Canara Bank And Ors vs Shri Debasis Das And Ors on 12 March, 2003

Equivalent citations: AIR 2003 SUPREME COURT 2041, 2003 AIR SCW 1561, 2003 (2) UJ (SC) 1129, (2004) 1 BANKJ 564, (2004) 2 JCR 16 (SC), (2003) 2 SCR 968 (SC), 2003 (2) SCR 968, 2003 (6) SRJ 151, (2003) 3 ALL WC 1853, 2003 (3) SLT 729, 2003 UJ(SC) 2 1129, 2003 (2) SERVLJ 345 SC, 2003 (3) SCALE 220, 2003 (3) LRI 119, 2003 (4) SCC 557, (2003) 3 JT 183 (SC), 2003 (62) ALL WC 1853, 2003 (3) ACE 614, 2003 SCC (L&S) 507, (2003) 2 LAB LN 444, (2003) 2 SCT 481, (2003) 2 SUPREME 793, (2003) 2 ESC 204, (2003) 2 CURLR 1, (2003) 2 LABLJ 531, (2003) 4 RAJ LW 509, (2003) 3 SERVLR 64, (2003) 3 SCALE 220, (2003) 5 INDLD 386, (2003) 3 CALLT 52, (2003) 2 BANKCLR 664

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Bench: Shivaraj V. Patil, Arijit Pasayat

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           CASE NO.:
Appeal (civil)  7539 of 1999

PETITIONER:
Canara Bank and Ors.

RESPONDENT:
Shri Debasis Das and Ors.

DATE OF JUDGMENT: 12/03/2003

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT,J.

Scope and ambit of Regulation 6(18) and 6(21) of the Canara Bank Officer Employees' (Conduct) Regulations 1976 (hereinafter referred to as 'the Regulations') fall for determination in this appeal.

Filtering out unnecessary details, the factual background relevant for adjudication for the present dispute is as follows:-

Four charge-sheets dated 12.12.1987, 5.11.1987, 23.3.1989 and 25.5.1989 were issued

to respondent no.1-

Debasis Das (hereinafter referred to as 'the employee') by the functionaries of the Canara bank, a Government of India undertaking. Disciplinary proceedings were commenced. Charge-sheet dated 5.11.1987 related to the non-vacation of residential quarter by the employee after expiry of the lease period. On completion of inquiry in respect of the said charge, disciplinary authority directed dismissal of the employee from the services of the Bank by order dated 28.8.1989. The disciplinary authority thereafter passed an order on 13.9.1989 which is the bone of contention of the parties. Details of the said order shall be dealt with infra and after the recital of the factual position is completed. Order of dismissal was challenged by the employee before the Calcutta High Court. By order dated 14.12.1990 in writ petition CO No. 10514(W)/1989, the order of dismissal was set aside. Employee was reinstated on 28.1.1991. After reinstatement three office orders were issued to proceed with the inquiries relating to the other three charge-sheets. According to the employer-Bank the proceedings were earlier suspended. Enquiry Officers and Presiding Officers were appointed in those proceedings. By letter dated 6.4.1991 employee requested to drop the proceedings in the said charge-sheets and to exonerate him from the charges contained. On 23.4.1991 he was advised by the authority to attend the inquiry proceedings. On 30.9.1991 list of the documents along with the copies were sent to the employee. On 24.11.1992 employee for the first time took the stand that he had been exonerated of the charges contained in the three charge-sheets and all proceedings in connection therewith had been dropped. Along with his letter, a photocopy purporting to be a copy of letter dated 13.9.1989 written by one Shri K.V. Nayak, officer of the Bank was sent. According to the appellant the enclosure to employee's letter dated 24.11.92 was a fabricated document and contents of the actual letter dated 13.9.1989 sent by the Bank had been interpolated. Treating the letter to be a fabricated document further charge-sheet dated 21.5.1994 was issued where it was stated that during the progress of the pending three enquiries employee had produced certain forged/fabricated documents before the disciplinary authority and thus constituted misconduct. The charge-sheet along with statement of imputation were served on the employee. On 7.6.1994 employee wrote to the Acting Dy. General Manager that the proceedings dated 13.9.1989 received by him from the Bank was singed by the Dy. General Manager and not by the Acting General Manager or Shri K.V. Nayak as alleged or at all. Enquiry into the charge-sheet was conducted, the documents relied upon by the management were produced and the office copy of the letter issued under the signature of Mr. K.V. Nayak, Acting General Manager was produced. Certain witnesses were examined. During the inquiry employee was asked to produce the original letter claimed to have been received by him, but his stand was that he did not desire to part custody of the defence documents since the same are very much required at a later stage. On 1.4.1995 the minutes were accordingly recorded. The employee on that date made a statement that he wanted to make further submissions in his written briefs which he would be submitting in terms of Rule 6(18) and he was closing his evidence/defence. The Presenting Officer was directed by the Inquiry Officer to submit his written briefs within 10 days i.e. before 12.4.1995. He was also instructed to send a copy of his written briefs to the charged officer simultaneously. Employee was further directed to submit his written briefs within 10 days of the receipt of the written briefs from the Presenting Officer. The Presenting Officer submitted his written briefs on 19.4.1995. Since no written briefs were sent by the employee, the inquiry officer sent his report to the disciplinary authority on 2.5.1995. On 19.5.1995 disciplinary authority sent copy of the enquiry report to the employee and asked for his submission

