

# State Bank Of India & Ors vs Bidyut Kumar Mitra & Ors on 11 January, 2011

**Author: Surinder Singh Nijjar**

**Bench: Surinder Singh Nijjar, B.Sudershan Reddy**

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. .... OF 2011  
[Arising out of SLP (C) No (s) 11590/2009]

State Bank of India and Ors. ...APPELLANTS

VERSUS

Bidyut Kumar Mitra and Ors. ...RESPONDENTS

JUDGMENT

SURINDER SINGH NIJJAR, J.

1. Leave granted.

2. This appeal is directed against the final judgment and order dated 6th February, 2009 passed by the Division Bench of the High Court at Calcutta in M.A.T. No. 3613 of 2001 whereby the Division Bench quashed the enquiry proceedings against the respondent held on the basis of the charge sheet dated 14th December, 1981, enquiry report dated 22nd September, 1982, the order of punishment dated 4th July, 1983, the order dated 6th June, 1984 passed by the Appellate Authority as also the resolution dated 12th November, 1987 adopted in the meeting of the Review Committee of the appellant Bank.

3. The respondent was appointed as a Clerk in the Imperial Bank of India, which is a predecessor of the appellant Bank. Way back in November, 1944, he had joined in the capacity of a Clerk. Subsequently, by the year 1978-79, he was working as Branch Manager at the Biplabi Rash Behari Bose Road Branch, Calcutta of the appellant Bank. In the capacity of a Branch Manager, he granted numerous mid-term loans to a number of transport operators without making appropriate scrutiny of the applications as required under the rules. He had also granted the loans in excess of his

discretionary power thereby exposed the Bank to the risk of serious financial loss.

4. A charge sheet dated 14th December, 1981 was served upon him alleging that he, during his incumbency as the Branch Manager of the Biplabi Rash Behari Bose Road Branch, Calcutta from 29th February, 1978 to 21 st August, 1979 had granted medium term loans to large number of transport operators without making thorough scrutiny of the relative proposals. He had sanctioned the loans even before completion of the necessary formalities. The loans were granted without making any discreet enquiries to the credit worthiness of the borrowers/guarantors. He had thus violated the laid down norms and instructions of the Bank in this regard and thereby exposed the Bank to grave risk of financial loss. The gist of the allegations was as follows:-

"(i) (a) granting loans, in as many as 29 cases (as per Annexure `B') out of 57 such cases, far in excess of the discretionary powers vested in you in terms of H.O. `SIB' Circular No.57 of 1979;

(b) Sanctioning the loans in question without compiling the necessary opinion reports on the borrowers/guarantors properly; and

(c) allowing most of these borrowers to stand AS guarantors for the advances granted to others and vice-versa (as per Annexure `C');

(ii) It has further been alleged against you that-

(a) You had failed to submit the necessary control returns in respect of the Medium Terms Loans in question to the Controlling Authority at the appropriate time despite reminders:

(b) You had made full payment to a body building firm viz. M/s.

C.A. Engineers and Body Buildings, Calcutta as per their quotation long before the delivery of the chassis by the suppliers, in respect of a loan of Rs.1,92,000/- granted to Shri Ashoke Kumar Sengupta (MTL No.21) on the 21st April, 1979;

(c) You had allowed clean overdrafts to some of these borrowers (as per Annexure `D'), presumably to meet their margin requirements, without obtaining any letters of request and without stipulating any repayment programme therefore and even without reporting the matter to your Controlling Authority."

5. It was alleged that he had acted in an extremely negligent manner and thereby contravened the provisions of Rules 32(3) and 32(4) of the State Bank of India (Supervising Staff) Service Rules (hereinafter referred to as `Service Rules'). It was further stated that the above charges, if proved, would amount to lapses involving lack of devotion to duty and would be construed as prejudicial to the interests of the Bank. Consequently, he was asked to show cause within fifteen days as to why disciplinary action should not be taken against him. A copy of the list of documents and list of

witnesses relied upon by the Bank were supplied to the respondent.

