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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 28th February, 2025*

\+ W.P.(C) 8652/2017 and CM APPL. 35560/2017

ASHUTOSH GOEL .....Petitioner

Through: Mrs. Prem Lata Bansal, Senior Advocate with Mr. Shivang Bansal and Mr. Praveen Jain, Advocates.

versus

STATE BANK OF INDIA AND ORS .....Respondents

Through: Mr. S.L. Gupta, Advocate.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. By this writ petition, Petitioner seeks quashing of order dated 26.07.2014 passed by the Appointing Authority imposing penalty of *'reduction to a lower stage in the time scale of pay by two stages for a period of two years, with further direction that officer will not earn increments to pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay'* as also order dated 03.09.2015 passed by Appellate Committee upholding the penalty. Writ of mandamus is sought to Respondent No. 1/State Bank of India ('SBI') to reinstate the Petitioner at the appropriate stage in the time scale of pay commensurate with the number of years of service put by him with all consequential benefits.

2. Case of the Petitioner as set up in the writ petition is that Petitioner joined SBI on 21.12.1981 as Probationary Officer and was promoted four

times in his career to MMGS-II w.e.f. 01.08.1987, MMGS-III w.e.f. 01.08.1993, SMGS-IV w.e.f. 01.11.1998 and SMGS-V w.e.f. 29.07.2004. Between February, 1998 to October, 2001, Petitioner worked in SBI Card Division, a joint venture of SBI and GE Capital of USA on deputation as a Project Team Member. Sales team led by the Petitioner was conferred the Best Sales Team award. From November, 2001, to December, 2002, Petitioner was posted at CAG Branch, Mumbai as Chief Manager (Forex) of India's biggest International Banking Division and from January, 2003 to October, 2003, he was posted in CAG Central, Mumbai as Chief Manager & Credit Analyst, where he handled high value accounts of steel sector such as TISCO, Essar Steel, JSW etc. Thereafter, from November, 2003 to October, 2004, Petitioner worked in CAG Branch, Delhi as Head of the International Banking Division and within 12 months the business grew over 50%.

3. It is averred that Petitioner was posted to Overseas Branch, New Delhi as Assistant General Manager (AGM) and Relationship Manager (RM) from November, 2004 to July, 2009, purely on the basis of his performance. Duties of the Petitioner included marketing activities to bring new credit accounts and to enhance the business by increasing the customer base. Role of the Petitioner was restricted to marketing and business development and he was not involved in day-to-day operational activities. Petitioner's performance during his tenure was assessed as extraordinary in his Annual Appraisal Reports which is a matter of record.

4. Petitioner averred that he was instrumental in making recoveries from the account of one Sudarshan Overseas Limited which was a stress account and a consortium with State Bank of Patiala with an exposure of SBI being Rs. 35 crore. Petitioner was able to recover Rs. 15.66 crore during financial

year 2007-08 and Rs. 8.01 crore in April-December, 2008. In another account which was declared NPA, a total recovery of Rs.6.04 crore was made by the Petitioner in 13 months and resultantly, the team led by him was declared No. 1 team in the 'Monthly Performance Review Meetings' during 2008-09 in the entire Region.

5. It is stated that despite the extraordinary performance and known integrity of the Petitioner, to his surprise, a letter dated 28.05.2010 was issued to him by General Manager, Mid-Corporate Group-Delhi Region, alleging certain irregularities in sanctioning the loan account of M/s. Suhrit Services Pvt. Ltd. to which Petitioner filed a reply dated 21.07.2010 denying the allegations. A similar letter was sent to his deputy namely, Sushil Kumar. In routine, the matter was referred to CVC and CBI, however, after conducting requisite inquiry, CVC found nothing wrong against the Petitioner but suggested criminal action to be initiated by CBI against Sushil Kumar vide O.M. dated 22.05.2012.

6. Against the advice of CVC, SBI issued a Charge Sheet dated 12.07.2012 against the Petitioner, which he received on 01.08.2012 wherein Article of Charge included 17 allegations, primarily relating to failure to discharge duties and acting in violation of Rule 50(4) of *'State Bank of India Officers' Service Rules, 1992'* ('1992 Rules') with respect to account of M/s. Suhrit Services Pvt. Ltd. As per Rule 68(2), the Articles of Charge are to be accompanied with a list of witnesses by whom the Articles of Charge are proposed to be substantiated but in the present case, contrary to the Rule, the Charge Sheet was not accompanied by a list of witnesses and the entire inquiry proceeded only on the basis of documents tendered by the Presenting Officer ('PO') without being proved by oral evidence.

7. After conclusion of the inquiry, the Inquiry Officer ('IO') submitted his report dated 20.05.2013 to the DA with copy to the Petitioner. As per the report, allegations 2, 3, 4, 8, 10, 11 and 12 were held as 'proved' while allegations 1, 5, 6, 7, 14 and 17 were held as 'not proved'. Allegations 9, 13, 15 and 16 were held as 'partly proved'. The findings were unsupported by any reasoning and even where allegations were held to be partly proved, it was not specified as to which part was proved and which was not. There was no appreciation of evidence in the report. Petitioner filed a detailed representation dated 15.06.2013 and a supplementary representation dated 26.06.2013 against the inquiry report bringing out the omissions and irregularities and pointing out how the entire proceeding was vitiated.

8. It is stated that after a gap of 10 months, Petitioner received an order dated 22.04.2014 whereby Appointing Authority proposed penalty of *'reduction to a lower stage in the time scale of pay by two stages for a period of two years, with further direction that officer will not earn increments to pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay',* and called upon the Petitioner for personal hearing to make submissions against the proposed penalty. After the personal hearing on 07.05.2014 and upon receiving the written representation from the Petitioner, the Appointing Authority passed the final order dated 26.07.2014 imposing the penalty as proposed. Petitioner filed an appeal before the Appellate Committee, which was dismissed on 03.09.2015, whereafter Petitioner approached this Court.

9. Ms. Prem Lata Bansal, learned Senior Counsel for the Petitioner raised the following contentions assailing the penalty order as also the order

passed by the Appellate Committee:-

(A) The impugned orders are illegal and arbitrary and unsustainable in law as Petitioner has been held guilty and punished for not maintaining financial discipline which was not even a part of the Article of Charge against him in the Charge Sheet dated 12.07.2012. Charge 1 was that Petitioner while working as RM, Overseas Branch, New Delhi committed serious irregularities in adhering to the norms laid down by the Bank in recommendation, conduct and follow-up of account relating to M/s. Suhrit Services Pvt. Ltd. and thus failed to discharge his duties with devotion and diligence and acted in a manner unbecoming of a bank official and prejudicial to bank's interest in violation of Rule 50(4) of 1992 Rules. Rule 50(4) provides that '*every officer shall, at all times, take all possible steps to ensure and protect the interest of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence, and do nothing which is unbecoming of the officer'*. Allegation No. 17 was specific that due to various lapses of the Petitioner, Bank is likely to suffer a loss of Rs.14.06 crore approximately. In the inquiry report, IO has clearly held that even those allegations which are substantiated merely pertain to procedural irregularities and therefore, it is difficult to infer that these irregularities have contributed to loss to the Bank and in this backdrop rendered a finding that allegation No. 17 was 'not proved'. DA concurred with the finding of the IO and held that Petitioner could not be held liable for the lapse and opinion of DA was confirmed by the Appointing Authority in the final order. Therefore, once no financial loss was suffered by the Bank on account of any act or

omission of the Petitioner, it is not understood how Petitioner could be found guilty and punished for not maintaining financial discipline.

