A P.D. AGRAWAL

v.

STATE BANK OF INDIA AND ORS.

APRIL 28, 2006

B [S.B. SINHA AND P.P. NAOLEKAR, JJ.]

Service law

Disciplinary proceedings:

C

Delay in initiation of proceedings—Effect of—Held: Proceedings were not vitiated as the ground of delay was not raised by employee before either High Court or appellate authority, and before disciplinary authority, he not only took part without any demur, but cross examined witnesses and entered his defence.

D

Misconduct—Condonation of—Held: Terms and conditions of employees were governed by a statute and disciplinary authority by reason of rules framed, was delegated with power to initiate departmental proceedings against employee and impose suitable punishment if misconduct was proved—In such E *a case concept of contract of personal service as understood in common parlance is not applicable and doctrine of condonation of misconduct evolved by ordinary law of 'master and servant' is not attracted—On facts, held that though the delinquent employee was suspended, non initiation of disciplinary proceeding due to pendency of criminal proceedings against him did not itself mean that there was a conscious act on part of employer to condone* F *his misconduct—State Bank of India Act, 1955.*

Principle of natural justice—Observance of—Disciplinary Authority while differing with findings of inquiry officer not issuing show cause notice to employee—Effect of—Held: Though it was a flagrant violation of principles G *of natural justice, that itself did not cause prejudice to employee and his order of dismissal from service could not be rendered a nullity for that reason—It was not a case where there was gross violation of principles of natural justice in the sense that no disciplinary proceeding was initiated at all or no hearing was given.*

H

One of several charges against employee disproved—Effect of—Held: Charges against employee were of similar nature in respect of misconduct on number of occasions—Disproved charge was independent and severable since one misconduct had nothing to do with commission of similar nature of misconduct on all other occasions—Its disproof could not affect sustainability of punishment of removal from service of delinquent employee.

Quantum of punishment—Jurisdiction of court to interfere—Held: It is limited and exercised only in very exceptional case—Article 136 of Constitution of India, 1950.

Appellant was working with respondent-bank. For his misbehavior with a senior officer of respondent he was placed under suspension. In disciplinary proceedings he was found guilty and censured, but allowed to join his duties. However, he started misbehaving with senior officers again as also with customers of respondent by using abusive language and passing derogatory remarks. One Branch Manager, having been abused and threatened to be hit by appellant, lodged First Information Reports against him. For this, he was placed under suspension by Disciplinary Authority. In criminal proceedings, he was acquitted, getting benefit of doubt. Disciplinary Authority thereafter issued a charge sheet against him for his purported misbehaviour. In domestic inquiry conducted thereafter, appellant entered into defence, exhibited several documents and cross examined witnesses in relation to each of the charges. The Inquiry Officer found him guilty of all the charges except one. The Disciplinary Authority, however, differed with those findings as regards the said one charge and recommended his dismissal from services. This recommendation was accepted by Appointing Authority. Against this, appeal of appellant before Appellate Authority was dismissed. High Court upheld dismissal of his appeal. Hence the present appeal.

Appellant contended that (i) respondent condoned his misconduct as disciplinary proceedings were initiated after delay of three years from alleged incident; (ii) prior to imposition of penalty on him, he was denied the opportunity to represent his case to inquiry officer as he was not given copy of enquiry report, and also when disciplinary authority disagreed with findings of inquiry officer as regard one of the charges; (iii) that non-observance of principle of natural justice itself caused prejudice him.

Respondent contended that (i) delay in initiating disciplinary action did not prejudice the appellant as all witnesses were available to prove charges against him, they were fully cross-examined and appellant defended himself

A fully before disciplinary authority; (ii) in law the disciplinary authority was not required to furnish copy of enquiry report to appellant (iii) fact that disciplinary authority did not give him opportunity of hearing while differing with findings of inquiry officer did not prejudice him; (v) findings of inquiry officer in respect of one charge where he was not found guilty being severable, punishment would still be sustainable (v) quantum of punishment was not B required to be interfered with as appellant did not reform himself despite opportunities for same, and continued to commit similar nature of misconduct.

Dismissing the appeal, the Court

C HELD 1.1. The validity of the disciplinary proceedings and/or justifiability thereof on the ground of delay or otherwise had never been raised by the appellant before any forum. It was not his case either before the Appellate Authority or before the High Court that by reason of any delay in initiating the disciplinary proceeding he had been prejudiced in any manner whatsoever. He did not raise such a question even before the Disciplinary D Authority. He not only took part therein without any demur whatsoever, but cross examined the witnesses and entered into the defence. [466-F; 470-C]

1.2. It may be true that delay itself may be a ground for arriving at a finding that enquiry proceeding was initiated in the even it is shown that by reason thereof the delinquent officer has been prejudiced, but no such case E was made out. [466-G]

Additional Supdt. of Police v. *T. Natarajan,* [1999] SCC L&S 646, relied on.

State of M.P. and Ors. v. *R.N. Mishra and Anr.,* [1977] 7 SCC 644 and F *State of M.P.* v. *Bani Singh and Anr.,* [1990] Supp SCC 738, distinguished.

State of Punjab and Ors. v. *Chaman Lal Goyal,* [1995] 2 SCC 570, referred to.

