges related to misappropriation, fraud and irregularities with regard to the maintenance of accounts. He had been siphoning off money belonging to the account holders. He was holding a position of trust in the Bank, which he betrayed. We are of the opinion that the Chairman has correctly observed at the personal hearing given to the respondent that the Bank has already been sympathetic and lenient enough. D E F

33. In view of the above, the appeal is allowed. The judgment of the High Court is set aside. The Writ Petition filed by the respondent is dismissed. G

B.B.B. Appeal allowed.