Karnataka High Court G.V. Aswathanarayana vs Central Bank Of India, By Chairman ... on 28 May, 2003 Equivalent citations: ILR 2003 KAR 3066, 2004 (1) KarLJ 363, (2004) ILLJ 36 Kant Author: Nayak Bench: S Nayak, K Ramanna JUDGMENT Nayak, J. 1. A learned Single Judge of this Court has refused to interfere with the disciplinary action taken by the Management of the Central Bank of India against the appellant in imposing the penalty of "reduction in pay by 5(five) stages in the present time scale with cumulative effect". Hence the delinquent officer is before us by way of this Writ Appeal. 2. The facts of the case in brief are the appellant while working as a Branch Manager at Jangamakote Branch, Central Bank of India was served with a charge memo dated 7th /9th August 1992 alleging that the appellant misued his official position by sanctioning loans totalling to Rs. 1,05,000/- to 21 persons contrary to the prescribed procedure, thereby committing gross misconduct within the meaning of Regulation 3(1) read with Regulation 24 of Central Bank of India Officer, Employee's Conduct Regulations 1976, (for short, " the Conduct Regulation") attracting penalty specified under Regulation 4 of Conduct Regulations. The appellant was asked to furnish his explanation, if any, to the charge memo within 15 days of the receipt of the charge memo.According to the appellant officer certain documents sought by him were not furnished to him and, therefore, he could not file his effective written statement of defence. 3. The Chief Manager and disciplinary authority, Divisional Officer, Bangalore, vide his order No. Personnel Do. PRS: 83: 805 dated 16th March 1983 appointed Sri R. Laxman Rao, Chief Officer (RD) as Enquiry Officer and U.S. Hegde,Inspector of Police, Central Bureau of Investigation, Bangalore as the Presenting Officer to enquiry into the charges. The enquiry officer on completion of the enquiry proceedings submitted his report dated 9.9.1982 together with the records of the enquiry proceedings and other documents to the disciplinary authority. The enquiry officer held that imputations 1 and 2 are partly proved, imputations 3 and 4 are not proved and imputation 5 is fully proved. The disciplinary authority after considering the report of the enquiry officer and records of the enquiry proceeding and after concurring with the findings of the enquiry officer, passed an order dated 8.11.1994 in terms of Regulation 4 of the Conduct Regulations imposing the penalty of"reduction in pay by 5 (five) stages in the present time scale with cumulative effect". The appellant being aggrieved by the said disciplinary action taken by the disciplinary authority preferred an appeal to the appellate authority as provided under the Conduct Regulations. The appellate authority by its order dated 25.7.1985 dismissed the appeal. 4. The appellant being aggrieved by the orders of the disciplinary authority and the appellate authority preferred Writ Petition No. 2575 of 1987 in this Court. Before the learned Single Judge, on behalf of the appellant, it was contended (i) that the charges are vague which prevented the delinquent officer to effectively reply to the allegations made in the charge memo; (ii) that relevant documents though sought for, not furnished to the delinquent which prevented the delinquent to file his written statement of defence; (iii) that assistance of legal practitioner to defend in the enquiry proceedings though asked for was refused; (iv) that evidence in support of the delinquent was ignored by the inquiry officer and,

therefore, the findings are perverse and (v) that the disciplinary authority as well as the appellate authority did not apply their mind before passing the impugned orders and the orders passed by them are not speaking orders. The learned Single Judge without finding merit in any of the contentions advanced on behalf of the appellant dismissed the Writ Petition by a judgment and order dated 19th December, 1997 impugned in this writ appeal. 5. The appellant joined services of the Bank after the disciplinary authority passed the order on 8.11.1994. The appellant, however, could work only for a period of about five months, ie., from 8.11.1984 to 31.03.1985, because, in pursuance of another departmental enquiry, the appellant was dismissed from service with effect from 21.9.1994 and the appeal preferred by the appellant against the said order was also dismissed by the authority on 10.7.1994. Being aggrieved by the above orders of the disciplinary authority and the appellate authority, the appellant preferred Writ Petition No. 40026 of 1995 in this Court. A learned Single Judge of this Court by his judgment and order dated 24.10.2002 allowed the said Writ Petition and quashed the above orders of the disciplinary authority and the appellant authority and directed payment of 75% of backwages from the date of dismissal until his superannuation, less amounts if any already paid, with all consequential benefits including pensionary benefits under the relevant Regulations. It is seen from the records of the Court that the Management being aggrieved by the above order of the learned Single Judge has preferred Writ Appeal No. 6520 of 2002 with I.A.I/2003 seeking condonation of 54 days' delay in refiling the appeal and that I.A. was allowed by a Division Bench of this Court on 9.11.2003. The appeal is not yet admitted. 