in relation to the findings recorded by the Inquiry Authority. Employee took the stand that he could not submit written briefs as he had not received copy of the Presenting Officer's written briefs. He requested for a copy. The Disciplinary Authority on 2.7.1995 wrote to the employee that Presenting Officer's briefs was sent to him on 2.5.1995 and as such he could make his submission based on the findings of the enquiry officer and also on the oral/documentary evidence which were recorded during the course of inquiry. He further informed that such submissions would be taken into account for final decision in the matter. Employee by his letter dated 12.7.1995 stated that without copy of the Presenting Officer's written briefs no effective submissions could be made on the findings of the Enquiry Report. The Disciplinary Authority sent copy of the briefs to the employee and asked him to make his submissions on the findings of the enquiry report. Employee asked for time till 10.8.1995. Finally on 4.8.1995 the employee stated that the written briefs were being sent for consideration of the Enquiry Officer. On 7.8.1995 the Disciplinary Authority asked the employee to file submissions to the findings of the Inquiry Authority. On 12.8.1995 the employee took the stand that the written briefs should be considered by the Inquiry Authority whereafter the findings of the Inquiry Officer should be made and he should be permitted 30 days' time to give his submissions on the findings of the said report. He did not make or send submissions on the findings of the Inquiry Officer. By order dated 29.9.1995 Disciplinary Authority held the employee guilty and imposed punishment of dismissal from service agreeing with the findings of the Inquiry Officer. On 11.10.1995 Howrah Branch of the appellant-Bank received order for effecting service on the employee. But he left the Bank along with certain keys. Complaint was lodged before the police on 13.10.1995 regarding the removal of the keys. On 6.11.1995 employee filed writ petition before the Calcutta High Court. Learned Single Judge of the High Court passed interim order restraining the Bank from giving effect to the final order. Thereafter on 8.11.1995 the employee attended the Bank. An appeal was preferred against the interim order by the Bank and the Appellate Court vacated the interim order. Employee filed a Special Leave Petition before this Court which was dismissed. The order of dismissal was given effect on 5.2.1996 operative from 29.1.1996. Employee filed an appeal before the prescribed departmental appellate authority. On 8.1.1997 the employee was informed that the Appellate Authority would give personal hearing to him on 27.1.1997. During personal hearing, employee submitted a written statement and submitted some documents, one of them purported to be copy of letter dated 13.9.1989, which was at variance with one which was produced by the employee earlier and was also at variance with the original letter produced by the management during the inquiry. According to the appellant, this letter was another forged and fabricated document and this time the letter was claimed to have been signed by the Dy. General Manager and not by the Acting General Manager. In any event, it is not necessary to deal with the aspect in detail. The Appellate Authority passed an order upholding the order of dismissal. Employee filed a writ petition No. 9707 (W) of 1997, with application for return of the documents produced by him before the Appellate Authority. Learned Single Judge disposed of the interim application directing the appellant-Bank to return the original documents produced by the employee before the Appellate Authority. When these documents were returned to the employee he refused to accept them stating that he had not filed them before the Appellate Authority. The Learned Single Judge allowed the writ petition holding that Inquiry Officer had given an opportunity to the Presenting Officer to file his written briefs and similar opportunity ought to have been given to the employee and thus there has been violation of principles of natural justice. Further direction was given to send the disputed documents to the Government Handwriting and Questioned Documents'