2.1. The order of suspension was passed as far back as, *inter alia*, in G contemplation of initiation of a disciplinary proceedings. It may be true that no disciplinary proceeding was initiated against the Appellant, as a criminal proceeding was pending against him. But, only because the criminal proceeding was pending, the same itself may not be a ground to hold that there had been a conscious act on the part of the respondents to condone the misconduct on H the part of the Appellant. [467-B]

2.2. The terms and conditions of the employees of the Respondent-Bank are governed by a statute. The Disciplinary Authority, by reason of the Rules framed, was delegated with the power of the Bank to initiate departmental proceeding against the delinquent officer and impose suitable punishment upon him, if the misconduct is proved. In this case, concept of contract of personal service as is understood in common parlance is not applicable. The doctrine of condonation of misconduct so evolved by ordinary law of 'master and servant' is thus, not attracted in this case. [467-C, D]

L.W. Middleton **v.** *Harry Playfair,* **(1925) Calcutta 87 and** *District Council, Amaroti through Secretary* **v.** *Vithal Vinayak Bapat,* **AIR (1941) Nagpur 125, referred to.**

3.1. The principles of natural justice cannot be put in a straight jacket formula. It must be seen in circumstantial flexibility. [470-D]

Ajit Kumar Nag **v.** *General Manager (PJ), Indian Oil Corpn. Ltd. Haldia and Ors.,* **[2005] 7 SCC 764;** *Viveka Nand Sethi* **v.** *Chariman, J&K Bank Ltd. and Ors.,* **[2005] 5 SCC 337;** *State of U.P.* **v.** *Neeraj Awasthi and Ors.,* **JT (2006) 1 SC 19 and** *Mohd. Sartaj* **v.** *State of U.P.,* **referred to.**

3.2. There has been a flagrant violation of principles of natural justice in so far as no show cause notice was issued to the appellant by the Disciplinary Authority while differing with the findings of the inquiry officer as regard charge no 2. [472-F]

Ranjit Singh **v.** *Union of India and Ors.,* **(2006) 4 Scale 154 and** *Punjab National Bank and Ors.* **v.** *Kunj Behari Mishra,* **[1998] 7 SCC 84, relied on.**

3.3. Non-observance of principle of natural justice did not itself cause prejudice to appellant. [473-B]

3.4. The principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principle of doctrine of *audi alterem partem,* **a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principal. [473-D]**

State Bank of Patiala and Ors. **v.** *S.K. Sharma,* **[1996] 3 SCC 364,** *Rajendra Singh* **v.** *State of M.P.* **[1996] 5 M.P. 5 SCC 460;** *Canara Bank and Ors.* **v.** *Debasis Das and Ors.,* **[2003] 4 SCC 577 and** *Managing Director, ECIL,*

A *Hyderabad and Ors.* v. *B. Karunakar and Ors.*, [1993] 4 SCC 727, relied on.

S.L. Kapoor v. *Jagmohan and Ors.*, [1980] 4 SCC 379 and *Union of India and Anr.* v. *Tulsi Ram Patel,* [1985] Supp 2 SCR 131, held inapplicable.

3.5. It is not a case where there had been gross violation of principles
B of natural justice in the sense that no disciplinary proceeding was initiated at all or no hearing was given. [475-C]

4. It cannot be said that only because a copy of the enquiry report was not furnished to the appellant by the Disciplinary Authority, there has been a violation of the mandatory provisions of the regulations. It was not at all
C necessary for the Disciplinary Authority, keeping in view the law as it then stood, to furnish a copy of the enquiry report to the Appellant.

[472-G; 473-B]

Union of India and Ors. v. *Mohd. Ramzan Khan,* [1991] 1 SCC 588 held
D inapplicable.

5.1. The pattern of charges against appellant categorically point out to the fact that the appellant had been misbehaving with the Regional Managers and other officers, as well as the customers while he was posted in different branches. [466-C]

E *Orissa Cement Ltd.* v. *Adikanda Sahu,* (1960) 1 LLJ SC 518 and *Mahindra and Mahindra Ltd.* v. *N.N. Narawade etc,* JT (2005) 2 SC 583, relied on.

5.2. The charges against the Appellant are almost identical. Primarily,
F charges of similar nature in respect of commission of misconduct on nine different occasions were the subject matter of the disciplinary proceeding. Charge no. 2 constituted an independent charge, as commission of one misconduct had nothing to do with the commission of similar nature of misconduct on all other occasions. The said charge was, therefore, severable.

[476-E]

G *State of Orissa and Ors.* v. *Bidvabhushan Mohapatra,* [1963] Supp 1 SCR 648, followed.

Sawarn Singh and Anr. v. *State of Punjab and Ors.*, [1976] 2 SCC 868, relied on.

H *Binny Ltd.* v. *Workmen,* AIR (1972) SC 1975, referred to.

6.1. The jurisdiction of the Court to interfere with the quantum of punishment is limited. While exercising the said jurisdiction, the Court, only in very exceptional case, interferes therewith. [478-D] A

Chairman and M.D., Bharat Pet. Corpn. Ltd. & Ors. **v.** *T.K. Raju,* **JT 2 SC 624 and** *A. Sudhakar* **v.** *Post Master General, Hyderabad and Anr.,* **JT (2006) 4 SC 68, relied on.** B

6.2. It is not a fit case where this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India. [479-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7686 of 2004. C

From the final Judgment and Order dated 16.12.2003 of the High Court of Madhya Pradesh at Jabalpur in L.P.A. No. 363 of 1998.

P.P. Rao, Prakash Shrivastava, Hari Kumar G, Miten Mahapatra and Anuradha Mutatkar for the Appellant. D

V.A. Bobde, Sanjay Kapur, Rajiv Kapur, Shubhra Kapur and Arti Singh for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. The Appellant herein was working as a Junior Manager, Grade-I in a Branch office of the 1st Respondent-Bank, herein. On or about 29.9.1984 he is said to have misbehaved with the Regional Manager of the Bank. He was placed under suspension. Disciplinary proceedings were also initiated against him on 26.11.1984. He was found guilty of the misconduct alleged against him. On earlier occasion also, he was found guilty for misbehaviour wherefor, he had been censured. He was thereafter allowed to join his duties. The Appellant, however, despite imposition of the said penalties on him, started misbehaving with the senior officers again as also with the customers by using abusive language and passing derogatory remarks during the period 8.9.1986 to 27.9.1986. During the said period, it may be mentioned, he was posted in different branches. A disciplinary proceeding was started against him. The charges levelled against him were as under: E F G

"Katni Market Branch

1. You created an unpleasant scene and atmosphere by using unparliamentary language against the local authorities of the H

A Branch in a calculated attempt to denigrate the said authority, which act of yours damaged/tarnished the image of the Bank.