6. We have heard Sri K. Subba Rao, learned Senior Counsel for appellant and Sri K. Ramdas, learned Senior Counsel for the Management of the Bank. Sri Subba Rao would reiterate the same contentions put before the learned Single Judge. In addition, Sri Subba Rao would highlight the circumstances which forced the nationalisation of Banks and the policy decisions taken by the Government of India after nationalisation to advance loans to the weaker sections of the society such as small farmers, artisans, craftsmen and similarly circumstanced others to uplift their living conditions and would maintain that in the course of implementation of those policy decisions of the Government of India, the officers of the nationalized Banks like the appellant were called upon to achieve targets fixed for loans distribution and, therefore, even assuming that there are certain lapses on the part of the appellant in sanctioning loans of Rs. 5,000/- to each of the 21 loanees, that circumstance itself would never justify imposition of a major penalty now imposed by the Management, particularly having regard to the fact that it is not the charge levelled against the appellant that he sanctioned loans to 21 beneficiaries for any extraneous or collateral considerations. Sri Subba Rao would also attack the correctness of the findings, factual and legal, recorded by the learned Single Judge. Sri K. Ramdas, on the other hand, would support the order of the learned Single Judge as well as the disciplinary action taken by the Management and would highlight the limited scope of judicial review under Article 226 while reviewing validity of disciplinary proceedings and would maintain that no ground whatsoever has been made out by the delinquent officer to

interfere with the disciplinary action taken by the Management. 7. It is well settled that if a charge memo issued to a delinquent employee is defective in substantial terms, then the enquiry proceedings and the final order that may be made on the basis of such defective charge memo would be vitiated and only on that ground the penalty imposed on the delinquent is liable to be quashed. Since the contention raised by Sri Subba Rao with regard the vagueness of the charge memo goes to the root of the matter, it becomes necessary for us to first deal with that contention. Articles of charge dated 7th/9th August, 1992 and statement of imputation of misconduct in support of the charges read as follows:" Articles of Charge against Sri G.V. Aswathanarayana, Branch Manager, Jangamakote Branch. Sri G.V. Aswathanarayana, while functioning as a Branch Manager, Central Bank of India, Jangamakote Branch, during the year 1979, in the capacity of a public servant, committed gross official misconduct inasmuch as he misused his official position by sanctioning 21 loans applications for a total amount of Rs. 1,05,000/- as detailed in the statement of imputations of misconduct contrary to the Banking procedure and thereby contravened Regulation 3(1) of Central Bank of India Officer Employee's (Conduct) Regulations, 1976. Sd/-
(F.M. WADIA) DISCIPLINARY AUTHORITY STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF THE CHARGES AGAINST SRI G.V. ASWATHANARAYANA, BRANCH MANAGER, JANGAMAKOTE BRANCH, KARNATAKA STATE. Sri G.V. Aswathanarayana was working as a Branch Manager at Central Bank of India, Jangamakote Branch in the year 1979 while functioning as such he committed grave official misconduct in as much as he without any regard to the norms of the Bank and in contravention to the Rules of the Bank and against the interest of the Bank sanctioned a total loan amount of Rs. 1,05,000/- as detailed herebelow: NAME OF THE BORROWERS DATE OF SANCTION & AMT GUARANTORS 1. Abdul Khader Bhai S/o Fakir Sab, Jangamakote 29.10.79 Rs.5.000/- 1. 2. B. Saban Sab Noorullah of Jangamakote Sheik Fakruddin, S/o Sheik Imam Jangamakote 31.10.79 Rs.5,000/- 1. Ibrahim Sab 3. Sheik Imam Sahib s/o Sheik Ibrahim Sahib Jangamakote 16.11.79 Rs.5,000/- 1. 2. Jaheer Khan Laidullah of Jangamakote 4. Chottu, S/o Samad Jangamakote 29.11.79 Rs.5,000/- 1. 2. Basha Sheik Mahaboob 5. Muhammed Imam S/o Hydersab Jangamakote 11.10.79 Rs.5,000/- 1. Sheikh Ibrahim Sab Jangamakote 6. Hayat Sab, S/o Madar Sab Jangamakote 29.11.79 1. 2. Sheik mahaboob Basha 7. Jaheer Khan s/o Saboosab Jangamakote 29.11.79 Rs.5,000/- 1. 2. Chottu Sheik Mahboob 8. Abdul Rahim Khan Jangamakote 12.12.79 Rs.5,000 1. 2. Mashan Khan Ibrahim Khaleel 9. Sailer San, S/o. Ibrahim Sab Jangamakote 22.12.79 Rs.5000 NIL 10. Sheik Mahaboob S/o Muhammed Sab Jangamakote 22.12.79. Nil 11. Akbar, S/o Wahab Sab FakkiranahosaHally 18.4.80 1. M. Narasimhappa 12. Syed Ahmed S/o Meer Akbar, Fakkiranahosa Hally 21.1.80 Rs. 5,000 1. B.V.Krishnappa 13. Anwar S/o Mahaboob Sab Fakkiranahosa Hally 18.4.80 Rs. 5,000 1. 2. Ajmeer Sab Venkateshappa 14. Rafeek Ahamed S/o Sabjan Sab Fakkiranahosahally 18.4.80 Rs. 5,000 1. 2. Rafee M. Narasimhappa 15. Syed Kadar S/o Syed Salaha, Fakkirana Hosahally 18.4.80 Rs. 5,000 1. 2. H. Babu Venkateshappa