(B) Assuming for the sake of argument that in the opinion of the IO, the inquiry proceedings established any charge different from the original Article of Charge, there is a procedure prescribed in Rule 68(2)(xxi)(a) of 1992 Rules, whereby reasonable opportunity was required to be given to the Petitioner against the new charge permitting him to lead evidence to defend himself.

(C) Charge Sheet also deserves to be quashed on the ground that it was issued after an inordinate delay of 4 years. The loan transaction in question pertains to the year 2008 whereas the Charge Sheet was issued on 12.07.2012. In ***M.V. Bijlani v. Union of India and Others, (2006) 5 SCC 88***, the Supreme Court held that delay in issue of Charge Sheet and initiation of disciplinary proceedings and continuance thereof prejudices the charged officer and action on delayed Charge Sheet cannot be countenanced in law. In ***State of Punjab and Others v. Chaman Lal Goyal, (1995) 2 SCC 570***, the Supreme Court held that disciplinary proceedings must be initiated and concluded without any delay as soon as irregularities committed by an employee are discovered. Delay in initiation of proceedings gives room for allegations of bias, *mala fides* and misuse of power and prejudices the delinquent employee.

(D) Charge Sheet is inherently unsustainable as the allegations do not constitute a misconduct. Strangely, one Article of Charge is broken into 17 allegations but even put together they do not establish any culpability on the part of the Petitioner and at best constitute an

error of judgment. In ***Union of India and Others v. J. Ahmed, (1979) 2 SCC 286***, the Supreme Court held that there may be negligence in performance of duty but that may not necessarily constitute misconduct unless the consequences, directly attributable to negligence, are such that there is irreparable or resultant damage which is huge and the degree of culpability is high. An error can be indicative of negligence but not misconduct. Misconduct involves moral turpitude and must include an improper or wrong behaviour, wilful in character or a forbidden act, a transgression of established and definite rule of action but not a mere error of judgment, as held by the Supreme Court in ***State of Punjab and Others v. Ram Singh Ex-Constable, (1992) 4 SCC 54***. From the inquiry report itself it can be inferred that at the highest, Petitioner was guilty of procedural violations, which may constitute negligence but cannot be construed as misconduct.

(E) The other glaring illegality in the conduct of the inquiry proceedings, the object of which is to give an opportunity to the Charged Officer to defend himself and controvert the allegations levelled is that, not even a single witness was produced by SBI before the IO to prove its case. In fact, a bare perusal of the Charge Sheet shows that it was not accompanied by a list of witnesses, which is in violation of Rule 68(2) of 1992 Rules, which provides that where it is proposed to hold an inquiry, Disciplinary Authority shall frame definite and distinct charges on the basis of the allegations against the Charged Officer and the Article of Charge, together with the statement of the allegations on which they are based, list of documents

and witnesses relied on and as far as possible, copies of such documents and statements of witnesses, if any, shall be communicated in writing/sent to the officer, who shall be required to submit a written statement of defence. The argument is that not a single witness was produced by SBI and copies of the listed documents were simply tendered by the PO. As per settled law, documents have to be proved by examining witnesses and thus no reliance could have been placed on the documents by the IO in the absence of their being proved through oral testimonies. Reliance was placed for the said proposition on the judgments of the Supreme Court in ***Roop Singh Negi v. Punjab National Bank and Others, (2009) 2 SCC 570; Delhi Transport Corporation v. Ashok Kumar Sharma, 2024 SCC OnLine SC 1871;*** and ***Pawan Kumar Agarwala v. General Manager-II and Appointing Authority, State Bank of India and Others, (2015) 15 SCC 184.***

(F) Rule 68(2)(xxi)(a) of 1992 Rules provides that on conclusion of the inquiry, IO shall prepare a report which shall contain gist of Articles of Charge and statement of imputation of misconduct; gist of defence of the Charged Officer; assessment of the evidence in respect of each Articles of Charge; and finding on each Article of Charge and reasons thereof. Plain reading of the inquiry report shows that IO has merely given his conclusion without discussing the evidence or giving any finding and/or reason in support of the conclusions or even dealing with the defence put forth by the Petitioner. Even where the allegations were held to be 'partly proved', it is not mentioned which part of the allegations were 'proved'. There is a clear violation of the

statutory obligation by the IO and this vitiates the inquiry report and the penalty imposed.

(G) Another illegality which goes to the root of the inquiry proceedings and the penalty order is violation and disregard of Rule 68(3)(ii) of 1992 Rules which provides that '*The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement……'* From the order of DA dated 22.04.2014, it is evident that it had disagreed with the IO with respect to allegation Nos. 9, 13, 15 and 16, however, no disagreement note, recording tentative disagreement, was issued by DA granting opportunity to the Petitioner to represent against the same and DA proceeded to propose the penalty vide Note dated 18.03.2014. This recommendation was sent to the Appointing Authority, which by its Note dated 22.04.2014 took a decision to grant opportunity of personal hearing only to the extent of quantum of penalty proposed and this was conveyed to the Petitioner vide letter dated 22.04.2014, calling upon him for a personal hearing as to why the proposed penalty be not imposed. It is a settled law that where DA disagrees with the findings of the IO in respect of any or all charges, it must form a tentative opinion that it does not agree with the findings and grant an opportunity of hearing to the Charged Officer to represent his case with respect to the reasons for which DA has disagreed. In this context, reliance was placed on the judgments of the Supreme Court and High Courts in ***Punjab National Bank and Others v. Kunj Behari Misra, (1998) 7 SCC 84; Yoginath D. Bagde v. State of Maharashtra and Another, (1999) 7***

SCC 739; M. Mohandas v. State Bank of India and Another, 2011 SCC OnLine Mad 2542; S.P. Malhotra v. Punjab National Bank and Others, (2013) 7 SCC 251; and ***A.K. Shrivastava v. Indira Gandhi Krishi Vishwavidyalaya Through its Registrar, Krishak Nagar, Raipur (C.G.) and Another, 2017 SCC OnLine Chh 969.***

(H) In the present case, DA and the Appointing Authority have followed a strange procedure, unknown to law. Without calling upon the Petitioner to present his case against the disagreement with the findings of the IO in respect of charges 'not proved'/partly proved', DA straightaway proposed the penalty and the Appointing Authority fixed the date for personal hearing only with respect to the proposed penalty, clearly implying that on the disagreement as also the merits of the allegations, they had pre-judged that Petitioner was guilty. Both the recommendation of the DA and the tentative and final orders of the Appointing Authority also reflect that not a single issue raised by the Petitioner in his representation against the inquiry report and/or during the personal hearing, has been considered meaningfully. All that the Appointing Authority has done in the final order dated 26.07.2014 is to extract the allegations and the views of the IO and DA and then render its opinion. In the absence of a disagreement note, the penalty and appellate orders are not sustainable in law.