Expert. It was observed that, if so desired, the parties may pray for adducing fresh evidence before the Enquiry Officer which shall be considered. The said order was challenged before the Division Bench. The appeal was dismissed by the Division Bench, inter alia, with the conclusion that provisions of Regulation 6(18) are mandatory in nature and the employee did not get an opportunity to file his written briefs before the Inquiry Officer. Prejudice is patent as the author of the disputed documents was not produced to prove or disprove his signature and contents of the letters in question. Written briefs had to be considered by the Inquiry Officer in terms of Regulation 6(18), and order of dismissal shows that written briefs of the employee had not been considered. An unfair trial cannot be cured by a fair appeal. There was no question of directing the proceedings to commence de novo from the inquiry report stage. Though Learned Single Judge had not given specific directions regarding payment of back wages upon quashing of disciplinary proceedings, the consequences had to follow.

In support of the appeal, Mr. P.P. Rao, learned counsel for the appellant submitted that the true import of Regulation 6(18) has not been considered by the High Court. As no prejudice was caused to the employee by the action taken by the Disciplinary Authority, and there was full compliance with the principles of audi alteram partem. Even if it is conceded for the sake of argument that there was any deficiency in the order passed by the Disciplinary Authority, same was abundantly made good by the Appellate Authority which granted personal hearing to the employee. Post decisional hearing is permissible and in fact personal hearing was granted though there was no such requirement. No prejudice has been shown.

In response learned counsel for the employee submitted that the Inquiry Officer had permitted filing of the written briefs by the employee after written briefs was submitted by the Presenting Officer. As the employee had not received the copy of written briefs, therefore, there was delay and the Inquiry Officer was duty bound to consider the written briefs of the employee. Merely because the Appellate Authority granted opportunity of personal hearing that did not cure the incurable defect in the proceedings. Furthermore, the directions of the Learned Single Judge for sending the disputed documents to the expert stand and the Bank is not prejudiced in any manner. He in essence supported the High Court's judgment.

Since Regulation 6(18) is the provision round which the controversy centers, it would be appropriate to quote the same. So far relevant it reads as follows:

> "Regulation 6(18): The Inquiring Authority may, after the completion of production of evidence hear the Presenting Officer, if any, appointed and the Officer employee, or permit them to file written briefs of the respective cases within 15 days of the date of completion of the production of evidence if they so desire."

It would be also relevant to extract Regulation 6(21) which reads as follows:

> "Regulation 6(21): (i) On the conclusion of the inquiry the inquiring authority shall prepare a report which shall contain the following:

a) a gist of the article of charge and the statement of the imputations of misconduct or misbehaviour;

b) a gist of the defence of the officer employee in respect of each article of charge;

c) an assessment of the evidence in respect of each article of charge;

d) the findings on each article of charge and the reasons therefor.