6. On 11th March, 1982, Shri A.R. Banerjee, Commissioner of Departmental Enquiries, Central Vigilance Commission (hereinafter referred to as 'CVC') was appointed as the Enquiry Officer. The Enquiry Officer instructed the Bank to show all the documents including the additional documents relied upon by it to the defence by 20th March, 1982. The defence assistant of the respondent was also instructed to submit the list of the defence documents required, if any, by 31st March, 1982 along with the respective relevancy to the charge sheet and likely whereabouts of the documents. He was also instructed to submit the list of additional witnesses, which were required to be summoned along with their latest addresses. By letter dated 31st March, 1982, the respondent informed the Enquiry Officer that he shall submit the list of defence witnesses and documents within "a couple of days". Thereafter, the defence representative of the respondent by letter dated 3rd April, 1982 addressed to the Enquiry Officer, submitted a list of witnesses and documents of the defence. According to the respondent, all the witnesses referred to in the list of witnesses were officers of the Bank. Similarly, the documents referred to, were also in the possession of the management of the Bank. Therefore, the respondent claimed that he was unable to produce either the witnesses or the documents in support of his defence, unless they were summoned by the Enquiry Officer.

7. It appears that the two witnesses referred to in the said application of the respondent were summoned. However, the documents relied upon by the respondent were not requisitioned. It was the case of the respondent that in fact his prayer in respect of the aforesaid documents was never disposed of and no reason was assigned by the Enquiry Officer for not requisitioning such documents. It appears that the aforesaid issue was also not dealt with by the Enquiry Officer in the Enquiry Report dated 22nd September, 1982. On this short ground, the respondent had claimed that he was denied reasonable opportunity of hearing at the enquiry and the same has caused serious prejudice to his defence.

8. On 16th September, 1982, the respondent submitted the defence arguments in the form of a written brief. In the aforesaid brief, the respondent did not raise the issue of non-supply of any documents. On 16th June, 1983, the Disciplinary Authority forwarded his comments and a note on the enquiry proceeding to the Appointing Authority. In this note, the Disciplinary Authority agreed with the findings of the Enquiry Officer. It was mentioned that it has been proved at the enquiry that the respondent granted medium term loans to a large number of transport operators, not in a proper manner, thus exposed the Bank to a risk of substantial financial loss. It was further mentioned that while granting advances, the respondent should have ascertained his discretionary powers and followed the Bank instructions. The Disciplinary Authority recommended the imposition of penalty of dismissal on the respondent.

9. By order dated 4th July, 1983, the Appointing Authority, upon examination of the records pertaining to the enquiry, agreed with the findings of the Disciplinary Authority and imposed the punishment of dismissal on the respondent in terms of Rule 49(h) read with Rule 50(3)(iii) of the Service Rules effective from the date of the receipt of the aforesaid order.

10. Aggrieved by the aforesaid order of dismissal, the respondent filed a departmental appeal on 31st August, 1983. In the aforesaid appeal, the respondent for the first time alleged violation of principle of natural justice due to non-supply of documents as requested through his letter dated 3rd April, 1982. However, there was no averment with regard to the non-supply of CVC recommendations. Furthermore, the respondent had not given any particulars as to what prejudice had been caused to him during the course of the enquiry proceeding. Such an objection was also not raised by the respondent while the enquiry was being conducted.

11. By order dated 6th June, 1984, the Appellate Authority upheld the order of the Appointing Authority imposing the punishment of dismissal. With regard to the non-supply of some documents, the Appellate Authority held that respondent had failed to submit the list of documents and witnesses within the stipulated time. Furthermore, he did not raise any objection during the course of the enquiry.

12. Being aggrieved by the aforesaid order of 1st December, 1984, the respondent filed a review application. He made a grievance that neither the Enquiry Officer nor the Disciplinary Authority or the Appellate Authority while passing the orders considered the material contentions raised by the respondent in his written statement of defence as well as in his petition of appeal. According to him, all the authorities proceeded with a predetermined mind and the orders have been passed mechanically. For the first time, he made a grievance that neither the documents mentioned in the application dated 3rd April, 1982 were requisitioned nor the witnesses mentioned in the list of witnesses were summoned. He then proceeded to set out the relevance of the documents which according to him would have enabled him to prove at the enquiry that priority sector advance was given utmost importance in the Bank's policy. It was, therefore, incumbent upon him as Branch Manager to make all efforts to increase advances in the priority sector which includes transport loans. The opinion reports submitted by the respondent with regard to the loans were never incomplete. They were not produced at the enquiry. He also highlighted that production of documents listed at Sr. No. 12 would have shown that the respondent was absorbed with the work relating to IDBI Refinance, which resulted in a little delay in submitting the controlled return. He stated that the documents mentioned at Sr. No. 14 would have shown that the overdrafts of borrowers were sanctioned on the basis of request letters. According to him, the document at Sr. No. 17 would have enabled him to prove that in priority sector group guarantee or counter guarantee was permissible in case of loans to transport borrowers. He, therefore, submitted that non-summoning of such documents resulted in denial of reasonable opportunity and was in gross violation of principle of natural justice.