(I) Petitioner took a consistent stand before the IO that as per MCG Note dated 25.08.2004 elaborating the credit process, which was an exhibited document, responsibility of the Petitioner as RM was to handover the check list of documents to be submitted by the prospective customer, which was duly done and the documents/

information received from the customer were handed over to the Credit Processing Cell ('CPC') in the branch. It was the responsibility of CPC to obtain all additional information as deemed fit from the customer directly and to this extent, IO agreed with the Petitioner and which is why allegation No. 1 i.e. before submission of the proposal, financial status of associate companies and/or other companies owned/promoted by Directors of M/s. Suhrit Services Pvt. Ltd. were not obtained, was held as 'not proved'. IO also agreed that it was the responsibility of Credit Processing Team (CPT) to carry out pre-sanction survey and yet erroneously held allegation No. 2, that Petitioner did not follow-up the matter of pre-sanction, as 'proved'.

(J) Allegation No. 3 was erroneously held as substantiated. The STDR of Rs. 0.32 crore was to be obtained pending creation of equitable mortgage ('EM') and was not in addition thereof. Bank received a letter dated 11.06.2008 from the Syndicate Bank confirming creation of EM of the flat in question and only thereafter disbursement was made in the account on 12.06.2008 and therefore, the allegation of not obtaining STDR was incorrect. In fact, the credit audit report also evidenced that EM was created on four properties with Syndicate Bank, as evident from their letter dated 11.06.2008. None of these issues were looked into by the IO and the charge was held as 'proved' merely on the ground that STDR was required pending creation of EM of the property under reference, which was not fully paid. Likewise, in respect to all other allegations also, the IO completely overlooked the defence raised by the Petitioner and rendered findings basis the allegations and case put forth by the

prosecution in the form of documents. It is true that this Court under Article 226 of the Constitution of India the scope of interference in inquiry matters is limited, but in a case of no evidence or serious violations of principles of natural justice and/or procedures of departmental inquiries, Court can certainly step in to protect the Charged Officer and quash the inquiry proceedings.

(K) There was no irregularity during the tenure of the Petitioner from 12.06.2008 to 30.11.2008 and Charge Sheet deserves to be quashed on this ground also. Loan was disbursed to M/s. Suhrit Services Pvt. Ltd. on 12.06.2008 and was handled by the Petitioner till 30.11.2008. Credit audit was done by the auditors wherein it was categorically stated that there were no warning signals/red flags requiring urgent remedial measures till 24.01.2009. The credit audit report, which was exhibited document, showed full score in the credit account. Hence, no allegation can be levelled against the Petitioner and in fact, PO was unable to establish any nexus between Petitioner's alleged acts and omissions and the misconduct. The Appellate Committee in its order dated 03.09.2015 observed that alleged lapses against the Petitioner regarding non-adherence to the bank norms in recommending loan to M/s. Suhrit Services Pvt. Ltd. could not be proved in the inquiry proceedings and yet did not absolve the Petitioner on an erroneous and frivolous allegation that lapses by Mr. Priyadarshan and Sachin Kumar were not brought to the notice of the sanctioning authority i.e. Mid-Corporate Credit Committee (MCCC). This observation was fallacious as Petitioner was never aware of the irregularities, if any, committed by his superior officers and learnt of

the allegations only during the inquiry. Moreover, as an RM, it was not Petitioner's duty to look into or flag faults with his superior officers.

(L) The penalty imposed on the Petitioner is extremely disproportionate. Petitioner was obliged only to expand the customer base for business growth of SBI but as far as the loan was concerned, the same was sanctioned by CPT i.e. team leader and branch head. In fact, Mr. Priyadarshan Raut, Chief Manager, the then Credit Analyst and Sachin Kumar, AGM, the then Team Leader were the persons who recommended the proposal to MCCC for sanctioning the loan but none of them were proceeded against and were instead rewarded by timely promotions and out of turn postings, whereas Petitioner was inflicted with a harsh penalty and remained without any promotion till his retirement. The penalty may appear on the face of it to be a case of reduction of pay by two stages for two years, but in fact it has far reaching adverse consequences on the career and the emoluments of the Petitioner. Penalty has resulted in reduction to a lower stage in the time scale of pay by two stages for two years with loss of increments in the reduction period as also postponement of future increments and this has in turn adversely impacted the pension of the Petitioner, who has retired on superannuation in October, 2015. There is no gainsaying that reduction in pension is a serious punishment and is awarded in case of grave misconduct, which is not the case here. There is also violation of Article 14 of the Constitution inasmuch as Petitioner and his subordinate Sushil Kumar were charge sheeted together with almost the same allegations and yet Appellate Authority

modified his penalty to reduction to a lower stage in time scale of pay by one stage for one year with further direction that he will not earn increments during the said period and on expiry of the period reduction will have the effect of postponing future increments of his pay. This is despite the fact that CVC had recommended no action against the Petitioner but a criminal action along with major penalty against Sushil Kumar. Even otherwise, the major penalty is not commensurate looking into the fact that the allegation of loss caused to the Bank due to the act of the Petitioner was not substantiated. Reliance was placed on the judgments in ***Rajendra Yadav v. State of Madhya Pradesh and Others, (2013) 3 SCC 73; Ishwar Chandra Jayaswal v. Union of India and Others, (2014) 2 SCC 748;*** and ***Punjab and Sindh Bank v. Raj Kumar, 2024 SCC OnLine Del 6431***, for the proposition that Courts can interfere where punishment is disproportionate to the charges levelled and proved and that there must be parity of punishment between employees with similar allegations.

10. Mr. S.L. Gupta, learned counsel for SBI raised the following contentions defending the inquiry proceedings and the impugned orders:-

(A) Charge Sheet was rightly issued against the Petitioner and there is no infirmity in the penalty imposed or the order of the Appellate Committee. The allegations levelled against the Petitioner are grave and serious and as an officer of the Bank highest degree of integrity and devotion to duty is expected and there can be no compromise with these virtues. In 2008, Petitioner was working as RM and was Head of Account Management Team-III. Cash credit limit of Rs.15 crores with

margin of 25% was sanctioned to M/s. Suhrit Services Pvt. Ltd. by the Competent Authority and loan account was to be managed by the AMT, headed by the Petitioner from the disbursement and during day-to-day management. On 12.06.2008, on the basis of old stock statement, Petitioner fixed the drawing power at Rs. 13 crores. The account was withdrawn from the AMT w.e.f. 01.12.2008 because of lack of proper management. The loan account turned NPA on 01.12.2008 and investigation revealed lapse on the part of the Petitioner in the conduct, supervision and follow-up of loan account. Explanation given by him was unsatisfactory and Charge Sheet was issued to inquire into the matter with 17 allegations and 15 documents duly served on him.

(B) Fair and transparent departmental inquiry was conducted following the principles of natural justice and laid down procedures granting sufficient opportunity to the Petitioner to defend himself. Fairness in action can be seen from the fact that IO held only those charges as ‘proved’ or ‘partly proved’ where there was evidence to substantiate the allegations. Three Chief General Managers were part of the Appellate Committee and carefully examined the evidence before passing the final order imposing the penalty and there are no allegations of bias or *mala fide* either against the IO or the DA or the members of the Appellate Committee. It is a settled law that this Court while exercising power of judicial review cannot re-appreciate the evidence led before the IO and substitute its own wisdom to come to a conclusion contrary to the findings of the IO and/or the DA. Petitioner is unable to point out any violation of principles of natural

justice and therefore, no interference is warranted in the writ petition. In ***H.B. Gandhi, Excise and Taxation Officer-Cum-Assessing Authority, Karnal and Others v. M/s Gopi Nath & Sons and Others, 1992 Supp (2) SCC 312,*** the Supreme Court held that scope of judicial review can only extend to decision making process and not to the decision.