Churcha Branch

2. You disobeyed the lawful and reasonable orders of the superiors. You also crossed the boundaries of decorum and decency. You B have thus acted in a manner unbecoming of an official of the Bank.

3. You disregarded the lawful instructions of the superiors.

Shahdol Branch

C

4.(a) By your acts you have disobeyed the lawful instructions of the superiors. You also displayed gross negligence in performance of your duties.

(b) By your acts you disobeyed the lawful and reasonable orders of D the Bank. You also showed insubordination to the superior authorities. Your acts are unbecoming of officer of the Bank.

(c) By your acts you intentionally showed insubordination to the superior authorities of the Bank. You thus acted in a manner unbecoming of an official of the Bank.

E (d) You created a feeling of insecurity amongst the staff members. You have acted in a manner unbecoming of an official of the Bank.

Jabalpur Regional Office

F 5. You failed to obey the reasonable and lawful orders of the Bank and behaved in a manner unbecoming of an official of the Bank.

The above charges, if proved, are tantamount to misconduct in contravention of Rules 32(1) and 32(4) and (5) of the State Bank of India (Supervising Staff) Service Rules governing our services."

G

One Shri R.K. Sharma, Branch Manager, having been abused and threatened to be hit by shoes by the Appellant, lodged two First Information Reports (FIR) against the Appellant pursuant whereto two cases under Section 353 of the Indian Penal Code were initiated in respect of the incidents which took place on 16.10.1986 and 23.10.1986. He was placed under suspension by H an order dated 11.11.1986 by the Disciplinary Authority stating:

"It has been reported that soon after your reinstatement on 16th August, 1986 on conclusion of major penalty proceedings against you, you again misbehaved with your colleagues, senior officer and also some of the outsiders and used abusive language passing derogatory remarks during your recent stay at different branches viz. Katni Market, Churcha and Shahdol branches. This has tarnished the image of the bank and resulted in your arrest by the local police on 16th October, 1986 and thereafter on 23rd October, 1986 under sections 353, 448 and 506 of Indian Penal Code. The nature and extent of the misbehaviour indicates that the established authorities of the Bank and certain other functionaries in the Regional Office and engendering indiscipline amongst the staff."

He was, however, acquitted of the charges levelled against him in the criminal proceedings by a learned Judicial Magistrate by a judgment dated 7.5.1988, *inter alia*, on the ground that the same could not be proved beyond reasonable doubt.

The Disciplinary Authority thereafter issued a charge sheet against him for his purported misbehaviour during the period 8.9.1986 to 27.9.1986 to which we have referred to hereinbefore. An Inquiry Officer was appointed to enquire into the said charges. Before the said Inquiry Officer several witnesses were examined. In relation to each of the charges, the witnesses, indisputably, were cross-examined. The Appellant also entered into defence and several documents on his behalf were exhibited.

The Inquiry Officer considered all the materials brought on record, including the judgment passed in his favour in the criminal case. The Appellant was found guilty of all the charges except the charge No. 2.

The Disciplinary Authority, however, differed with the findings of the Inquiry Officer as regards the said charge No. 2 and recommended for his dismissal from services to the Appointing Authority stating:

"2. I am in agreement with the findings of the Inquiring Authority in respect of all the allegation/charges except allegations/charge No. 2. In respect of allegation No. 2, on perusal of deposition of Shri K.C. Tiwari (the maker of PEX-3) I find that DEX-1 was written by him under pressure of the charge sheeted official. Further PEX-4 was written by Shri Tiwari on receipt of the letter of Regional Office (DEX-3). However, nothing has been established during the course of the

A enquiry that the letter PEX-3 was written under pressure. Therefore, I am not in agreement with the Inquiring Authority that the letter (PEX-3) was not written of his own volition, and placing reliance on PEX-3, I hold the allegation and the charge as fully proved.

3. In this connection, I have also perused/examined and considered
B the past record of the official. I find that earlier also the official was placed under suspension for similar type of acts of misconduct and was proceeded against for major penalty. On conclusion of the enquiry he was inflicted upon the penalty of "Censure" by the Disciplinary Authority considering that he suffered mental agony and that the act
C was the first riotous act during his service and with a view to give him an opportunity to reform himself. Despite this, I find that the official has repeated such type of misconduct proving that the earlier decision of the Disciplinary Authority did not have any reformative impact upon the official.

D 4. The ingredients of the proved/partly proved allegations/charges in the instant case are so grave that the official does not deserve to be continued in the Bank's service. I, therefore, recommend that the penalty of "Removal from Bank's service" as provided for in Rule No. 49(g) of the State Bank of India (Supervising Staff) Service Rules may be inflicted upon the official treating his period of suspension as
E such. Accordingly, he will not be eligible for any back wages for the period of his suspension. The order shall be effective from the date of its receipt by the official."