16. Ameerjan S/o Suleenan Sab Fakkirana hosahally 26.2.80 Rs. 5,000 1. Syed Abbas 17. Ajmeer Sab S/o Rahman Sab Fakkiranahosahally 18.4.80 Rs. 5,000 NIL 18. Syed Ibrahim S/o Syed Hussain Fakkiranahosahally 26.2.80 1. Syed Abbas 19. Syed Baheer S/o Syed Yusuf Fakkiranahosahally 18.4.80 Rs. 5,000 NIL 20. S. Samiullah S/o Khadar Basha Fakkiranahosahally 18.4.80 Rs. 5,000 NIL 21. H. Babu, S/o Hyder Sab Fakkiranahosahally 18.4.80 Rs. 5,000 NIL While sanctioning the above loans, Shri Aswathanarayana has not followed the rules mentioned herebelow: 1. The loanees were bogus parties and their address and whereabouts are not obtained by the Branch Manager. 2. The S.O. has got to verify whether the borrower has got a "voted licence" for the purpose of dealing with silk cocoons. 3. The S.O. has not taken genuine surities or guarantors for the loans. In some cases, he has not taken the guarantors at all. 4. Some loans are sanctioned by the S.O. to some persons outside Jangamakote limits which is against the norms of the Bank. 5. The S.O. has not verified regarding the necessity of the loans and also regarding the way for which it is utilised. By the above acts of misconduct, Sri Aswathanarayana has put the Bank to a total loss of Rs. 1,05,000/- and thus misused his official capacity adverse to the interest of the Bank and also in contravention of the Conduct Rules of the Central Bank of India Officer Employees (Conduct) Regulations, 1976, and is charged under Regulations 3(1) of the Central Bank of India Officer Employees' Conduct Regulations, 1976." 8. It is trite that charge-sheet is the charter of disciplinary action. The domestic/departmental enquiry commences with the service of the charge-sheet. In other words, before proceeding with the departmental or domestic enquiry against a delinquent official, he must be informed clearly, precisely and accurately of the charges levelled against him. The charge-sheet should specifically set out all charges which the delinquent is called upon to show-cause against and should also state all relevant particulars and details without which he cannot defend himself. The object of this requirement is that the delinquent employee must know what he is charged with and have the adequate opportunity to meet the charge and to defend himself by giving a proper explanation, after knowing the nature of the offence or misconduct with which he is charged; otherwise, it will amount to his being condemned unheard. Fair hearing pre-supposes a precise and definite catalogue of charges so that the person charged my understand and effectively meet it. If the charges are imprecise and indefinite or vague or unintelligible, the person charged could not be able to understand them and defend himself effectively and in those circumstances, the subsequent enquiry would not be a fair and just enquiry. The charged official ought to be informed of the charges levelled against him as also the grounds upon which they are based. Charge of misconduct should not be vague. The charge-sheet must be specific and must set out all the necessary particulars and details irrespective of the fact whether the delinquent knows it or not; he must have told about the charges and it was not his duty to connect the charge-sheet with his alleged understanding or knowledge of the charge. However, it is true that the charge need not be framed with the precision of a charge in criminal proceeding. But, at the same time, it must not be vague or so general as to make it impossible of being traversed. Therefore, the test is

whether the charge conveys to the delinquent employee, the exact nature of the alleged misconduct in a way that would enable him to meet the charge effectively. It is well established that if a vague charge is given to a delinquent, it is a fatal defect, which vitiates the entire proceedings. It is also relevant to notice that the vagueness in the charge is not excused on the plea that the employee concerned should be deemed to have known the facts correctly. It should not be left to the delinquent official to find out or imagine what the charges against him are and it is for the employer to frame specific charges with full particulars. 9. In the premise of the above noticed well settled principles governing issuance of a charge memo/ charge-sheet to delinquent employees, let us have a look at the articles of charge and the imputations 1 - 5. Since the enquiry officer has held that the imputations 3 and 4 levelled against the appellant officer are not proved and that finding has been accepted by the disciplinary authority, there is no need for us to consider the alleged vagueness of those charges. Imputations 1 and 5, in our considered opinion, are vague, because, the disciplinary authority has levelled omnibus allegations in one sentence with regard to as many as 21 loans sanctioned by the delinquent officer. In order to facilitate the delinquent, the disciplinary authority ought to have supplied full particulars in the statement of imputations with regard to each of the 21 loans. Further, the imputations do not refer to any document or other source on the basis of which the allegations contained in imputations 1 and 5 are levelled against the delinquent.Further, it is pertinent to notice that