(C) Charges were proved on documentary evidence. Bank produced 20 documents, P-1 to P-20 which were duly furnished to the Petitioner and he accepted their genuineness and authenticity. In the proceeding held on 02.11.2012, Petitioner admitted the authenticity of the prosecution documents P-1 to P-15 and in the hearing on 19.11.2012 he admitted the authenticity of the documents P-16 to P-20. Once the documents were admitted and were uncontroverted, there was no requirement of their being proved through oral evidence and therefore, the judgments relied on in ***Roop Singh Negi (supra), Ashok Kumar Sharma (supra)*** and ***Pawan Kumar Agarwala (supra)*** are of no consequence. In ***Tara Chand Vyas v. Chairman & Disciplinary Authority and Others, (1997) 4 SCC 565,*** the Supreme Court held that non-production of witnesses/oral evidence is not a manifest error in the departmental inquiry if documentary evidence is produced and copies of the documents are furnished to the charged employee. This position was reiterated in ***Director General, Indian Council of Medical Research and Others v. Dr. Anil Kumar Ghosh and Another, (1998) 7 SCC 97.*** Even otherwise, as per Section 59 of the Indian Evidence Act, 1872, only facts other than the contents of documents are to be proved by oral evidence. It is not mandatory in

departmental proceedings that oral evidence must necessarily be led. In any case, no fact or allegation was sought to be proved beyond the documents filed and relied upon and therefore, the contention of the Petitioner that there was no list of witnesses cannot inure to his advantage in this case.

(D) Petitioner is wrong in contending that he had no role in the loan transaction and its follow-up and/or there was no allegation of violating the financial discipline. Before the disbursal of the loan, Petitioner failed to obtain a security by way of STDR of Rs. 0.32 crores and Rs. 11 lakhs, which were subject matter of allegations No. 3 and 4. Petitioner did not obtain the stocks statement as on the date of disbursal of the loan/limit on 12.06.2008 and also failed to verify the availability of the stock, in the absence of which limits could not be disbursed because the drawing power is determined only basis the recent stock statement and thus allegation No. 8 was established. The borrower was a car dealer and its stock was moving and therefore, the drawing power could not be decided on the basis of old stock statements.

(E) Allegation No. 9 was serious and grave as Petitioner allowed over drawings in the accounts within two months of the loan sanction while he had no authority to grant the same beyond his sanctioning limit. In ***Disciplinary Authority-cum-Regional Manager and Others v. Nikunja Bihari Patnaik, (1996) 9 SCC 69,*** the Supreme Court held that allowing overdrafts in the accounts cannot be treated as mere error of judgment and thus the penalty of dismissal was proportionate. Likewise, allegations No. 10 and 11 were proved inasmuch as when

the borrower requested for over drawings vide letter dated 26.07.2008, the same was allowed without any approval. The defence of the Petitioner that his service officer had allowed the over drawing is of no consequence as being an immediate superior officer, he was responsible for the actions of his subordinates. Over drawings were permitted casually without even ensuring the proper end use of the funds by undertaking inspection of the stocks and DA rightly observed that Petitioner had no control over the loan account.

(F) Petitioner has not brought to the notice of the Court another serious flaw in his conduct which was subject matter sof allegation No. 12. The relevant account had started showing unsatisfactory conduct in July, 2008 itself as 11 cheques drawn by M/s. Suhrit Services Pvt. Ltd. were returned in July, 2008, while 24 cheques were returned in August, 2008. Petitioner did not exercise effective supervision over his subordinate officers and this allegation was established during the inquiry. Being the team leader, it was his duty to diligently manage and supervise the account and on this score, even the claim for parity with Sushil Kumar, is misconceived. The onus and responsibility of a superior officer is far more onerous than his subordinates and it is not as if no action was initiated against Sushil Kumar. Penalty has been imposed on Sushil Kumar commensurate with his misconduct and criminal action against him is pending before the competent Court.

(G) Even assuming that there are any procedural violations, it is a settled law that each and every violation of laid down procedure

cannot automatically vitiate the inquiry proceeding. Complaint of violation of procedural provisions ought to be examined from the point of view of prejudice i.e. whether the violation has prejudiced the Charged Officer in defending himself properly and effectively. If prejudice is found, the same must be remedied including by setting aside the inquiry and/or the penalty order but where no prejudice is established, no interference is warranted in the departmental proceedings *albeit* there are certain procedural violations which are of a fundamental character, whose violation by itself is proof of prejudice. This is the view of the Supreme Court in ***State Bank of Patiala and Others v. S.K. Sharma, (1996) 3 SCC 364*** and has been reaffirmed in several judgments from time to time.

11. Heard learned Senior Counsel for the Petitioner and learned counsel for the Respondent.

12. Amongst myriad of arguments raised by learned Senior Counsel for the Petitioner, the first and foremost issue that requires to be considered is whether non-production of witnesses by SBI to prove the documents tendered in support of the Article of Charge is fatal to the inquiry. It is well-settled that in departmental/domestic inquiries, strict rules of evidence do not apply but being quasi-judicial proceedings, IO has a duty to carefully examine the evidence led before him and he cannot merely rely on the documents filed by the PO to hold the Charged Officer guilty. Inference on facts by an IO must be based on some evidence, which is led before the IO in compliance of the principles of natural justice and IO is expected to ensure that the evidence presented by the department is sufficient to prove

the charge *albeit* the standard of proof required is preponderance of probabilities. ***[Ref.: Anil Kumar Dhyani v. Union of India & Ors., 2017 SCC OnLine Del 9911*]**.

13. Coming to the present case, Article of Charge along with statement of allegations is as follows:-

STATEMENT OF ARTICLES OF CHARGE IN REPECT OF SHRI ASHUTOSH GOEL, SMGS-V

CHARGE - I

Shri Ashutosh Goel, SMGS-V, while working as Relationship Manager (MCG) Overseas Branch, New Delhi committed serious irregularities in adhering to the norms laid down by the Bank in recommendation, conduct and follow up of account relating to M/S Suhrit Services P. Ltd.

The official failed to discharge his duties with utmost devotion and diligence and acted in a manner unbecoming of a Bank official and highly prejudicial to the Bank's interest in violation of Rule 50(4) of State Bank of India Officers Service Rules as per his acts detailed in the enclosed statement of Imputations and Misconduct (Annexure II)'.

STATEMENT OF ALLEGATIONS (MISCONDUCT) BASED ON WHICH ARTICLES OF CHARGES HAVE BEEN FRAMED AGAINST SHRI ASHUTOSH GOEL, SMGS-V, FOR THE LAPSES COMMITTED BY HIM AS RELATIONSHIP MANAGER (MCG) OVERSEAS BRANCH, NEW DELHI

Allegations

1) Before submission of the proposal; the Financial status of associate companies and/or other companies owned/promoted by Directors were not obtained / incorporated therein.

2) In a note dated 31.10.2008 (Note no. 85), the Concurrent Auditor at the branch had stated that the pre sanction survey report had not been kept on record in the relative file. Against that observation, he had given remarks that the same was awaited from the Centralized Processing Cell (CPC). No further follow up was evidenced nor the pre-sanction report is on record.

3) As per page 18 of the proposal, under the head 'collateral details', the branch was required to obtain a STDR of Rs.0.32 crs. being our share of realizable value of the property i.e. a flat with an area of 198.30 Sq. mt. at 601, Vatika City, Gurgaon, as Equitable Mortgage was to be created later. However, the required STDR for Rs.0.32 crs. was not obtained.