13. By a detailed order dated 12th/16th November, 1987, the Review Committee declined to interfere with the order of the Appointing Authority which had been upheld by the Appellate Authority.

14. Aggrieved by the action of the Bank in passing the aforesaid order, the respondent challenged the same in a Writ Petition Civil Order No. 7390 (W) of 1988 in the High Court at Calcutta. It would appear that for the first time, the respondent raised the ground of non-

supply of the vigilance report. He also submitted that the refusal of the Bank to requisition the documents mentioned in the list of witnesses and to summon the witnesses named in the list of witnesses resulted in denial of reasonable opportunity of hearing at the enquiry and the same caused serious prejudice to his defence. He stated that out of the seventeen documents referred to in the application dated 3rd April, 1982, the documents at Sr. No. 1, 2, 6, 12, 14 and 17 were most vital documents. He reiterated the pleas which were raised in the Review Petition.

15. The appellant Bank filed a detailed counter affidavit in opposition to the writ petition denying all allegations and claims of the respondent. In reply to paras 10, 11 and 12 of the petition, it was stated that respondent was asked to submit his list of documents and witnesses by 31st March, 1982, but he failed to do so. He submitted the list after nearly two months and as such no action could be taken there upon. It is reiterated that the respondent did not make any grievance about the non-production of documents at the enquiry. He also did not raise any objection with regard to non-calling of any witness at the enquiry. It was stated that the allegations with regard to denial of natural justice are baseless and the respondent had in fact admitted that he committed the irregularity but he blamed the Head Office for not warning the respondent well in advance. His justification about the group guarantee was nullified by his own defence witness, a Development Manager, who deposed that the group guarantee is meant for poor sections of the community under Differential Interest Rate (DIR) loans and not for transport operators. It was also pointed out that group guarantees are taken only for loans of about Rs.6,500/- or so and not for large amounts of Rs. 1 Lac and above. The appellant Bank also submitted that there were no violations of principle of natural justice. The appellant Bank also submitted that Presenting Officer made repeated requests to the respondent to submit the list of documents and witnesses but the respondent ignored the requests. It was only about two months later when the enquiry was virtually completed when the respondent submitted a request letter dated 3rd April, 1982.

16. By judgment and order dated 18th April, 2001, the learned Single Judge dismissed the writ petition. Aggrieved by the judgment of the learned Single Judge, the respondent challenged the same in appeal before the Division Bench. The Division Bench vide judgment and order dated 6th February, 2009 set aside the judgment of the learned Single Judge dated 18th April, 2001 and allowed the writ petition. Consequently, the Enquiry Report, order of punishment and the subsequent orders of the Appellate Authority as also the resolution passed by the Review Committee were quashed and set aside. The Bank has challenged the aforesaid judgment of the Division Bench in the present appeal.

17. We have heard the learned counsel for the parties.

18. It is submitted by Mr. Shyam Divan, learned senior counsel appearing for the Bank that the Division Bench without adverting to the fact situation held that there has been a breach of rules of natural justice, which has vitiated the entire disciplinary proceedings from the stage of holding of the departmental enquiry till the passing of the resolution by the Review Committee. Learned Single Judge, according to the learned senior counsel, had given cogent reasons to justify its conclusions on facts. It was rightly observed by the learned Single Judge that respondent never raised the issue of any prejudice having been caused by the non-supply of the documents during the proceedings. The

Division Bench also failed to appreciate that all material documents relied upon by the Bank had been supplied to or inspected by the respondent. The Division Bench, wrongly relying on a judgment of this Court in the case of State Bank of India and Ors. Vs. D.C. Aggarwal and Anr.<sup>1</sup> held that the non-supply of the report of the CVC had vitiated the entire proceedings. Learned senior counsel submitted that both the grounds on which the judgment of the Division Bench is based are factually non-existent in this case. According to Mr. Divan, the matter herein is in fact covered by the judgment of this Court in (1993) 1 SCC 13 the case of State Bank of India and Ors Vs. S. N. Goyal<sup>2</sup> wherein the judgment in D.C. Aggarwal's case (supra) has been distinguished. Learned senior counsel had also relied on Disciplinary Authority-cum-Regional Manager and Ors Vs. Nikunja Bihari Patnaik<sup>3</sup> and Regional Manager, U.P. SRTC, Etawah and Ors Vs. Hoti Lal and Anr.<sup>4</sup>.