It is not disputed that the Disciplinary Authority, prior to making the said recommendations, did not assign any reason for expressing his difference
F of opinion with the Inquiry Officer as regard the said charge No. 2, nor served the delinquent officer with a show cause nor he was served with a copy of the enquiry report. The Appointing Authority, however, relying on or on the basis of the said recommendations of the Disciplinary Authority, as also upon consideration of the materials on record, while forwarding a copy of the report
G of the Inquiry Officer, imposed upon the Appellant a punishment of removal from service stating:

"I have perused the records of the enquiry in its entirety and concur with the reasonings/findings recorded in the "Note" of the Disciplinary Authority. Accordingly, I am in agreement with the
H recommendations of the Disciplinary Authority that you do not deserve

to be continued in the Bank's service. I have, therefore, decided to inflict upon you the penalty of "Removal from service" in terms of Rule No. 49(g) of the State Bank of India (Supervising Staff Service Rules governing your services in the Bank read with Rule No. 50(3)(iii) ibid., which I hereby do. Further, you will also not be paid the salary and allowances for the period of your suspension except the subsistence allowance already paid to you, as the period of suspension has been treated as such by me. The order shall be effective from the date of receipt of this letter by you. Please note that a copy of this order is being placed in your service file."

The Appellant herein, thereafter, preferred an appeal before the Appellate Authority. As regards the opinion of the Disciplinary Authority, so far as charge No. 2 is concerned, he stated:

"The enquiring authority held this charge disproved but the disciplinary authority reversed the findings of E/A and deemed the charge as proved. The act of disciplinary authority having given weightage to the CSO pressure on BM Churcha requires to be reviewed in the light of the fact that the Regional Manager's say in the matter was not considered the pressure to whom BM is subordinate but an OJM on deputation to the branch could pressurise the BM Churcha. The perusal of relative portion of enquiry proceedings will reveal that the entire issue was framed by BM Churcha on instance of the respective Regional Manager. It is, therefore, requested to your honour to take an independent view in the matter."

No plea was raised by the Appellant that he was prejudiced in any manner either by reason of any delay, which might have taken place in holding the disciplinary proceeding, or by reason of the Disciplinary Authority's dissatisfaction as regards thereto and/or non-grant of an opportunity of hearing to him. The said appeal, upon consideration of the contentions raised by the Appellant herein, was dismissed by the Appellate Authority by an order dated 16.6.1992 stating:

"Discipline and decency will have to be maintained at all costs and breach thereof will have to be severely dealt with. Further, the official was given an opportunity to reform himself on an earlier occasion but he failed to eschew his defiant attitude. I am, therefore, in full agreement with the appointing Authority's decision to impose the exemplary punishment of removal from service on Shri Agarwal.

A However, to reduce the financial hardships faced by the appellant, I am inclined to consider the period of suspension from 11.11.1986 to 22.7.1990 on duty."

He filed a writ petition questioning the legality of the said order, which was dismissed. A Letters Patent Appeal preferred by the Appellant thereagainst B was also dismissed by a reasoned order.

Mr. P.P. Rao, learned Senior counsel appearing on behalf of the Appellant has raised the following contentions in support of this appeal:

(i) The penalty of removal from service, imposed upon the Appellant C by the Disciplinary Authority, was illegal as prior thereto a copy of the enquiry report was not furnished to him and thus: (a) the Appellant was denied an opportunity to present his case against the findings of the Inquiry Officer; (b) a similar opportunity was denied to him by the Disciplinary Authority when he differed with the finding of the Inquiry Officer as regard D charge No. 2;

(ii) As violation of the principle of natural justice itself causes prejudice, it was not necessary for the Appellant to raise the said contention expressly, as also for the violation of Article 14 of the Constitution of India;

E (iii) The High Court committed a manifest error in passing the impugned judgment in so far as it held that the principles of natural justice had been complied with as the Appellant herein got an opportunity of hearing before the Appellate Authority;

(iv) The disciplinary proceedings were initiated after delay of about F three years from the alleged incidents, on the basis whereof the charges had been framed against him and as such the entire disciplinary proceeding was vitiated;

(v) In any event such inaction on the part of the Disciplinary Authority for a long time would amount to condonation of the acts of alleged misconduct;

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(vi) The disciplinary proceeding, being *mala fide*, is violated in law;

(vii) The punishment imposed upon the Appellant was disproportionate to the gravity of the misconduct, for which the Appellant was charged, and, thus, deserve to be set aside by this Court.

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Mr. V.A. Bobde, learned Senior counsel appearing on behalf of the Respondents, on the other hand, would contend: A

(i) The Appellant did not plead or prove any prejudice having been caused to him before the Appellate Authority in view of the fact that he himself invited it to deal with the matter on merit;

B

(ii) It is not a case where delay in initiating the Disciplinary Authority caused any prejudice to the Appellant as: (a) all witnesses were available to prove the charges against him; (b) the witnesses were fully cross-examined; and (c) the Appellant fully defended himself before the Disciplinary Authority.

(iii) In respect of findings of the Inquiry Officer *vis-a-vis* the other charges being severable, even if the Appellant was held to be not guilty of commission thereof, the impugned order of punishment would be sustainable. C

(iv) So far as non-furnishing of copy of the enquiry report is concerned, having regard to the fact that the decision of this Court in *Union of India & Ors.* v. *Mohd. Ramzan Khan,* [1991] 1 SCC 588, was rendered on 20th November, 1990, and it having only a prospective application and the impugned order of punishment having been passed on 20th July, 1990, in law the Disciplinary Authority was not required to furnish a copy of the enquiry report to the Appellant; D

E

(v) Compliance of principles of natural justice not only varies from case to case, in a situation of the present nature, the same would be deemed to have been waived as by reason of non-issuance of a show cause notice upon the Appellant by the Disciplinary Authority, while differing with the findings of the Inquiry Officer on charge No. 2, he was not at all prejudiced as he himself .had called upon the Appellate Authority to decide the matter on its own merit and the impugned order may not be interfered with. F

(vi) No case has been made out for interference with the quantum of punishment by this Court having regard to the fact that despite opportunities having been granted to the Appellant to reform himself, he continued to commit similar nature of misconduct, namely, using abusive and unparliamentary language and threatenings to assault the senior officers and others. G

The Respondent No. 1 is a statutory authority, having been created under the State Bank of India Act, 1955.