4) An STDR of Rs. 11 lacs was required to be provided as a part of collateral security (in lieu of our stipulated share in an LIC insurance policy in the name of Ms. Binita Pradhan-value Rs.30 lacs), but that was not done.

5) He obtained the search report after the disbursement of the loan to the company i.e. on 12.06.2008 as the search report obtained from the ROC is dated 11.08.2008.

6) As per the stipulation of MCCC, the sanctioned limit was to be released only after obtaining clear and specific opinion from Bank's Law Officer as regards the legal implication regarding obtention of personal guarantee of directors of Nepalese citizens based in Nepal. He failed to comply with above instructions of MCCC as detailed hereunder :
   (i) The opinion obtained from the Bank's Law Officer was not clear and specific.
   (ii) He failed to exercise due diligence on the opinion report of Nepalese Advocate as the opinion was not authenticated or validated.

7) Disbursement of Rs.5.00 crs. was made on 12.06.2008 by issuing a Banker's Cheque favouring M/s Hyundai Motors India Ltd. from Cash Credit account no. 30402018486 of M/s SSPL. On the next day i.e. on 13.06.2008, another disbursement of Rs.5.00 crs. was made from Current Account no. 30390237633 of M/s SSPL. and proceeds remitted through RTGS to Syndicate Bank. There was no justification to allow transaction from the current a/c, which should have been closed on the day when Cash Credit account of the company was opened. He did not ensure that the disbursement of Rs. 5 crs. on 13.06.2008 is for asset creation instead of adjusting the company's loan account with Syndicate Bank.

8) Before first disbursement in the account on 12.06.2008, obtention of stock statement and the verification of stocks were not carried out. There is no pre-disbursement inspection report on record.

9) Normally, in newly sanctioned accounts, overdrawings are not permitted. However, it was observed that overdrawings were permitted in the account from July 2008 onwards i.e. soon after sanction of limits in May 2008, to a new connection and the account remained irregular during the following period :

10.07.08 to 11.07.08 -	Max. overdrawing permitted in the a/c Rs.0.66 crs.
17.07.08 to 04.10.08 -	Max. overdrawing permitted in the a/c. Rs.1.19 crs.
01.11.08 to 05.11.08 -	Max. overdrawing permitted in the a/c Rs.1.12 crs.
17.11.08 to 01.12.08 -	Max. overdrawing permitted in the a/c Rs.1.12 crs.

Thereafter, the account remained continuously irregular since 06.12.2008.

10) The Company had requested for permitting overdrawings vide their letter dt.26.07.2008 for purchasing i10 cars, which do not bear any remarks/recommendations by any official or approval by any authority. However, on subsequent occasions, no request letter(s) from the borrowers were obtained while permitting the overdrawings in the account.

11) The decision to permit overdrawing in the account had been taken in a casual manner by allowing drawings in the account and not ensuring proper end use of funds by confirming that the i10 cars were actually purchased. There is no record as to whether inspection was carried out after permitting overdrawings to verify creation of additional securities (i.e. stocks).

12) The account had started throwing signals of unsatisfactory conduct in July'08 itself as 11 cheques of the company were returned by the branch due to insufficient funds in the month of July, 2008. In subsequent months also the position did not improve which is evidenced by the number of cheques returned due to insufficient funds as under :

August 2008	-	24 Cheques
September 2008	-	5 Cheques
October 2008	-	2 Cheques

This was in addition to the fact that account was allowed to be overdrawn from the very beginning.

13) As per the appraisal memo, the receivable on account of car sold under finance arranged by the buyer from HDFC, ICICI, Reliance Capital, etc, the car released are on the basis of delivery of orders issues by the financing companies and the payments are received by M/s SSPL in approx 20-25 days. As invoices do not appear to have been raised against the said finance companies, there was no justification to include them in the receivables.

14) FFR for the quarter ended September 2008 was put up as late as on 15.12.2008. FFR for the subsequent quarters are not on banks record.

15) Insurance related to stocks in transit for which insurance had been taken by M/s Hyundai Motors, no authentic copy of transit insurance policy is on bank's record. Also neither SBI's name was included in the insurance policies nor its rights were noted.

16) He did not exercise effective supervision and control over the functioning of the Service Officer as regards the areas mentioned hereinabove.

17) Due to your above lapses, the Bank is likely to suffer a loss of Rs. 14.06 Crs approximately.

14. Along with the charge memorandum, SBI enclosed a list of documents but admittedly, the charge memorandum was not accompanied by a list of witnesses. Entire case of SBI is predicated on documentary

evidence and plain reading of the inquiry report leaves no doubt that IO has heavily relied on documents to hold some allegations as 'proved' or 'partly proved' against the Petitioner. In the absence of list of witnesses, it can be safely concluded that neither the documents relied upon by SBI nor their contents can be said to be proved by SBI. Since no oral evidence was led to prove the documents tendered, Petitioner did not have the opportunity to cross-examine the witnesses for rebutting the documents and/or their contents and therefore, Petitioner was unable to lead his defence, effectively and meaningfully. Absence of list of witnesses renders the Charge Sheet invalid and this vitiates the inquiry proceedings. I may, at this stage, allude to the judgment of the Supreme Court in ***Roop Singh Negi (supra)***, relevant paragraphs of which are as follows:-

> *"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.*
>
> *xxx xxx xxx*
>
> *17. In Moni Shankar v. Union of India [(2008) 3 SCC 484 : (2008) 1 SCC (L&S) 819] this Court held: (SCC p. 492, para 17)*
>
> > *"17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet*

the requirements of legal principles. The Tribunal was, thus, entitled to arrive at its own conclusion on the premise that the evidence adduced by the Department, even if it is taken on its face value to be correct in its entirety, meet the requirements of burden of proof, namely, preponderance of probability. If on such evidences, the test of the doctrine of proportionality has not been satisfied, the Tribunal was within its domain to interfere. We must place on record that the doctrine of unreasonableness is giving way to the doctrine of proportionality.""

15. Reiterating the principle, the Supreme Court in ***State of Uttar Pradesh and Others v. Saroj Kumar Sinha, (2010) 2 SCC 772,*** held as under:-

"27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.

30. When a departmental enquiry is conducted against the government

servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

31. In Shaughnessy v. United States [97 L Ed 956 : 345 US 206 (1952)] (Jackson, J.), a Judge of the United States Supreme Court has said: (L Ed p. 969)

"... Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied.""

16. Relevant would it be to refer to the judgments of the Division Benches of this Court on the same proposition of law. In ***Union of India and Others v. Ritu Chaudhary, 2019 SCC OnLine Del 12063,*** the Division Bench held as follows:-

"13. *The Court is not persuaded by any of the above contentions of the Petitioners. The Court notes that under Rule 14(3) & (4) of the CCS (CCA) Rules, it was incumbent, where the Government proposes to hold an inquiry, to draw the substance of imputations which would contain "a list of documents by which and a list of witnesses by whom, the Articles of Charge are proposed to be sustained". The said rule reads as under:*

"14 (3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed

to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person".