19. On the other hand, Mr. Kalyan Bandopadhyay, learned senior counsel appearing for the respondent submitted that there has been a clear breach of procedure prescribed under Rule 50 sub-clause xi of the Service Rules. The Division Bench on consideration of the aforesaid rule concluded that the learned Single Judge did not take care of the (2008) 8 SCC 92 (1996) 9 SCC 69 (2003) 3 SCC 605 procedural impropriety, i.e., breach of Rule 50 in conducting the enquiry proceeding against the respondent. Learned senior counsel further submitted that the procedural requirements under Rule 50 are mandatory in nature to ensure that there is a fair enquiry. Mr. Bandopadhyay further submitted that non-supply of the recommendations of the CVC being contrary to the requirements of the Service Rules, any further proof of prejudice was not required. Once the procedural rule had been violated, prejudice would be presumed. In support of his submissions, Mr. Bandopadhyay relied on a number of judgments of this Court in the case of D.C. Aggarwal's case (supra), Committee of Management, Kisan Degree College Vs. Shambhu Saran Pandey and Ors.<sup>5</sup>, State Bank of Patiala and Ors Vs. S.K. Sharma<sup>6</sup> and Nagarjuna Construction Company Limited Vs. Government of Andhra Pradesh and Ors.<sup>7</sup>.

20. Mr. Bandopadhyay submits that the Division Bench had passed a just order to remove an injustice. The respondent had been dismissed from service arbitrarily. The entire disciplinary proceedings were vitiated being violative of principle of natural justice. According to the learned senior counsel, the appeal observes to be dismissed.

21. We have considered the submissions made by the learned counsel for the parties. Before we consider the judgment (1995) 1 SCC 404 (1996) 3 SCC 364 (2008) 16 SCC 276 of the Division Bench, it would be appropriate to notice the opening remarks made by the learned Single Judge in its order dated 18th April, 2001. The learned Single Judge observed as follows:-

"Very many points had been urged in the writ petition in support of the challenged thrown to the charge sheet, proceedings pursuant thereto and the orders passed therein, but at the hearing the same was restricted to denial of natural justice for not supplying the vigilance report, which, according to the petitioner, was considered while taking the decision for completion of the disciplinary proceedings."

From the above, it become obvious that even before the learned Single Judge, the respondent had made no grievance about the non-supply of documents. Also no further issue was raised about any

prejudice having been caused to the respondent. With regard to the non-supply of the recommendations of the CVC, the learned Single Judge made the following observations:-

"It is true that if in a disciplinary proceeding a decision is taken on the basis of a recommendation or advice, not supplied to the delinquent, such a decision would be bad. On the pleadings there is no dispute that in the case of the Petitioner advice and recommendations were sent by the Central Vigilance Commission. There is also no dispute that such advice and recommendations were not communicated to the Petitioner. If the decisions impugned in this writ petition have been taken on the basis of such advice and recommendations, the same are equally bad. It is not the case of the Petitioner that by reason of any application rule or by reason of usage, custom or practice, the Authorities concerned, who have decided the matters, are bound to take into account such advice or recommendations of the Central Vigilance Commission. Therefore, despite such advice and recommendations having been given, the Authorities concerned, who are empowered to decide, may totally ignore such advice and recommendations and if they so ignore they will be well within their right to do so. In the instant case it has been denied that such advice or recommendations were taken note of or considered by the Authorities concerned, who passed the impugned orders. The orders in question have been set out above. From that it does not appear that the Authorities concerned have in fact considered any of the said advices or recommendations of the Central Vigilance Commission. Merely because the Central Vigilance Commission had given advice or recommendations, but the same were not furnished to the Petitioner to give him an opportunity to deal with the same, would not make the decisions impugned in the instant case bad, unless it is shown and established that the decisions in the instant case are influenced by such advice or recommendations. There is nothing on record from where it can be safely said that at or before making the impugned decisions, any of the authorities concerned in fact looked into or considered such advices or recommendations of the Central Vigilance Commission. In that view of the matter, it cannot be said that there has been denial of natural justice in the instant case for not supplying the subject Vigilance reports case for not supplying the subject Vigilance reports or advice and recommendations as the case may be."