imputation No. 2 speaks only about the duty of the sanctioning officer by stating that the sanctioning officer has got to verify whether a borrower has got "voted licence" for the purpose of dealing with silk cocoons. It is not the allegation of the disciplinary authority that the delinquent has breached the above rule and sanctioned loans to 21 persons.It is one thing to say that an officer is duty-bound to do something and it is altogether different thing to say that the officer has breached the said duty cast on him. Unless it is specifically levelled by the disciplinary authority against the delinquent that in sanctioning loans to 21 persons he breached the duty cast on him mentioned in imputation 3, it could not be said that an allegation of misconduct was levelled against the delinquent with regard to his failure to verify whether borrowers have got "voted licence" for the purpose of dealing with silk cocoons. It is not a valid argument to contend that in the context of the case, the delinquent understood the charge properly because the vagueness in the charge cannot be excused on the plea that the delinquent should be deemed to have known the facts correctly. It should not be left to the delinquent official to find out or imagine what the charges against him are but it is the duty of the disciplinary authority to frame charges with full particulars. In that regard what the Supreme Court thought about similar vague charge in MANAGEMENT OF THE NORTHERN RAILWAY CO-OPERATIVE CREDIT SOCIETY LIMITED, JODHPUR vs. INDUSTRIAL TRIBUNAL, RAJASTHAN, JAIPUR, is quite apposite. In para - 13 of the said judgment Apex Court held: "13. As regard the remaining four charges,they were clearly very vague. The first charge, in general terms, stated that Kanraj had instigated and conspired to paralyse the working of the Society by collectively submitting sickness certificates. The

charge did not mention whom he had instigated or with whom he had conspiracy was being inferred. Similarly, the third charge of taking active part in the issue and distribution of certain leaflets against the management of the Society did not at all indicate what those leaflets were and what part Kanraj had taken in the issue and distribution of those leaflets. The fourth charge of carrying vilifying propaganda in connection with the elections of the Society at the Annual General Meeting on 28th April, 1956 was again similarly vague as there was no specification as to the persons with whom this propaganda was carried on by Kanraj and where and when it was done. In the same way, the last and the fifth charge of instigating the depositors to withdraw their deposits from the Society was again very vague as there was no mention as to which depositors had been instigated and when they were instigated. In these circumstances, Kanraj was fully justified impleading that the charges were vague and he was unable to show cause against the charges served on him." 10. Judgment of the Supreme Court in TRANSPORT COMMISSIONER vs. RADHA KRISHNA MOORTHY, can also be noticed in that regard. The Supreme Court dealing with a charge levelled against certain officials alleging that they indulged in misappropriation by falsification of accounts without giving full particulars held: "9. Insofar as the vagueness of the charges is concerned we find that it deserves acceptance. It is asserted by Shri Vaidyanathan, learned Counsel for the respondent that except the memo of charges dated 4.6.1989, no other particulars of charges or supporting particulars were supplied. This assertion could not be denied by the learned Counsel for the appellant. A reading of charges would show that they are not specific and clear. They do not point out clearly the precise charge against the respondent, which he was expected to meet. One can understand the charges being accompanied by a statement of particulars or other statement furnishing the particulars of the aforesaid charges but that was not done. The charges are general in nature to the effect that the respondent along with eight other officials indulged in misappropriation by falsification of accounts. What part is the respondent play, which account did he falsify or help falsify, which amount did he individually or together with other named persons misappropriate, are not particularised. The charge is a general one. It is significant to notice that respondent has been objecting to the charges on the ground of vagueness from the earliest stage and yet he was not furnished with the particulars. It is brought to our notice that respondent's name was not included in the schedule appended to GOMs 928 dated 25.4.1988 mentioning the names of officials responsible for falsification of accounts and misappropriation and that he is also not made an accused in the criminal proceedings initiated in that behalf. 10. We are, therefore, of the opinion that the judgment of the tribunal is right insofar as it holds that the charges communicated to the respondent are vague". 11. Further, the Supreme Court in SURATH CHANDRA CHAKRAVARTHY vs. THE STATE OF WEST BENGAL, speaking about the requirement of a valid charge memo held that if a delinquent is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.