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A The terms and conditions of the employees of the 1st Respondent herein, thus, are governed by the statutory Rules framed in this behalf including the State Bank of India (Supervisory Staff) Service Rules (the 'Rules', for short). Rule 49 of the said Rules provides for the mode and manner in which the disciplinary proceedings are required to be initiated. The said Rules also provide for imposition of minor and major penalties. In terms B of the proviso appended to Rule 50(1)(i), where the Disciplinary Authority is lower in rank than the Appointing Authority in respect of the category of the employees to which he belongs to, no order imposing any of the major penalties can be passed, except by the Appointing Authority or an authority higher than it on the recommendations of the Disciplinary Authority.

C The pattern of charges against the Appellant, categorically point out to the fact that the Appellant had been misbehaving with the Regional Managers and other officers, as well as the customers not only while he was posted in different branches.

D Charge No. 2 refers to an incident, which took place on 26.9.1986. The said charge, admittedly, was not proved. However, it is not disputed that in respect of charge No. 1 witnesses were examined on behalf of the 1st Respondent. They were thoroughly cross-examined by the Appellant. Documentary evidences were also adduced by the parties. So far charge No. 3 is concerned, only one witness was examined on behalf of the 1st Respondent. E The Appellant therein exhibited four documents in support of his case. The 1st Respondent also exhibited some documents. Similarly, in relation to each other charge witnesses were examined on behalf of the 1st Respondent; they were cross-examined and documents were exhibited.

F The validity of the disciplinary proceeding and/or justifiability thereof on the ground of delay or otherwise had never been raised by the Appellant before any forum. It was not his case either before the Appellate Authority or before the High Court that by reason of any delay in initiating the disciplinary proceeding he had been prejudiced in any manner whatsoever. It may be true that delay itself may be a ground for arriving at a finding that enquiry G proceeding was vitiated in the event it is shown that by reason thereof the delinquent officer has been prejudiced, but no such case was made out.

Mr. Rao urged that the Respondents must have condoned the misconduct on the part of the Appellant herein as they have not taken any action and initiated disciplinary proceeding after he was placed under suspension. Reliance H

in this behalf has been placed on *State of M.P. & Ors.* v. *R.N. Mishra & Anr.*, [1997] 7 SCC 644. A

The order of suspension was passed as far back in 1986, *inter alia*, in contemplation of initiation of a disciplinary proceeding. It may be true that no disciplinary proceeding was initiated against the Appellant, as a criminal proceeding was pending against him. But, only because the criminal proceeding B was pending, the same itself may not be a ground to hold that there had been a conscious act on the part of the Respondents herein to condone the misconduct on the part of the Appellant herein.

The terms and conditions of the employees of the Respondent-Bank are C governed by a statute. The Disciplinary Authority, by reason of the Rules framed, was delegated with the power of the Bank to initiate departmental proceeding against the delinquent officer and impose suitable punishment upon him, if the misconduct is proved. In this case concept of contract of personal service as is understood in common parlance is not applicable. The doctrine of condonation of misconduct so evolved by ordinary law of 'master D and servant' is thus, not attracted in this case. Under the common law, as also the provisions contained in Section 14(1)(b) of the Specific Relief Act, a master was entitled to terminate the services of an erring employee at his sweet will. The dismissed employee could have sued his master only for damages and not for his reinstatement in service. It is only for the purpose of grant of damages, a declaration was required to be made that the termination E of the service was illegal. Having regard to the said legal position, the doctrine of condonation of misconduct evolved, in terms whereof, it was impermissible for the master to allow an employee to continue in service for a long time despite his knowledge that he had committed a misconduct and then to turn round and contend that his services should have been terminated F on the ground that he was guilty of misconduct.

We may notice some decisions cited at the Bar.

In *L.W. Middleton* v. *Harry Playfair*, (1925) Calcutta 87, the Calcutta High Court was concerned with the terms and conditions of service governed G by contract and not by a statute. The suit was filed by the manager of a Tea Estate for recovery of arrears of salary and damages for beach of contract of employment.

In *District Council, Amraoti through Secretary* v. *Vithal Vinayak Bapat*, H

A AIR (1941) Nagpur 125, Vivian Bose, J., following L.W. Middleton (supra), the Nagpur High Court held:

> "Once a master has condoned any misconduct which would have justified dismissal or a fine, he cannot after such condonation go back upon his election to condone and claim a right to dismiss him (servant)
B or impose a fine or any other punishment in respect of the offence which has been condoned. This rule is to be found in AIR 1925 Cal 87 and in many other cases."

In *R.N. Mishra* (supra), this Court, in view of the fact situation obtaining therein opined that the employer had condoned the misconduct stating:
C

> "In the present case, misconduct attributed to the respondent came to light in the year 1976 when a preliminary inquiry was ordered and while the inquiry was continuing, the State Government was required to consider the case of the respondent for promotion to the
D post of Assistant Conservator of Forest. Under law, the State Government had no option but to consider the case of the respondent for promotion. The State Government could not have excluded the respondent from the zone of consideration merely on the ground that a preliminary inquiry to enquire into the allegations of misconduct attributed to him was pending. In such a situation, the doctrine of
E condonation of misconduct cannot be applied as to wash off his acts of misconduct which was the subject-matter of preliminary enquiry. We are, therefore, of the opinion that the promotion of the respondent to the post of Assistant Conservator of Forest would not amount to condonation of misconduct alleged against him which was the subject-matter of preliminary inquiry. Consequently, the punishment imposed
F on the respondent by the State Government was valid and legal. The decision relied upon by the Tribunal as well as by the learned counsel for the respondent in the case of *Lal Audhraj Singh* v. *State of M.P.* is not applicable to the facts of the present case, as in that case, the employer had a choice to inflict punishment on the employee but the
G employer did not choose to punish the employee and in that context, it was held by the High Court that the misconduct attributable to the employee was condoned."