22. The aforesaid observations make it abundantly clear that the recommendations of the CVC were not taken into consideration by the authorities concerned. There was also no other material on the record to show that before taking the impugned decisions, any of the authorities concerned took into consideration any advice or recommendations of the CVC. It was also not even the case of the respondent that under any rule, usage, customs or practice, the authorities concerned were bound to take into account such advice or recommendations of the CVC. The authorities concerned would be within their right to totally ignore any advice or recommendations of the CVC, if they so chose. The learned Single Judge also observed that in case of D.C. Aggarwal's case (supra), the authorities had relied upon the recommendations of the CVC, which were not at all disclosed to the delinquent officer. On the fact situation in the present case, the learned Single Judge held that the authorities concerned have not looked at the advice or recommendations of the CVC before taking any of the

impugned decisions.

The aforesaid judgment was distinguishable as it did not apply in the facts of this case.

23. The Division Bench, in our opinion, erroneously proceeded to presume that there has been either any breach of the statutory rules or violation of rules of natural justice. The Division Bench also failed to take into consideration that the issue with regard to the non-supply of the documents listed in the letter dated 3rd April, 1982 was not even canvassed before the learned Single Judge at the time of arguments. As is evident from the remarks of the learned Single Judge at the hearing of the writ petition, counsel for the respondent restricted the challenge only to denial of natural justice for not supplying the vigilance report. This apart, the Division Bench totally ignored the fact that the respondent did not care to raise the issue of non-supply of the documents during the entire course of the enquiry proceedings. He also totally omitted to raise such an issue in the written brief containing his defence arguments. The Appellate Authority in its order dated 6th June, 1984 noticed that the respondent had "failed to submit his list of documents and witnesses which he wanted to produce for the purpose of his defence within the date stipulated the Inquiring Authority and he also did not raise any objection during the course of enquiry." The Review Committee in its order dated 12 th November, 1987 upon consideration of the entire matter observed as follows:-

"The Petitioner has contended that certain documents required by him were not made available to him by the prosecution at the inquiry. The records reveal, in this respect, that he was asked to submit his lists of documents and witnesses by the 31st March, 1982 and that he had failed to do so. The lists were in fact received by the Presenting Officer on the 28th May 1982, far beyond the stipulated time, and as such no action was taken thereon. However, the Committee is at a loss to understand as to why the Petitioner did not press at the Inquiry for the production of the requisite documents if they were so vital as to cause serious prejudice to his defence as alleged. The Petitioner's accusation that the Inquiry Authority refused to summon all the defence witnesses is also not acceptable for the same reason that the list was not received within the stipulated period. The committee, however, observes that the Inquiring Authority had, in fact, permitted the Petitioner to produce his witnesses for deposition."

24. These observations indicate even though the grievance was made belatedly, the same was duly considered by the highest authority of the Bank. Even at that stage, the respondent had failed to point out as to what prejudice had been caused to him during the course of the enquiry. In such circumstances, the Division Bench was wholly unjustified in setting aside the entire disciplinary proceedings and the findings recorded by the learned Single Judge.

25. In our opinion, the Division Bench has erroneously relied on the judgment in D.C. Aggarwal's case (supra). As rightly observed by the learned Single Judge, in that case this Court considered a situation where the Disciplinary Authority passed an elaborate order regarding findings against the Charge Sheet Officer agreeing on each charge on which CVC had found against him. In these circumstances, this Court observed that:-



"The order is vitiated not because of mechanical exercise of powers or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of sub-rule (5). But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the disciplinary authority but was examined and relied on, was certainly violative of procedural safeguard and contrary to fair and just inquiry."

These observations would not be applicable in the facts of the present case as the Disciplinary Authority did not take into consideration any recommendations of the CVC. The judgment was, therefore, rightly distinguished by the learned Single Judge.