The Supreme Court in Para - 4 has observed: “4. ... The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders as also to be stated. This Rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself.If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him. By the way of illustration one of the grievances of the appellant contained in his letter dated March 24, 1950, to the Enquiry Officer may be mentioned. This is what he said though the language employed is partly obscure and unhappy:”Regarding the first charge I beg to submit that the allegation is vague.In the charge it has not been specifically stated as to where, when and before whom I circulated false rumours, regarding retrenchment policy of the Government and thereby spread insubordination. In fact, if one goes through the statements of the P. Ws. made to D.F.S. as submitted before my suspicion, it will appear that no specific case could have made with all the material particular as to date, time and person. Having been able to take deposition and to conduct enquiry keeping me in dark and finally put me out of office. Sri S.Bose was able to win over the witnesses and was able to shape his case to suit his purpose." Now in the present case each charge was so bare that it was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the appellant to defend himself. It is precisely for this reason, the Fundamental Rule 55 provides, as stated before, that the charge should be accompanied by a statement of allegations. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. The appellant repeatedly and at every stage brought it to the notice of the authorities concerned that he had not been supplied the statement of allegations and that the charges were extremely vague and indefinite. In spite of all this no one cared to inform him of the facts, circumstances and particulars relevant to the charges." 12. In this case also, the imputations 1 and 5 are omnibus, very sweeping and bare that it was not capable of being intelligently understood by the delinquent and sufficiently definite to furnish materials to the delinquent to defend himself effectively. Therefore, we find force in the contention of Sri Subba Rao that the imputations 1 and 5 are vague. Imputation 2 cannot form part of Article of charge inasmuch as it does not disclose any breach of duty on the part of the delinquent which, if proved, will tantamount to a misconduct under the Conduct Regulations. 13. In the result, we hold the articles of charge and the statements of imputations of misconduct issued to the appellant suffer from vice of vagueness and, therefore, are invalid. In that view of the matter, in normal course, we would have straightaway quashed the impugned proceedings reserving liberty to the management to conduct enquiry de novo. It is brought to our notice that the

appellant, had he continued in service without being dismissed from service as a disciplinary measure in the other case, he would have retired on attaining the age of superannuation. In that view of the matter, reinstatement of the appellant into service would not arise and, therefore, there is no scope for directing a de novo enquiry against the appellant after framing proper charge memo. In addition, since Sri Subba Rao and Sri Ramdas, learned Senior Counsel for the parties argued quite extensively with regard to the procedure adopted by the enquiry officer and the disciplinary authority in conducting domestic enquiry, it is proper to deal with those contentions also. 14. The procedure adopted by the enquiry officer in marking the statements recorded by the CBI without the consent of the delinquent and without furnishing copies of the same in advance to the delinquent and the procedure calling upon the delinquent to immediately cross-examine the witnesses of the disciplinary authority with reference to the documents so produced without giving reasonable time-gap could not be sustained in the light of the judgments of the Supreme Court M/s. KESORAM COTTON MILLS LIMITED vs. GANGADHAR AND OTHERS, and M/S. KHARDAH AND CO. LTD. vs. THE WORKMEN, . 15. The learned Single Judge has rejected the contention of the delinquent with regard to refusal of the disciplinary authority/enquiry officer to supply the records requested and permission to inspect documents solely on the basis of the following observation made by the appellate authority in his order: "On going through the relevant papers, I find that Disciplinary Authority had directed the Branch Manager to allow inspection of records and a letter of permission to inspect the documents was also issue to Co. Again when the matter was taken up at Departmental Enquiry, the Presenting Officer expressed his willingness to allow further time to Co. to peruse the documents at the Branch and submit his defence. The CO for reasons known to him, instead of approaching the Branch for verification of records, kept quite all the way and when the enquiry was taken up after more than 75 days of time, requested for additional time for verification of documents at the Branch and IA had rightly stated that he will not allow any more time and proceeded with the enquiry. Every opportunity was provided to CO in the interest of natural justice and fair play and no documents useful in his defence were held back from the enquiry." 16. With respect, we tend to state that the above observations of the appellate authority could hardly be a good ground to reject the contention of the delinquent, which contention is founded on factual matrix elaborately laid in the pleadings. Therefore, it becomes necessary for us to examine whether there is any truth in several allegations levelled by the delinquent in his pleading with regard to the enquiry conducted and different steps taken by the enquiry officer in conducting the enquiry. The allegations levelled against the enquiry officer with regard to the conduct of enquiry, non-furnishing copies of relevant documents, refusal to permit the delinquent to engage the services of a Counsel etc, are found in para -4 of the Writ Petition. Para - 4 is a very lengthy paragraph running to as many as 8 pages. The allegation contained in para - 4 can be summarised briefly thus; after the charge memo was served on the delinquent he made a representation dated 3.9.1982 produced as Annexure-C to the Chief Manager and disciplinary authority to