14. *Rule 14 (4) also envisages serving upon the Government servant the copy of the Articles of Charge which would include "the list of documents and witnesses by which each Articles of Charge is proposed to be sustained".*

15*. The following observations in LIC of India v. Ram Pal Singh Bisen, (2010) 4 SCC 491 are relevant in this context:*

"20. Thus, the question that arises, for consideration is whether in absence of any oral evidence having been tendered by the appellants, and especially in absence of putting their own defence to the respondent during his cross examination in the Court, what is the effect of documents filed by appellants and marked as Exhibits.

21. Despite our persistent requests made to the learned counsel appearing for the appellants they have not been able to show compliance of Order XII Rule 1 and 2 of the CPC, meaning thereby that there has not been any compliance thereof.

.....

26. We are of the firm opinion that mere admission of document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law. As has been mentioned herein above, despite perusal of the record, we have not been able to come to know as to under what circumstances respondent plaintiff had admitted those documents. Even otherwise, his admission of those documents cannot carry the case of the appellants any further and much to the prejudice of the respondent.

27. It was the duty of the appellants to have proved documents Exh. A-1 to Exh. A-10 in accordance with law. Filing, of the Inquiry Report or the evidence adduced during the domestic enquiry would not partake the character of admissible evidence in a court of law. That documentary evidence was also required to be proved by the appellants in accordance with the provisions of the Evidence Act, which they have failed to do."

16. *Although, as pointed out by learned counsel for the Petitioners, in disciplinary inquiry proceedings the rules of the CPC and the Evidence Act may not strictly apply, it is basic that the mere production of a document is not sufficient even in a disciplinary inquiry. There has to be some witness to prove such a document. Without a witness to prove the documents, the Enquiry Officer cannot take it on record as a genuine document. In the present case in the absence of any list of witnesses, there*

was no means by which the documents could have been proved by the Department in the inquiry proceedings.

17*. In the present cases, if indeed the MoC refer to documents, the originals of which were not available with the Department, and the list of the names of the witnesses who were sought to be examined to prove the above documents, was not appended, clearly, the holding of the enquiry would itself become a mere formality. As rightly pointed out by the CAT, if in the absence of original documents and witnesses, an Enquiry Officer was to find the charges to be proved, such a finding would obviously be perverse and unsustainable in law. In other words, by allowing the disciplinary proceeding to continue on the basis of the subject MoCs, the Court or the Tribunal, as the case may be, would be effectively directing a wasteful exercise to be undertaken, which would end up being invalidated on obvious grounds."*

17. In ***Union of India v. Shameem Akhtar, 2015 SCC OnLine Del 14747***, the Division Bench, relying on the judgment of the Supreme Court in ***Kuldeep Singh v. The Commissioner of Police and Others***, ***(1999) 2 SCC 10***, held as follows*:*

"15. It is settled law that the charges levelled against a delinquent official is to be proved in the inquiry before any penalty is imposed. Sub-Rule (3) of Rule 14 provides that the Articles of Charge are to be supported with documents and proved by witnesses during the hearing. In our view, this in-built safeguard has been provided to allow a delinquent employee to cross-examine the witnesses and to rebut the allegations against him. In the absence of any witness and in the absence of any opportunity to cross-examine a witness would be against the canon of natural justice and the same cannot be treated as a mere formality."

18. In ***A.K. Saxena v. Union of India & Ors., W.P.(C) 3127/2014,*** decided on 10.08.2016, the Division Bench was again called upon to decide the legality of a departmental inquiry and one of the issues was that Memorandum of Charge was without a list of witnesses. Relying on the judgments in ***Roop Singh Negi (supra)*** and ***Saroj Kumar Sinha (supra)***, the Division Bench held that mere production of documents was not enough and contents of the documents have to be proved by examining the witnesses as

this is the requirement of principles of natural justice *albeit* provisions of Evidence Act may not be strictly applicable to departmental proceedings. To the same effect are the judgments of the Division Benches of this Court in ***Union of India and Others v. Surender Kumar, 2023 SCC OnLine Del 3414; Anil Kumar Dhyani (supra);*** and ***Union of India v. Man Singh, 2018 SCC OnLine Del 7298.*** It would be relevant to refer to some passages from the judgment in ***Anil Kumar Dhyani (supra)*** as under:

> *"**16.** We have heard learned counsel for the parties and considered their rival contentions. From the facts noticed hereinabove, it is clear that in the chargesheet itself, the Respondents have clearly stated, that they did not propose to examine any witness. The short question of simple nature, but considerable importance, which arises for our consideration in the present case is as to whether in a domestic inquiry, documents can be relied upon to hold the employee guilty, without producing even a single witness to prove those documents and that too when the delinquent employee does not admit those documents.*
>
> ***17.** Though it is well settled that in a domestic inquiry, strict rules of evidence do not apply and the inquiry officer is not expected to write a judgment like a Judge of a Court but it is also equally a well settled proposition, that the domestic inquiry is a quasi judicial proceeding and the inquiry officer, while performing this quasi judicial function, has a duty to carefully examine the evidence led before him and he cannot merely rely on the documents filed by the Presenting Officer to hold the delinquent employee guilty. Inference on facts by an inquiry officer must be based on some evidence, which is led before the inquiry officer in compliance of the principles of natural justice and he is expected to ensure that at least the evidence presented by the management, is sufficient to hold that the charge is proved.*
>
> ***18.** Coming to the facts of the present case, we find that the Petitioner had specifically denied the documents on which reliance had been placed by the Respondents, and he had repeatedly requested for production of original documents, so as to enable him to carry out admission/denial of the documents relied upon. It is evident that the documentary evidence relied upon in the chargesheet, was not admitted by the Petitioner employee. In such a situation, in our considered view, it was imperative for the Respondents management to, at least, examine some witness to exhibit those documents before the inquiry officer, and only when the documents were exhibited through a witness, before the inquiry officer, and sufficient opportunity granted to the Charged Officer to cross-examine*

the witness, that reliance could have been placed on the same to hold the Petitioner guilty.

xxx *xxx* *xxx*

23. *In fact, from a perusal of the judgment of the Apex Court in the case of State Bank of India v. Narendra Kumar Pandey (supra), which has been relied upon by the Respondents, it becomes evident that only when the documents are uncontroverted, it is open to the inquiry officer to accept the same, to hold the employee guilty even without examining any witness. In a case where the documents are not admitted by the delinquent employee, the same have to be proved by the management by leading oral evidence and in the absence of any witness, the same cannot be relied upon by the inquiry officer while arriving at his finding in respect of the charges."*

19. Recently, the Division Bench of this Court in ***Punjab National Bank and Others v. S.K. Jain, 2024 SCC OnLine Del 8916,*** reiterated that documents relied upon in disciplinary proceedings have to be proved through oral evidence so that the employee gets an opportunity to rebut the evidence by cross-examining the witnesses through whom the documents are sought to be proved. The argument of SBI that Petitioner has admitted the authenticity of the documents relied upon by SBI and tendered by the PO, can be no avail to SBI for the simple reason that even assuming the authenticity of the documents was accepted by the Petitioner, contents of the documents were required to be proved through oral testimonies and moreover, since no witnesses were cited, Petitioner lost the opportunity of cross-examination and resultantly to rebut the documentary evidence produced against him.