Explanation: If, in the opinion of the Inquiring authority, the proceedings of the inquiry establish any article of charge different from the original article of charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the officer employee has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority, where it is not itself the Disciplinary Authority, shall forward to the Disciplinary Authority, the records of inquiry which shall include.

a) the report of the inquiry prepared by it under clause (i);

b) the written statement of defence, if any, submitted by the officer employee referred to in sub-regulation (15);

c) the oral and documentary evidence produced in the course of the inquiry;

d) written briefs referred to in sub-

regulation (18) if any; and

e) the orders, if any, made by the Disciplinary Authority and the inquiring authority in regard to the inquiry."

It is to be noted that the Disciplinary Authority can himself be the Inquiring Authority. In that sense the Inquiry Officer is an agent of the Disciplinary Authority. The regulations make this position crystal clear in Regulation (7). It reads as follows:

"Regulation 7: Action on the Inquiry Report:

(1) The Disciplinary Authority, if it is not itself the inquiring authority may for reasons to be recorded by it in writing, remit the case to the inquiring authority for fresh or further inquiry and report and the inquiring authority shall thereupon

proceed to hold the further inquiry according to the provisions of regulation 6 as far as may be.

(2) 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 and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in regulation 4 should be imposed on the officer employee it shall notwithstanding anything contained in regulation 8, make an order imposing such penalty.

(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned."

It is to be noted that both the expressions "may" and "shall" appear in Regulation (7). The former expression is used when the Disciplinary Authority, if it is not the Inquiring Authority can remit the case to the Inquiring Authority for fresh or further inquiry and report and the latter expression is used vis--vis the Inquiring Authority who is required to proceed to conduct further inquiry according to provision of Regulation (6) as far as may be applicable.

Regulation 6(21)(ii) deals with the documents which are to be forwarded to the Disciplinary Authority in case it is not the Inquiring Authority. The documents to be forwarded include the written briefs referred to in sub-regulation (18).

A bare reading of sub-regulation (18) of Regulation 6 makes the position clear that there is no requirement of the employee being granted an opportunity to file written briefs after the Presenting Officer files written briefs. On the contrary, as the provisions postulate, after completion of production of evidence two options are open to the Inquiry Officer. It may hear the Presenting Officer appointed and the concerned employee or in the alternative permit them to file written briefs within 15 days of the date of completion of the production of evidence if they so desire. The written briefs are relatable to the cases of the party concerned; otherwise the expression 'respective case' would be meaningless. In other words, the written briefs must contain what his case is. There is no requirement of filing written briefs one after the other. It is not required that one party has to wait till filing of written briefs by the other. The expression "respectively", means belonging or relating separately to each of several people. It is a word of severance.

It is to be further noted that in the appeal before the Appellate Authority findings of the Inquiry Officer were challenged and, therefore, the question of any prejudice does not arise. Since employee had the opportunity to meet the stand of the Bank, it was to his advantage, and opportunity for personal hearing was also granted, though Regulation 6(18) does not even speak to grant such an opportunity. Keeping in view what was observed in B. Karunakara's case (supra) there was no

question of violation of principles of natural justice.

On that score the conclusion arrived at by the Learned Single Judge and the Division Bench that there was violation of principles of natural justice cannot be maintained.

Residual and crucial question that remains to be adjudicated is whether principles of natural justice have been violated; and if so, what extent any prejudice has been caused. It may be noted at this juncture that in some cases it has been observed that where grant of opportunity in terms of principles of natural justice do not improve the situation, "useless formality theory" can be pressed into service.

Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works (1963 (143) ER 414), the principle was thus stated:

> "Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat".

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

What is meant by the term 'principles of natural justice' is not easy to determine. Lord Summer (then Hamilton, L.J.) in Ray v. Local Government Board (1914) 1 KB 160 at p.199:83 LJKB 86) described the phrase as sadly lacking in precision. In General Council of Medical Education & Registration of U.K. v. Sanckman (1943 AC 627:

> (1948) 2 All ER 337), Lord Wright observed that it was not desirable to attempt 'to force it into any procusteam bed' and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give 'a full and fair opportunity' to every party of being heard.