26. We may now consider the other judgments relied upon by Mr. Bandopadhyay. In the case of Kisan Degree College (supra), this Court noticed that the respondent was dismissed from service on the basis of an Enquiry Report. In that case, the respondent had at the earliest sought for inspection of the documents. He was, however, told to inspect the same at the time of final arguments in the enquiry. It was, therefore, held that the enquiry proceeding had been conducted in breach of rule of natural justice. The aforesaid judgment would have no relevance in the facts of this case. In the case of S.K. Sharma (supra), this Court held that violation of any and every procedural provision can not be said to automatically vitiate the enquiry held or order passed. Except in cases falling under - "no notice", "no opportunity" and "no hearing" categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. In the present case, we have noticed above that the respondent did not even care to submit the list of documents within the stipulated time. Further, he did not even care to specify the relevance of the documents sought to be requisitioned. In our opinion, the appellant Bank has not transgressed any of the principles laid down in the aforesaid judgment whilst conducting and concluding the departmental proceedings against the respondent. Therefore, the aforesaid observations in S.K. Sharma's case are of no avail to the respondent. In the case of Nagarjuna Construction Company Limited (supra), this Court observed as follows:-

"The basic principles of natural justice seem to have been disregarded by the State government while revising the order. It acted on materials which were not supplied to the appellants. Accordingly, the High Court for the first time made reference to the report/inspection notes which were not even referred to by the State Government while exercising revisional power."

These observations are of no relevance in the facts and circumstances of the present case. The respondent herein is merely trying to make capital of his own lapse in not submitting the list of documents in time and also not stating the relevance of the documents required to be produced. By now, the legal position is well settled and defined. It was incumbent on the respondent to plead and

prove the prejudice caused by the non-supply of the documents. The respondent has failed to place on record any facts or material to prove what prejudice has been caused to him.

27. At this stage, it would be relevant to make a reference to certain observations made by this Court in the case of Haryana Financial Corporation and Anr. Vs. Kailash Chandra Ahuja<sup>8</sup>, which are as under:-

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

28. We may also notice here that there is not much substance in the (2008) 9 SCC 31 submission of Mr. Bandopadhyay that mere breach of Rule 50(11) would give rise to a presumption of prejudice having been caused to the respondent.

The aforesaid rule is as under:-

"(x) (a) the inquiring authority shall where the employee does not admit all or any of the articles of charge furnish to such employee a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be proved.

(b) The Inquiring Authority shall also record an order that the employee may for the purpose of preparing his defence:

I. inspect and take notes of the documents listed within five days of the order or within such further time not exceeding five days as the Inquiring Authority may allow:

II. submit a list of documents and witnesses that he wants for inquiry:

III. be supplied with copies of statements of witnesses, if any, recorded earlier and the Inquiring Authority shall furnish such copies not later than three days before the commencement of the examination of the witnesses by the Inquiring Authority.

IV. give a notice within ten days of the order or within such further time not exceeding ten days as the Inquiry Authority may allow for the discovery or production of the documents referred to at (II) above.

Note: The relevancy of the documents and the examination of the witnesses referred to at (II) above shall be given by the employee concerned.

(xi) the Inquiry Authority shall, on receipt of the notice for the discovery of production of the documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept with a requisition for the production of the documents on such date as may be specified."

A perusal of the note under Clause 4 of the aforesaid rule would make it obvious that the respondent was not only to submit a list of documents and witnesses but was also required to state the relevancy of the documents and the examination of the witnesses. The respondent himself having not complied with the procedural requirements can hardly complain that a breach of the procedural requirements under Clause xi would ipso facto result in rendering the enquiry null and void. In any event, since the Disciplinary Authority has not relied on any recommendations of the CVC and the respondent has failed to plead or prove any prejudice having been caused, the disciplinary proceedings can not be said to be vitiated.

29. In our opinion, the aforesaid observations of this Court are fully applicable to the facts and circumstances of this case. In our opinion, the respondent has failed to prove any prejudice caused which has resulted in miscarriage of justice. In our opinion, the judgment of the Division Bench can not be sustained in law. The appeal is, therefore, allowed, the impugned judgment of the Division Bench is set aside and the judgment of the learned Single Judge is restored.

.....J. [B.Sudershan Reddy] .....J. [Surinder Singh Nijjar] New Delhi;

January 11, 2011.