However, for the purpose of holding that misconduct was condoned by the employer the Court must come to a definite finding as regard the conduct
H of the employer. It must be held that either expressly or by necessary implication

that the employer had knowledge of the misconduct of the employee. It is one thing that despite such knowledge, the delinquent officer is promoted to which he would not have been otherwise entitled to or if the disciplinary proceeding had been initiated as if the misconduct was not committed for and it is another thing to say that such a misconduct was not required to be taken into consideration as by reason of the service Rule, promotion was to be granted on the basis of seniority alone, and, thus, the question of condonation of misconduct on the part of the employer would not arise.

In *State of M.P.* v. *Bani Singh & Anr.*, [1990] Supp. SCC 738, whereupon Mr. Rao placed strong reliance, this Court opined that by reason of delay of 12 years in initiating the disciplinary proceeding, the delinquent officer could not defend himself properly. In that case there was no satisfactory explanation such a long delay. There was also doubt as regards the involvement of the delinquent officer.

In *State of Punjab & Ors.* v. *Chaman Lal Goyal,* [1995] 2 SCC 570, however, this Court refused to set aside those disciplinary proceeding which had been initiated after a delay of 5½ years. Distinguishing the decision of this Court in *Bani Singh & Anr.*, (supra), it was stated:

> "Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, *mala fides* and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing."

A In *Additional Supdt. of Police* v. *T. Natarajan,* [1999] SCC (L&S) 646, this Court held:

> "In regard to the allegation that the initiation of the disciplinary proceedings was belated, we may state that it is settled law that mere delay in initiating proceedings would not vitiate the enquiry unless
B the delay results in prejudice to the delinquent officer. In this case, such a stage as to examine that aspect has not arisen."

In this case, as noticed hereinbefore, the Appellant did not raise the question of delay before any forum whatsoever. He did not raise such a question even before the Disciplinary Authority. He not only took part therein
C without any demur whatsoever, but, as noticed hereinbefore, cross-examined the witnesses and entered into the defence.

The Principles of natural justice cannot be put in a straight jacket formula. It must be seen in circumstantial flexibility. It has separate facets. It
D has in recent time also undergone a sea change.

In *Ajit Kumar Nag* v. *General Manager (PJ), Indian Oil Corpn. Ltd., Haldia & Ors.,* [2005] 7 SCC 764, a Three Judge Bench of this Court opined:

> "We are aware of the normal rule that a person must have a fair trial and a fair appeal and he cannot be asked to be satisfied with an
E unfair trial and a fair appeal. We are also conscious of the general principle that pre-decisional hearing is better and should always be preferred to post-decisional hearing. We are further aware that it has been stated that apart from Laws of Men, Laws of God also observe the rule of *audi alteram partem.* It has been stated that the first
F hearing in human history was given in the Garden of Eden. God did not pass sentence upon Adam and Eve before giving an opportunity to show cause as to why they had eaten the forbidden fruit. (See *R.* v. *University of Cambridge*[18].) But we are also aware that the principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straitjacket. They must yield to and change with
G exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. It has been stated: " 'To do a great right' after all, it is permissible sometimes 'to do a little wrong'." [Per Mukharji, C.J. in *Charan Lal Sahu* v. *Union of India*[19] (*Bhopal Gas Disaster*), SCC p. 705, para 124.] While interpreting legal provisions,
H a court of law cannot be unmindful of the hard realities of life. In our

opinion, the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than "precedential". A

In *Canara Bank & Ors.* v. *Debasis Das & Ors.*, [2003] 4 SCC 557], this Court referred to the prejudice doctrine stating: B

> "Additionally, there was no material placed by the employee to show as to how he has been prejudiced. Though in all cases the post-decisional hearing cannot be a substitute for pre-decisional hearing, in the case at hand the position is different."

The question as to whether in this case there has been a gross violation of principles of natural justice will have to be considered from two different angles. C

Firstly, the effect of the Disciplinary Authority having not given him an opportunity of hearing while differing with the findings of the Inquiry Officer as has been laid down in *Punjab National Bank & Ors.* v. *Kunj Behari Mishra,* [1998] 7 SCC 84 may be noticed. D

In *Ranjit Singh* v. *Union of India & Ors.*, (2006) 4 SCALE 154, following *Punjab National Bank* (supra), it was held:

> "In view of the aforementioned decisions of this Court, it is now well settled that the principles of natural justice were required to be complied with by the Disciplinary Authority. He was also required to apply his mind to the materials on record. The Enquiry Officer arrived at findings which were in favour of the Appellant. Such findings were required to be over turned by the Disciplinary Authority. It is in that view of the matter, the power sought to be exercised by the Disciplinary Authority, although not as that of an appellate authority, but akin thereto. The inquiry report was in favour of the Appellant but the Disciplinary Authority proposed to differ with such conclusions and, thus, apart from complying with the principles of natural justice it was obligatory on his part, in absence of any show cause filed by the Appellant, to analyse the materials on records afresh. It was all the more necessary because even the CBI, after a thorough investigation in the matter, did not find any case against the Appellant and thus, filed a closure report. It is, therefore, not a case where the Appellant was exonerated by a criminal court after a full fledged trial by giving E F G H