permit him to inspect the records, in order to enable him to prepare effective explanation to the charge memo. On 19th June, 1983 the delinquent addressed another letter produced as Annexure-D to the disciplinary authority to furnish a copy of CBI report or to permit him to inspect the same. The documents sought by the delinquent are not furnished nor was he allowed to inspect the same. Without acceding to the delinquent's above request, the disciplinary authority proceeded to conduct enquiry. Under those circumstance, the delinquent submitted a representation dated 19.3.1983 produced as Annexure-E to the disciplinary authority pleading that Sri Shiva Reddy, Law Officer of the Bank and Sri U.S. Hegde, Presenting Officer are well experienced and legally trained and, therefore, he may be allowed to engage the services of a Counsel to defend him in the enquiry. This was followed by another representation dated 30.6.1983 produced as Annexure - G wherein the delinquent has stated thus: "In this regard I would like to inform you that in the matter of both the charge sheets i.e., dated 9.8.82 and 16.12.82 although I have been directed by the Disciplinary Authority to submit my written statement of defence within fifteen days from the date of the charge sheets I have not been able to submit the same to you only because the documents and necessary Bank's records have not been made available to me by the Management so far inspite of my repeated requests. However the Branch Manager informed us that he will be intimating to us when he will be in a position to make available the records etc. to us in due course. Under the circumstances I once again request you to kindly to note to allow me sufficient and reasonable time to go through the same and then submit my written statement of defence since I have not been allowed to inspect the records from the very beginning though it is already more than three years. This is for your kind information." 17.The enquiry was commended on 21.6.1983. On that day also the delinquent again reiterated his plea that he was not supplied with necessary documents and, therefore, he could not submit his written statement. On behalf of the disciplinary authority, as many as 13 witnesses were examined as M.W. 1 to M.W-13 and 29 documents were marked as Ex.M.E-1 to M.E. 23. The delinquent examined himself as D.E.-1 and marked 14 documents as D.E-1 to D.E-14.In the course of the enquiry, original records were not produced and what were produced were only xerox copies of certain documents only and not all documents. Since the delinquent was not permitted to engage the services of a counsel in the enquiry, he had no other alternative but to take the assistance of one Sri K.K.Pande, Assistant Branch Manager, Patna to defend him before the enquiry officer. After the completion of the enquiry, the delinquent submitted a detailed defence brief produced as Annexure-H dated 10.04.1984. The disciplinary authority without considering several grounds urged in the defence brief passed the order on 8th November, 1984 imposing major penalty of "reduction in pay by five stages in the present time-scale with cumulative effect". Only with the final order of disciplinary authority, a copy of the findings recorded by the enquiry officer was sent to the delinquent. Thereafter, the delinquent preferred an appeal to the Zonal Manager of the Bank under Regulation 17 of the Regulation rising large number of grounds running to as many as 14 pages. The appellate authority by a cryptic order without considering the

grounds urged in the memorandum dismissed by the order by his order dated 25th July, 1985. Thereafter, a representation was made on 16.10.1985 to the General Manager written statement of defence within fifteen days from the date of the charge sheets I have not been able to submit the same to you only because the documents and necessary Bank's records have not been made available to me by the Management so far inspite of my repeated requests. However the Branch Manager informed us that he will be intimating to us when he will be in a position to make available the records etc. to us in due course. Under the circumstances I once again request you to kindly to note to allow me sufficient and reasonable time to go through the same and then submit my written statement of defence since I have not been allowed to inspect the records from the very beginning though it is already more than three years. This is for your kind information." 18.The enquiry was commended on 21.6.1983. On that day also the delinquent again reiterated his plea that he was not supplied with necessary documents and, therefore, he could not submit his written statement. On behalf of the disciplinary authority, as many as 13 witnesses were examined as M.W. 1 to M.W-13 and 29 documents were marked as Ex.M.E-1 to M.E. 23. The delinquent examined himself as D.E.