20. Matter can be seen from another angle. Rule 67 of 1992 Rules provides the minor and major penalties that can be imposed on the bank employee in a disciplinary proceeding. Procedure for disciplinary action is laid down in Rule 68 of 1992 Rules. Rule 68(2)(i) provides that no order imposing major penalty shall be made except after an inquiry held in

accordance with sub-Rule (2). Rule 68(2) of 1992 Rules provides that along with the Articles of Charge and statement of allegations, a list of documents and list of witnesses shall be furnished to the Charged Officer who will then submit a written statement of defence. Therefore, furnishing a list of witnesses is a mandate of the procedure prescribed for holding an inquiry before imposing a major penalty. Therefore, the procedure followed by SBI by not having a list of witnesses accompanying the Charge Sheet is more in breach of the Rule than in compliance and this to my mind is enough to vitiate the Charge Sheet. Since the Charge Sheet itself is illegal and cannot be sustained, the departmental inquiry together with the penalty stands vitiated and this Court need not delve into any further argument raised by the parties.

21. Be that as it may, Petitioner is also right in his contention that there is another glaring illegality in the procedure followed by the DA and the Appointing Authority. Rule 68(3)(ii) of 1992 Rules provides that DA shall, if it disagrees with the findings of the IO on any Article of Charge, record its reasons for such disagreement. As per settled law, once a disagreement note is issued by the DA, the same has to be put to the Charged Officer to make his representation and contest the reasons for disagreement. This position of law is settled by the Supreme Court in ***Kunj Behari Misra (supra)*** and ***Yoginath D. Bagde (supra)*****.** Relevant paragraph from ***Yoginath D. Bagde (supra)*** is as follows:-

> ***"31.*** *In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has*

been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution."

22. Following the judgments of the Supreme Court in ***Kunj Behari Misra (supra)*** and ***Yoginath D. Bagde (supra),*** the Division Bench of this Court in ***K.C. Sharma v. BSES Yamuna Power Limited, 2015 SCC OnLine Del 8125,*** held as follows:-

"15. In the decisions reported as (1998) 7 SCC 84 Punjab National Bank v. Kunj Bihari Misra and (1999) 7 SCC 739 Yoginath D. Bagde v. State of Maharashtra, the Supreme Court held that a facet of the principles of natural justice was that if the Disciplinary Authority disagreed with the findings returned by an Enquiry Officer it should record tentative reasons for the disagreement, leaving scope for an open mind to consider the response of the Charged Officer, give the tentative reasons for the disagreement to the Charged Officer and invite his response and then dealing with the response pass a reasoned order.

16. The jurisprudence behind said principle of law is that unless a person is given an opportunity to respond to a tentative reason to disagree, the person affected loses a valuable right of being heard before a decision adverse to his interest is taken and that the final decision must contain the reasons because it is this reasons which would determine the appellate remedy of the person whose interest is adversely affected by the decision.

17. In Yoginath D. Bagde's case (supra), the Supreme Court held:

> *"a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution."*
>
> *18. An argument was advanced in Yoginath Bagde's case before the Supreme Court that a post-decisional hearing may be granted. The Supreme Court negative the plea holding that the same would not be adequate because the Disciplinary Authority had already closed its mind by taking a determinative view."*

23. To the same effect are the judgments relied upon by the Petitioner in ***M. Mohandas (supra), S.P. Malhotra (supra),*** and ***A.K. Shrivastava (supra).*** In the present case, there is an apparent violation of Rule 68(3)(ii) inasmuch as DA disagreed with the findings of the IO on allegation Nos. 9,

13, 15 and 16, however, no disagreement note was rendered recording reasons for the disagreement and thus no opportunity was granted to the Petitioner to represent and contest the reasons for disagreement. In fact, a strange procedure was followed by the DA, wherein it rendered a tentative opinion not on the findings it disagreed with but only on the quantum of penalty and forwarded the recommendation to the Appointing Authority. The Appointing Authority also did not care to pen down any disagreement note and seek Petitioner's comments but gave an opportunity with respect to quantum of penalty only. This is a serious flaw in the disciplinary proceedings and on this ground the penalty order deserves to be quashed.

24. Additionally, Petitioner is also correct in his submission that IO has not taken into consideration the defence submitted by the Petitioner during the inquiry and has merely noted the respective stands and returned a finding on the allegations basing his conclusion on the documents tendered by SBI. To deal with this aspect, I may illustratively refer to the findings on the allegations held to be 'proved' against the Petitioner as follows:-

> *"**Allegation No. 2***
> *In a note dated 31,10.2008 (Note no, 85), the Concurrent Auditor at the branch had stated that the pre sanction survey report had not been kept on record in the relative file. Against that observation, he had given remarks that the same was awaited from the Centralized Processing Cell (CPC). No further follow up was evidenced nor the pre-sanction report is on record.*
>
> ***My findings***
> *1. Pex 18 conveys that the copy of pre sanction survey report is not kept in branch record,*
> *2. Dex 9/2 confirms responsibility of CPT to carry out pre sanction survey.*
> *3. Dex 13/2 confirms only omission of note no 85 from the pending list but does not confirm satisfactorily advising by CPC about resolution of issue or follow up of issue by Concurrent auditor.*
>
> ***In view of the above documentary evidences & Arguments the charge leveled against OPA regarding no further follow up is proved.***

Allegation No. 3

As per page 18 of the proposal, under the head 'collateral details', the branch was required to obtain a STDR of Rs.0.32 crs. being our share of realizable value of the property i.e. a flat with an area of 198.30 Sq. mt. at 601, Vatika City, Gurgaon, as Equitable Mortgage was to be created later. However, the required STDR for Rs.0.32 crs. was not obtained.

My findings

1. Pex 2/19 confirms requirement of obtaining a STDR of Rs. 0.32 cr under exclusive charge of SBI pending creation of EM of property under reference which was not fully paid.
2. Pex 4/1 confirms that property remains partly paid as on 12.06.2008.
3. Letter no 9044/NP/ADV/SUHRIT is not admitted as prosecution of defense exhibit.

In view of the above documentary evidences & Arguments the charge leveled against OPA Is proved.

Allegation No. 4

An STDR of Rs. 11 lacs was required to be provided as a part of collateral security (in lieu of our stipulated share in an LIC insurance policy in the name of Ms. Binita Pradhan-value Rs.30 lacs), but that was not done.

My findings

1. Pex 2/19 confirms stipulation of obtaining assignment of LIC policy in the name of Binita Pardhan with surrender value of Rs 0.30 cr with Syndicate Bank and our share being Rs 0.11 cr.
2. Pex 4/2 confirms non tendering of insurance policy.
3. Pex 2/1 does not permit any time for creation of security by way of assignment subsequent to disbursement in the absence of which it is implied to create the security upfront.

In view of the above documentary evidences & Arguments the charge leveled against OPA is proved.

Allegation No. 8

Before first disbursement in the account on 12.06.2008, obtention of stock statement and the verification of stocks were not carried out. There is no pre-disbursement inspection report on record.

My findings

1. Prosecution document Dex 6/1 is the Transaction Enquiry of CC Account No.30402018486 of M/s Suhrit Services which shows First debit of Rs. 5,0012500/- on account of first disbursal.
2. Prosecution document PEX 6/1 to 4 is the copy of stock statement of M/s Suhrit Services Pvt Ltd. It is as on 30.06.2008.
3. No stock statement of 12.06.2008 (Date of 1st disbursal) or prior to that is on Branch record.

4. Defense document D-7/2 refers to recording of Monthly stock statement dated 31.05.2008 in the DP Register on 10,06,2008, This confirms that it was obtained 2 days prior to the first disbursal.
5. Defense Document D-9/5 says Verification of stocks after first disbursement is to be done by AVT as per MCG Note Para C (ii)(1).