A benefit of doubt. It was also not a case where the Appellant could be held guilty in the disciplinary proceedings applying the standard of proof as preponderance of the probability as contrasted with the standard of proof in a criminal trial, i.e., proof beyond all reasonable doubt. When a final form was filed in favour of the Appellant, the CBI even did not find a *prima facie* case against him. The Disciplinary B Authority in the aforementioned peculiar situation was obligated to apply his mind on the materials brought on record by the parties in the light of the findings arrived at by the Inquiry Officer. He should not have relied only on the reasons disclosed by him in his show cause notice which, it will bear repetition to state, was only tentative C in nature. As the Appellate Authority in arriving at his finding, laid emphasis on the fact that the Appellant has not filed any objection to the show cause notice; ordinarily, this Court would not have exercised its power of judicial review in such a matter, but the case in hands appears to be an exceptional one as the Appellant was exonerated by the Inquiry Officer. He filed a show cause but, *albeit* after some time D the said cause was available with the Disciplinary Authority before he issued the order of dismissal. Even if he had prepared the order of dismissal, he could have considered the show cause as it did not leave his office by then. The expression "communication" in respect of an order of dismissal or removal from service would mean that the same E is served upon the delinquent officer. [See *State of Punjab* v. *Amar Singh Harika,* AIR (1966) SC 1313]"

Contention of Mr. Bobde in this behalf that he was not prejudiced thereby cannot be accepted. There has been a flagrant violation of principles of natural justice in so far as no show cause notice was issued to the F Appellant by the Disciplinary Authority while differing with the findings of the Inquiry Officer as regard charge No. 2. We would deal with this aspect of the matter a little later.

However, the contention of Mr. Rao that only because a copy of the enquiry report was not furnished to the Appellant by the Disciplinary Authority, G there has been a violation of the mandatory provisions of the regulations, cannot also be accepted for the reasons stated hereinafter.

The order of punishment of removal against the Appellant was passed against the Appellant on 22nd July, 1990. The decision of this Court in *Mohd. Ramzan Khan* (supra), as noticed hereinbefore, was decided on 20th November, H

1990 wherein the law laid down by this Court, while holding that a delinquent officer cannot be called upon to make a representation on the quantum of punishment without furnishing a copy of the enquiry report, was expressly given a prospective effect. It was, therefore, not at all necessary for the Disciplinary Authority, keeping in view the law as it then stood, to furnish a copy of the enquiry report to the Appellant.

Decision of this Court in *S.L. Kapoor* v. *Jagmohan & Ors.*, [1980] 4 SCC 379, whereupon Mr. Rao placed strong reliance to contend that non-observance of principle of natural justice itself causes prejudice or the same should not be read "as it causes difficulty of prejudice", cannot be said to be applicable in the instant case. The principles of natural justice, as noticed hereinbefore, has undergone a sea change. In view of the decision of this Court in *State Bank of Patiala & Ors.* v. *S.K. Sharma,* [1996] 3 SCC 364 and *Rajendra Singh* v. *State of M.P.*, [1996] 5 SCC 460, the principle of law is that some real prejudice must have been caused to the complainant. The Court has shifted from its earlier concept that even a small violation shall result in the order being rendered a nullity. To the principal doctrine of *audi alterem partem*, a clear distinction has been laid down between the cases where there was no hearing at all and the cases where there was mere technical infringement of the principal. The Court applies the principles of natural justice having regard to the fact situation obtaining in each case. It is not applied in a vacuum without reference to the relevant facts and circumstances of the case. It is no unruly horse. It cannot be put in a straightjacket formula. [See *Viveka Nand Sethi* v. *Chairman, J. & K. Bank Ltd. & Ors.*, [2005] 5 SCC 337 and *State of U.P.* v. *Neeraj Awasthi & Ors.*, JT (2006) 1 SC 19. See also *Mohd. Sartaj* v. *State of U.P.*, (2006) 1 SCALE 265.]

In *Union of India & Anr.* v. *Tulsi Ram Patel,* [1985] Supp. 2 SCR 131 : [1985] 3 SCC 398], whereupon again Mr. Rao placed strong reliance, this Court did not lay down a law in absolute terms that violation of principle of natural justice would be read into the equality clause contained in Article 14 of the Constitution of India. The said decision was rendered having regard to the fact that by taking recourse to the second proviso appended to Article 311 of Constitution of India, no disciplinary proceeding was to be initiated at all and an order of dismissal could be passed only on the basis of subjective satisfaction of the authority empowered to dismiss or remove a person or to reduce him in rank wherefor reason was to be recorded by it in writing that it was not reasonably practicable to hold a disciplinary proceeding. The facets of the principle of natural justice was considered in some details in *State*

A *Bank of Patiala & Ors.* v. *S.K. Sharma,* [1996] 3 SCC 364, wherein this Court categorically held:

> "Now, coming back to the illustration given by us in the preceding para, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests
B of justice or would it be its negation? In our respectful opinion, it would be the latter. 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
C 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."

It was opined that in an appropriate case, the said right could also be waived, stating:

D

> "If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may
E be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases."

It was further held:

F

> "Where the enquiry is not governed by any rules/regulations/ statutory provisions and the only obligation is to observe the principles of natural justice - or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action - the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of *audi alteram partem*) and violation
G of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no *adequate* opportunity, i.e., between "no notice"/"no hearing" and "no fair hearing". (a) In the case of former, the order passed would undoubtedly be invalid (one may call it 'void' or a nullity if one
H chooses to). In such cases, normally, liberty will be reserved for the

Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (*audi alteram partem*). (b) But, in the latter case, the effect of violation (of a facet of the rule of *audi alteram partem*) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query." A B

It is not a case where there had been a gross violation of principles of natural justice in the sense no disciplinary proceeding was initiated at all or no hearing was given. C

In *Canara Bank & Ors.* (supra), a Division Bench of this Court held:

"It is to be noted that at no stage the employee pleaded prejudice. Both learned Single Judge and the Division Bench proceeded on the basis that there was no compliance with the requirement of Regulation 6(18) and, therefore, prejudice was caused. In view of the finding recorded supra that Regulation 6(18) has not been correctly interpreted, the conclusions regarding prejudice are indefensible." D

Even in *Managing Director, ECIL, Hyderabad & Ors.* v. *B. Karunakar & Ors.*, [1993] 4 SCC 727, this Court clearly held: E

".....The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. 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. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice." F G

It was further opined: H

A "....If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is B regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of C the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment..."