-1 and marked 14 documents as D.E-1 to D.E-14.In the course of the enquiry, original records were not produced and what were produced were only xerox copies of certain documents only and not all documents. Since the delinquent was not permitted to engage the services of a counsel in the enquiry, he had no other alternative but to take the assistance of one Sri K.K.Pande, Assistant Branch Manager, Patna to defend him before the enquiry officer. After the completion of the enquiry, the delinquent submitted a detailed defence brief produced as Annexure-H dated 10.04.1984. The disciplinary authority without considering several grounds urged in the defence brief passed the order on 8th November, 1984 imposing major penalty of "reduction in pay by five stages in the present time-scale with cumulative effect". Only with the final order of disciplinary authority, a copy of the findings recorded by the enquiry officer was sent to the delinquent. Thereafter, the delinquent preferred an appeal to the Zonal Manager of the Bank under Regulation 17 of the Regulation rising large number of grounds running to as many as 14 pages. The appellate authority by a cryptic order without considering the grounds urged in the memorandum dismissed by the order by his order dated 25th July, 1985. Thereafter, a representation was made on 16.10.1985 to the General Manager circumstances of the case and decide. In this case, the Presenting Officer appointed by the disciplinary authority is not a legally trained persons nor a legal practitioner. The charges and imputations leveled against the delinquent as rightly held by the learnedSingle Judge, did not involve complexity either with regard to questions of law or of fact and it is not such a case where the delinquent cannot properly and effectively be defended by defence representative. 19. .... 20. We, however, find considerable force in the contention of Sri Subba Rao that the refusal of the disciplinary authority / enquiry officer to furnish the documents requisitioned and sought by the delinquent has resulted in prejudice. A delinquent in a departmental or domestic enquiry is entitled to demand and receive two sets of documents, namely, (i) all

those documents on the basis of which the disciplinary authority has framed the charges and the documents on which the disciplinary authority places reliance to prove those charges and (ii) other documents which may not be the basis for framing the charges nor those on which the disciplinary authority places reliance to prove the charges against the delinquent, but, they are required by the delinquent to effectively defend himself in the enquiry and to effectively cross-examine the witness of the disciplinary authority. If required relevant documents are not made available to a delinquent, it is trite, such delinquent would be prejudiced greatly in defending himself against the charge effectively. Departmental / domestic enquiry in order to be valid, a discliplinary Authority not only appraise the delinquent precisely and clearly with the charges leveled against him but also should supply all necessary information, particulars and documents that may be required by the delinquent to defend himself effectively in the enquiry. If the Court finds that the disciplinary authority has failed to furnish either of the two sets of documents referred to above to a delinquent, it will be duty bound to step in and interfere with the disciplinary action taken against such delinquent. 21. In STATE OF MADHYA PRADESH vs. CHINTAMAN SADASHIVA WAISHAMPAYAN, AIR 1961 SC 1623, the Supreme Court while finding flaw held thus: "6. ....Thus, it was of very great importance for the defence to cross-examine these two witness, and for that purpose the respondent wanted copies of their prior statements recorded by Mr. Ghatwal in his preliminary enquiry. It is difficult to understand how these statement could be regarded as secret papers, for that alone is the reason given for not supplying their copies to the respondent. Failure to supply the said copies to the respondent made it almost impossible for the respondent to submit the said two witnesses to an effective cross-examination; and that in substance deprived the respondent of a reasonable opportunity to meet the charge. 10. ..... It is hardly necessary to emphasise that the right to cross-examine the witnesses who give evidence against him is a very valuable right and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would be that the enquiry had not been held in accordance with rules of natural justice." 22. It is an admitted position that despite the request made by the delinquent, copies of the documents were not supplied to him. Therefore, the burden to show that non-supply of documents required by the delinquent did not cause any prejudice is on the disciplinary authority and not on the delinquent. This position in well settled by the judgment of the Supreme Court in KASHINATH DIKSHITA vs. UNION OF INDIA AND OTHERS, it was held: "10. And such a stance was adopted in relation to an inquiry whereat as many as 38 witnesses were examined, and 112 documents running into hundreds of pages were produced to substantiate the charges. In the facts and circumstances of the case we find it impossible to hold that the appellant was afforded reasonable opportunity to meet the charges levelled against him. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental inquiry depends on the facts of each case. We are not prepared to accede to the submission urged on behalf of the respondents that