Lord Wright referred to the leading cases on the subject. The most important of them is the Board of Education v. Rice (1911 AC 179:80 LJKB 796), where Lord Loreburn, L.C. observed as follows:

> "Comparatively recent statutes have extended, if they have originated, the practice of imposing upon departments or offices of State the duty of deciding or determining questions of various kinds. It will, I suppose usually be of an administrative kind, but sometimes, it will involve matter of law as well as matter of fact, or even depend upon matter of law alone. In such cases, the Board of Education will have to ascertain the law and also to ascertain the facts. I need not and that in doing either they must act in good faith and fairly listen to both sides for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial....The Board is in the nature of the arbitral tribunal, and a Court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari".

Lord Wright also emphasized from the same decision the observation of the Lord Chancellor that the Board can obtain information in any way they think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view". To the same effect are the observations of Earl of Selbourne, LO in Spackman v. Plumstead District Board of Works (1985 (10) AC 229:54 LJMC

81), where the learned and noble Lord Chancellor observed as follows:

> "No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice".

Lord Selbourne also added that the essence of justice consisted in requiring that all parties should have an opportunity of submitting to the person by whose decision they are to be bound, such considerations as in their judgment ought to be brought before him. All these cases lay down the very important rule of natural justice contained in the oft-quoted phrase 'justice should not only be done, but should be seen to be done'.

Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

Natural justice has been variously defined by different Judges. A few instances will suffice. In Drew v. Drew and Lebura (1855(2) Macg. 1.8, Lord Cranworth defined it as 'universal justice'. In James Dunber Smith v. Her Majesty the Queen (1877-78(3) App.Case 614, 623 JC) Sir Robort P. Collier, speaking for the judicial committee of Privy council, used the phrase 'the requirements of substantial justice', while in Arthur John Specman v. Plumstead District Board of Works (1884-85(10) App.Case 229, 240), Earl of Selbourne, S.C. preferred the phrase 'the substantial requirement of justice'. In Vionet v. Barrett (1885(55) LJRD 39, 41), Lord Esher, MR defined natural justice as 'the natural sense of what is right and wrong'. While, however, deciding Hookings v. Smethwick Local Board of Health (1890(24) QBD 712), Lord Fasher, M.R. instead of using the definition given earlier by him in Vionet's case (supra) chose to define natural justice as 'fundamental justice'. In Ridge v. Baldwin (1963(1) WB 569, 578), Harman LJ, in the Court of Appeal countered natural justice with 'fair-play in action' a phrase favoured by Bhagawati, J. in Maneka Gandhi v. Union of India (1978 (2) SCR 621). In re R.N. (An Infaot) (1967(2) B617, 530),Lord Parker, CJ, preferred to describe natural justice as 'a duty to act fairly'. In fairmount Investments Ltd. v. Secretary to State for Environment (1976 WLR 1255) Lord Russell of Willowan somewhat picturesquely described natural justice as 'a fair crack of the whip' while Geoffrey Lane, LJ. In Regina v. Secretary of State for Home Affairs Ex Parte Hosenball (1977 (1) WLR 766)

preferred the homely phrase 'common fairness'.

How then have the principles of natural justice been interpreted in the Courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is 'nemo judex in causa sua' or 'nemo debet esse judex in propria causa sua' as stated in (1605) 12 Co.Rep.114 that is, 'no man shall be a judge in his own cause'. Coke used the form 'aliquis non debet esse judex in propria causa quia non potest esse judex at pars' (Co.Litt. 1418), that is, 'no man ought to be a judge in his own case, because he cannot act as Judge and at the same time be a party'. The form 'nemo potest esse simul actor et judex', that is, 'no one can be at once suitor and judge' is also at times used. The second rule is 'audi alteram partem', that is, 'hear the other side'. At times and particularly in continental countries, the form 'audietur at altera pars' is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely 'qui aliquid statuerit parte inaudita alteram actquam licet dixerit, haud acquum facerit' that is, 'he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right' (See Bosewell's case (1605) 6 Co.Rep. 48-b, 52-a) or in other words, as it is now expressed, 'justice should not only be done but should manifestly be seen to be done'. Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.