What then would be the consequence of violation of principles of D natural justice, so far as the dicta laid down by this Court in *Punjab National Bank & Ors.* (supra) is concerned is the question.

The charges against the Appellant are almost identical. Primarily, charges of similar nature in respect of commission of misconduct on nine different occasions were the subject matter of the disciplinary proceeding. The charge E No. 2 constituted an independent charge, as commission of one misconduct had nothing to do with the commission of similar nature of misconduct on all other occasions. The said charge was, therefore, severable.

A Constitution Bench of this Court in *State of Orissa & Ors.* v. F *Bidyabhushan Mohapatra,* [1963] Supp.1 SCR 648 : AIR 1963 SC 779 opined:

"The High Court has held that there was evidence to support the findings on heads (c) & (d) of Charge (1) and on Charge (2). In respect of charge 1(b) the respondent was acquitted by the Tribunal and it did not fall to be considered by the Governor. In respect of charges G 1(a) and 1(e) in the view of the High Court "the rules of natural justice had not been observed".....It is not necessary for us to consider whether the High Court was right in holding that the findings of the Tribunal on charges 1(a) and 1(e) were vitiated for reasons set out by it, because in our judgment the order of the High Court directing the Government to reconsider the question of punishment cannot, for H reasons we will presently set out, be sustained. If the order of dismissal

was based on the findings on charges 1(a) and 1(e) alone the Court would have jurisdiction to declare the order of dismissal illegal but when the findings of the Tribunal relating to the two out of five heads of the first charge and the second charge was found not liable to be interfered with by the High Court and those findings established that the respondent was *prima facie* guilty of grave delinquency, in our view the High Court had no power to direct the Governor of Orissa to reconsider the order of dismissal."

The Constitution Bench therein has clearly laid down that even if the charges which have been proved, justify imposition of punishment of dismissal from service, this Court may not exercise its power of judicial review.

The said decision was noticed by this Court in *Binny Ltd.* v. *Workmen,* AIR (1972) SC (1975) : [1972] 3 SCC 806, in the following terms:

".....It was urged that the Court should not have assumed that the General Manager would have inflicted the punishment of dismissal solely on the basis of the second charge and consequently the punishment should not be sustained if it was held that one of the two charges on the basis of which it was imposed was unsustainable. This was rejected following the decision in *State of Orissa* v. *Bidyabhan Mohapatra,* where it was said that if an order in an enquiry under Article 311 can be supported on any finding as substantial misdemeanour for which punishment imposed can lawfully be given, it is not for the Court to consider whether that ground alone would have weighed with the authority in imposing the punishment in question. In our view that principle can have no application to the facts of this case. Although the enquiry officer found in fact that the respondent had behaved insolently towards the Warehouse Master, he did not come to the conclusion that this act of indiscipline on a solitary occasion was sufficient to warrant an order of dismissal."

Yet again, in *Sawarn Singh & Anr.* v. *State of Punjab & Ors.,* [1976] 2 SCC 868, this Court held:

"19. In view of this, the deficiency or reference to some irrelevant matters in the order of the Commissioner, had not prejudiced the decision of the case on merits either at the appellate or revisional stage. There is authority for the proposition that where the order of a domestic tribunal makes reference to several grounds, some relevant

A and existent, and others irrelevant and non-existent, the order will be sustained if the Court is satisfied that the authority would have passed the order on the basis of the relevant and existing grounds, and the exclusion of irrelevant or non-existing grounds could not have affected the ultimate decision."

B We are, therefore, of the opinion that charge No. 2 being severable, this Court can proceed on the basis that the charges against the Appellant in respect of charge No. 2 was not proved.

In *Orissa Cement Limited* v. *Adikanda Sahu,* reported (1960) 1 LLJ SC
C 518 that a verbal abuse may entail imposition of punishment of dismissal from service.

The said decision has been followed in *Mahindra and Mahendra Ltd.* v. *N.N. Narawade etc.,* reported in JT (2005) 2 SC 583.

The question as regard the jurisdiction of this Court to interfere with
D the quantum of punishment, it is well known, is limited. While exercising the said jurisdiction, the Court, only in very exceptional case, interferes therewith.

In *Chairman & M.D., Bharat Pet. Corpn. Ltd. & Ors.* v. *T.K. Raju,* JT (2006) 2 SC 624, this Court opined:

E "15. We also do not agree with the submission of Mr. Krishnamani that two of the eight charges have not been found to be proved. The charges levelled against the respondent must be considered on a holistic basis. By reason of such an action, the respondent had put the company in embarrassment. It might have lost its image. It received
F complaints from the Federation. There was reason for the appellant to believe that by such an action on the part of the respondent the appellant's image has been tarnished. In any event, neither the learned Single Judge nor the Division Bench came to any finding that none of the charges had been proved.

G 16. The power of judicial review in such mattes is limited. This Court times without number had laid down that interference with the quantum of punishment should not be one in a routine manner."

[See also *A. Sudhakar* v. *Post Master General, Hyderabad & Anr.,* JT (2006) 4 SC 68].

H

For the reasons afore-mentioned, we are of the opinion that it is not a fit case where this Court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India. This appeal is, therefore, dismissed. However, in the facts and circumstances of this case, there shall be no order as to costs. A

VS. Appeal dismissed. B