there was no prejudice caused to the appellant, in the facts and circumstances of this case. This appellant in his affidavit page 309 of the SLP Paper book has set out in a tabularform running into twelve pages as to how he has been prejudiced in regard to his defence on account of the non-supply of the copies of the documents. We do not consider it necessary to burden the record by reproducing the said statement. The respondents have not been able to satisfy us that no prejudice was occasioned to the appellant. 11. Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed that copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself. We do not consider it necessary to quote extensively from the authorities cited on behalf of the parties, beyond making passing reference to some of the citations, for, whether or not there has been a denial to afford a reasonable opportunity in the backdrop of this case must substantially depend upon the facts pertaining to this matter." 23. In this case, it is also relevant to notice that Regulations 6(5) (iii) requires a list of documents has to be enclosed with the charge memo itself. In this case, along with the charge memo, neither the list of witnesses nor the list of documents are enclosed. 24. We also find considerable force in the contention of Sri Subba Rao that the order passed by the disciplinary authority and the order passed by the appellate authority do not reflect application of mind on their part for want of reasons in the orders passed by them. After completion of the enquiry, the delinquent submitted his written brief dated 10.04.1984 rising several grounds and contentions with regard to each and every finding recorded by the enquiry officer and the procedure followed by him, running to as many as closelytyped 19 full pages. The disciplinary authority, in its final order dated 8th November, 1984 produced as Annexure-J, disposed of all those contentions and grounds and objections in a most cryptic manner. The disciplinary authority has stated: "5. I have carefully gone through the report and findings of the Enquiry Officer and the statement of defence and the records of the enquiry. Considering the evidence on record, I accept the findings of Enquiry Officer that two imputations of the charge are partly proved and one imputation of the charge is fully proved." 25. Further, the delinquent in his memorandum of appeal filed under Regulation 17 to the appellate authority running to 14 pages has raised large number of grounds and contentions to attack the validity of the order made by the disciplinary authority. Here again, the appellate authority without considering any of those contentions and objections summarily disposed of the appeal by a cryptic order. 26. It is now well settled that where an authority makes an order in exercise of a quasi-judicial function or an order which has

the effect of affecting civil rights of a person and which action is liable to be reviewed by Constitutional Courts as provided under the Constitution, it must record its reasons in support of the order it makes. In SIEMENS ENG. AND MFG. CO. OF INDIA LIMITED vs. UNION OF INDIA, , the Supreme Court held that the rule requiring reasons in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirements of law. To the same effect is the opinion of the Supreme Court in UNION OF INDIA vs. Mohan Lal Capoor and Ors., , WOOLCOMBERS OF INDIA LTD. vs. WOLCOMBERS WORKER UNION, , MANEKA GANDHI vs. UNION OF INDIA, . It hardly requires any emphasis that compulsion of disclosure of reasons guarantees consideration. The condition to give reasons introduced clarity and excludes or at any rate minimizes arbitrariness; it gives satisfaction to the other party against whom the order is made; and it also enables an appellate or supervisory or reviewing Court to keep the Tribunals and authority within bounds. Therefore, a reasoned order is always a desirable condition of judicial disposal or a disposal which is required to be done judiciously. 27. In conclusion we are constrained to hold that the procedure adopted by the enquiry officer / disciplinary authority in conduct of the domestic enquiry against the appellant is not only in violation of Regulations but also in utter violation of principles of natural justice and fair play in action. We also hold that on account of the failure of the disciplinary authority / enquiry officer to furnish the documents sought by the delinquent, prejudice has been caused to him defending himself effectively. 28. Since we have held that the charge memo is vague and that the procedure adopted by the respondent authorities in conducting domestic enquiry is in violation of Regulations and principle of natural justice, we do not find any necessity to deal with the contention of Sri Subba Rao that even the factual findings recorded by the enquiry officer against the delinquent are perverse for want of legal evidence. 29. In the result and for the foregoing reasons, we allow writ appeal and set aside the order of the learned Single Judge dated 19th December 1997 and allow writ petition No. 2575 of 1987 and quash the order bearing No. DO: PRS : 84 : 3275 (Annexure - J) passed by the disciplinary authority and the order bearing reference No. ZO:PRS:85:2030 dated 25th July 1985 (Annexure-N), passed by the appellate authority, with no order as to costs. We declare that the appellant officer is entitled to all benefits, pecuniary and otherwise, flowing from this order and the same shall be extended / paid to him within two months from the date of receipt of a copy of this order.