What is known as 'useless formality theory' has received consideration of this Court in M.C. Mehta v. Union of India (1999(6) SCC 237). It was observed as under:

> "Before we go into the final aspect of this contention, we would like to state that case relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of 'real substance' or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed (See Malloch v. Aberdeen Corpn: (1971)2 All ER 1278, HL) (per Lord Reid and Lord Wilberforce), Glynn v. Keele University:
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> (1971) 2 All ER 89; Cinnamond v. British Airports Authority: (1980) 2 All ER 368, CA) and other cases where such a view has been held. The latest addition to this view is R v. Ealing Magistrates' Court, ex p. Fannaran (1996 (8) Admn. LR 351, 358) (See de Smith, Suppl. P.89 (1998) where Straughton, L.J. held that there must be 'demonstrable beyond doubt' that the result would have been different. Lord Woolf in Lloyd v. McMohan (1987 (1) All ER 1118, CA) has also not disfavoured refusal of discretion in certain cases of breach of natural justice.

The New Zealand Court in McCarthy v. Grant (1959 NZLR 1014) however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is 'real likelihood-not certainty- of prejudice'. On the other hand, Garner Administrative Law (8th Edn. 1996. pp.271-

72) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from Ridge v. Baldwin (1964 AC 40:

> (1963) 2 All ER 66, HL), Megarry, J. in John v. Rees (1969 (2) All ER 274) stating that there are always 'open and shut cases' and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J has said that the 'useless formality theory' is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that 'convenience and justice are often not on speaking terms'. More recently, Lord Bingham has deprecated the 'useless formality theory' in R. v. Chief Constable of the Thames Valley Police Forces, ex p. Cotton (1990 IRLR 344) by giving six reasons (see also his article 'Should Public Law Remedies be Discretionary?" 1991 PL. p.64). A detailed and emphatic criticism of the 'useless formality theory' has been made much earlier in 'Natural Justice, Substance or Shadow' by Prof. D.H. Clark of Canada (see 1975 PL.pp.27-63) contending that Malloch (supra) and Glynn (supra) were wrongly decided. Foulkes (Administrative Law, 8th Edn. 1996, p.323), Craig (Administrative Law, 3rd Edn. P.596) and others say that the court cannot prejudge what is to be decided by the decision-making authority. De Smith (5th Edn. 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (Administrative Law, 5th Edn. 1994, pp.526-530) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision.

Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a 'real likelihood' of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their 'discretion', refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in State Bank of Patiala v. S.K. Sharma (1996 (3) SCC

364), Rajendra Singh v. State of M.P. (1996 (5) SCC 460) that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

We do not propose to express any opinion on the correctness or otherwise of the 'useless formality theory' and leave the matter for decision in an appropriate case, inasmuch as the case before us,

'admitted and indisputable' facts show that grant of a writ will be in vain as pointed by Chinnappa Reddy, J."

As was observed by this Court we need not go into 'useless formality theory' in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the appellants unless failure of justice is occasioned or that it would not be in public interest to dismiss a petition on the fact situation of a case, this Court may refuse to exercise said jurisdiction (see Gadde Venkateswara Rao v. Govt. of A.P. and Ors. (AIR 1966 SC 828). It is to be noted that legal formulations cannot be divorced from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post- decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing. (See Charan Lal Sahu v. Union of India etc. (AIR 1990 SC 1480) Additionally there was no material placed by the employee to show as to how he has been prejudiced. Though in all cases the post-decisional hearing cannot be a substitute for pre-decisional hearing, in the case at hand the position is different. The position was illuminatingly stated by this Court in Managing Director, ECIL, Hyderabad and Ors. vs. B. Karunakara and Ors. [1993 (4) SCC 727 at para 31] which reads as follows:

> "Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the state of furnishing him with the report. The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law

> how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

The position was again reiterated in Union Bank of India vs. Vishwa Mohan ([1998 (4) SCC 310 at page 314). The relevant para 9 reads as follows:

> "We are totally in disagreement with the above-quoted reasoning of the High Court. The distinction sought to be drawn by the High Court that the first charge-sheet served on the respondent related to the period when he was a clerk whereas the other three charge-sheets related to the period when he was promoted as a bank officer. In the present case, we are required to see the findings of the enquiry authority, the order of the Disciplinary Authority as well as the order of the Appellate Authority since the High Court felt that the charges levelled against the respondent after he was promoted as an officer were not of a serious nature. A bare look at these charges would unmistakably indicate that they relate to misconduct of a serious nature. The High Court also committed an error when it assumed that when the respondent was promoted as a bank officer, he must be having a good report otherwise he would not have been promoted. This finding is totally unsustainable because the various acts of misconduct came to the knowledge of the Bank in the year 1989 and thereafter the first charge-sheet was issued on 17.2.1989. The respondent was promoted as a bank officer sometime in the year 1988. At that time, no such adverse material relating to the misconduct of the respondent was noticed by the Bank on which his promotion could have been withheld. We are again unable to accept the reasoning of the High Court that in the facts and circumstances of the case "it is difficult to apply the principle of severability as the charges are so inextricably mixed up". If one reads the four charge-sheets, they all relate to the serious misconduct which includes taking bribe, failure to protect the interests of Bank, failure to perform duties with utmost devotion, diligence, integrity and honesty, acting in a manner unbecoming of a bank officer etc. In our considered view, on the facts of this case, this principle has no application but assuming that it applies yet the High Court has erred in holding that the principle of severability cannot be applied in the present case. The finding in this behalf is unsustainable. As stated earlier, the appellant had in his possession the enquiry report/findings when he filed the statutory appeal as well as the writ petition in the High Court. The High Court was required to apply its judicial mind to all the circumstances and then form its opinion whether non-furnishing of the report would have made any difference to the result in the case and thereupon pass an appropriate order. In para 31, this Court in Managing Director, ECIL has very rightly cautioned: (SCC p. 758) "The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts".

Strong reliance was placed by learned counsel for the employee on a three-Judge Bench of this Court in Punjab National Bank and Ors. vs. Kunj Behari Misra [1998 (7) SCC

84)]. The said decision has no application and is factually distinguishable. That was a case where the Disciplinary Authority differed from the views of the inquiry officer. In that context it was held that denial of opportunity of hearing was per se violative of the principles of natural justice. The case at hand is founded on totally different factual backdrop.

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

It is further to be noted that case of the parties on merits was not considered by Learned Single Judge or the Division Bench. Notwithstanding the fact that there was no consideration of the respective cases, Learned Single Judge directed examination of the documents by the expert.

The inevitable result is that the judgment of the Division Bench confirming that of the Learned Single Judge has to be quashed so far as it relates to the question of violation of principles of natural justice. But that is not the end of the matter. There was no consideration of the merits of the case as noted above. It would be in the fitness of things to direct examination of the documents by the expert in terms of Learned Single Judge's order. The employee shall file originals of the documents on which he relies upon, of which copies were placed before the High Court. The appellant-Bank shall file originals of the documents on which reliance was placed, if not already done. If the government expert is of the view that documents produced by the employee are forged/fabricated or not authentic the order of dismissal shall stand. If, however, the report of the expert is that the documents produced by the employee are genuine, the order of dismissal has to be vacated. In case the originals, as directed above, are not filed by the employee or the Bank, then the High Court shall pass necessary orders, upholding the order of dismissal or setting aside the order of dismissal, as the case may be. No other point shall be considered by the High Court. The matter shall be heard by the Division Bench by restoration of the writ appeal.

The appeal is allowed to the extent indicated.