No evidence of having carried out the pre disbursement inspection has been produced. In view of the above documentary evidences & Arguments the charge leveled against OPA is substantiated.

Allegation No. 10
The Company had requested for permitting over drawings vide their letter dt.26.07.2008 for purchasing i10 cars, which do not bear any remarks/recommendations by any official or approval by any authority. However, on subsequent occasions, no request letter(s) from the borrowers were obtained while permitting the overdrawings in the account.

My findings
1. Prosecution document PEX 9/1-12 is the copy of Irregularity reports of M/S Suhrit Services for the month of July 2008 & Aug 2008 put up by the Branch to Mid Corporate Credit Committee for confirmation. Reports show irregularity of Rs. 66.00 lacs in July 2008 (PEX 9/7) Irregularity of Rs. 1.18 crores in the month of Aug 2008 (PEX 9/1).
2. Defence reply makes a mention of overdrawing permitted during the month of August 2008 only and reply is silent about applications received on other occasions like in July 2008 and beyond the expiry of period requested in letter

In view of the above documentary evidences & Arguments the charge leveled against OPA is proved.

Allegation No. 11
The decision to permit overdrawing in the account had been taken in a casual manner by allowing drawings in the account and not ensuring proper end use of funds by confirming that the i10 cars were actually purchased. There is no record as to whether inspection was carried out after permitting over drawings to verify creation of additional securities (i.e. stocks).

My findings
1. Prosecution document PEX 9/7 to 12 is the Irregularity report of M/s Suhrit Services for the month of July 2008 which shows irregularity of Rs. 66.00 lacs and document Pex 8 is the letter dt.26/07/2008 of M/s Suhrit services requesting an addl. Overdrawing of Rs. 1.00 crore. Pex 9/1 to 9/7 is the Irregularity Report for the month of August 2008 showing irregularity of Rs.1.18 crores in the account of borrower.

2. Defense also mentions that no stock statement is on record showing that the i10 cars were purchased and added to the hypothecated stock and the stock were verified.
3. Defense cites document Dex 7/2 and stales that to ensure proper end use of funds, the Company submitted its stock statement as on 31.08.2008 which shows Finished Goods stock of Rs.39.48 cr.
4. Prosecution document PEX 11/1 to PEX 11/23 are the relevant pages of Inspection Report of Assets Verification Officer (AVO) who had carried out inspection on 03.09.2008 and in his report he enclosed list of cars, which were physically verified by him and list of cars in transit. Total 126 i10 cars were in inventory list (52 i10 cars were physically verified and 74 i10 cars were in transit as per the report).

The document Pex 11 refers to stock statement dated 31.07.2008 where as overdrawing was permitted thereafter. ***In view of the above documentary evidences & Arguments the charge leveled against OPA Is proved.***

Allegation No. 12
The account had started throwing signals of unsatisfactory conduct in July '08 itself as 11 cheques of the company were returned by the branch due to insufficient funds in the month of July, 2008. In subsequent months also the position did not improve which is evidenced by the number of cheques returned due to insufficient funds as under:
August 2008 - 24 Cheques
September 2008 - 5 Cheques
October 2008 - 2 Cheques

This was in addition to the fact that account was allowed to be overdrawn from the very beginning.

My findings
1. Prosecution document PEX 7/17, 7/21, 7/22, 7/23, 7/26, 7/27, 7/29, 7/31, 7/32 & 7/33 show that more than 11 cheques were returned unpaid on account of insufficient funds in the month of July 2008.
2. Prosecution document PEX 7/37 to 7/45 show that 24 cheques were dishonoured during the month of Aug 2008.
3. Prosecution document PEX 7/45 to 7/52 Show that 5 cheques were dishonoured during the month of Sep 2008
4. Prosecution document PEX 7/53 shows returning of 2 Cheques during the month of Oct 2008.

In view of the above documentary evidences & Arguments the charge leveled against OPA is proved."

25. With respect to allegation No. 2, it can be seen that Petitioner had taken a stand that responsibility for pre-sanction survey report was of the

credit analyst as per Ex.D9/2, who was member of the CPC and as RA, Petitioner had no role to play. He also brought out that the concurrent auditor never got back to him regarding non-receipt of the survey report during the period Petitioner was handling the account and that Note 85 which stated that survey report was not on record, was not shown in the list of pending audit notes, which confirms that the concurrent auditor was satisfactorily advised by CPC and had closed the note as complied with. IO found that responsibility of pre-sanction survey was of CPT and despite this finding and overlooking the other issues raised by the Petitioner, IO simply concluded that the allegation was 'proved'. Similarly, in respect of allegation No. 3, Petitioner had pointed out that a letter was received from Syndicate Bank dated 11.06.2008 confirming creation of EM of the flat in question before the first disbursement on 12.06.2008 and that STDR of Rs. 0.32 crore was not in addition to the EM. It was also brought out that EM was created on four properties as confirmed by the Syndicate Bank, however, overlooking all this and without dealing with the defence, the allegation was held as 'proved'.

26. In respect to allegation No. 4, Petitioner brought forth that the sanction appraisal did not stipulate condition of Rs.11 lacs by way of STDR and only required assignment of insurance policy with surrender value of Rs.0.30 crore on *pari passu* basis with Syndicate Bank and that though the account was transferred on 30.11.2008, Petitioner and his Service Officer assisted RM-IV and arranged deposit of Rs.0.182 crore in the company's account, however, as SSPL account was transferred to RM-IV on 01.12.2008, it was the said officer, who had to decide whether to make STDR for Rs.0.11 crore or not. Same is the position with respect to

allegations No. 8, 10, 11 and 12. There is only a reference to the defence put up by the Petitioner and/or the documents tendered by him, but there is no discussion or analysis on the same. The inquiry report clearly shows a mechanical exercise by the IO contrary to the settled law that the Inquiring Authority must examine, discuss and analyse the evidence led by prosecution and defence, before returning a finding on each Article of Charge.

27. Since the Charge Sheet is illegal for want of list of witnesses, Court is not delving into other contentions of the Petitioner on merits. For all the aforesaid reasons, the Charge Sheet, the inquiry proceedings and the penalty order cannot be sustained in law. Accordingly, Charge Sheet dated 12.07.2012, inquiry report dated 27.05.2013, order dated 26.07.2014 imposing the penalty and appellate order dated 01.01.2015 are hereby quashed and set aside. It is, however, left open to SBI to take recourse to *de novo* inquiry, if so advised, in accordance with law, from the stage of issuance of Charge Sheet, with a caveat that if SBI is unable to comply with the legal requirement of leading oral evidence to prove the documents relied upon and/or witnesses are not available, it should not re-open the issue considering that the Charge Sheet was issued in 2012 and penalty order dates back to 26.07.2014 and Petitioner has suffered for over 13 years. In the eventuality, SBI decides not to conduct a *de novo* inquiry, consequential benefits of quashing the penalty shall be granted to the Petitioner which will entail re-fixation of his pay from the date of the penalty order and consequent re-fixation of pension. Arrears of pay and pension upon re-fixation shall be released to the Petitioner within eight weeks from today.

28. Writ petition is disposed of in the aforesaid terms. Pending application also stands disposed of.

JYOTI SINGH, J

FEBRUARY 28, 2025*/shivam*