Ganesh Santa Ram Sirur vs State Bank Of India & Anr on 17 November, 2004

Equivalent citations: AIR 2005 SUPREME COURT 314, 2005 (1) SCC 13, 2004 AIR SCW 6725, 2005 LAB. I. C. 214, 2005 (1) UJ (SC) 123, 2005 (2) SERVLJ 246 SC, (2005) 2 SERVLJ 246, (2005) 5 ALL WC 4168, 2005 UJ(SC) 1 123, 2005 (2) SRJ 161, (2004) 9 JT 620 (SC), 2005 (1) ALL CJ 657, 2005 ALL CJ 1 657, 2004 (9) SCALE 449, 2004 (4) LRI 641, 2004 (7) SLT 14, 2004 (9) JT 620, (2005) ILR (KANT) 1924, (2005) 1 SCT 780, (2005) 1 SCJ 41, (2005) 1 SERVLR 386, (2004) 8 SUPREME 607, (2004) 9 SCALE 449, (2005) 1 LABLJ 188, (2005) 1 LAB LN 13, (2005) 1 CURLR 293, (2005) 1 BANKCLR 455, (2005) 3 BOM CR 888

Author: Ar. Lakshmanan

Bench: K.G.Balakrishnan, Ar. Lakshmanan

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           CASE NO.:
Appeal (civil)  7058 of 2002

PETITIONER:
Ganesh Santa Ram Sirur

RESPONDENT:
State Bank of India & Anr.

DATE OF JUDGMENT: 17/11/2004

BENCH:
K.G.Balakrishnan & Dr. AR. Lakshmanan

JUDGMENT:
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J U D G M E N T Dr. AR. Lakshmanan, J.

This appeal is directed against the final judgment and order dated 7th November, 2001 passed by the High Court of Judicature at Bombay in Writ Petition No. 540 of 1996 filed by the appellant herein to quash and set aside the order dated 10.5.1995 and for a writ of Mandamus directing the Respondent-Bank to reinstate the respondent with back wages and with arrears of service and all other service benefits which are consequential to reinstatement in service and for other incidental and ancillary relief. The Division Bench of the High Court dismissed the writ petition filed by the appellant herein for the reasons recorded therein. The appellant in this appeal questioned the order of removal from service by the Appellate Authority.

The appellant joined the services of the Bank as a clerk in 1963. He was chargesheeted for such irregularities committed by him while working as Branch Manger of Konkan Bhavan Branch of the Bank from 1982-1984. There were total seven charges imputed against him. The Enquiry Officer appointed by the Disciplinary Authority conducted an enquiry and submitted his report to the Disciplinary Authority. In his report, the Enquiry Officer dropped one charge out of seven charges and out of remaining six charges five charges had not been proved. The Enquiry Officer held that only charge No. 5 pertaining to grant of advance by the appellant to his wife was proved. This Enquiry Report did not contain any recommendation regarding punishment. According to the appellant, this report was not communicated to him for more than two years. On 24.4.1991, the Disciplinary Authority sent the report of the Enquiry Officer to the appellant and he was asked to make his representation on the report. The Disciplinary Authority recommended to the Punishing/Appointing Authority of the appellant the punishment of reduction in substantive salary at one stage from Rs. 4020 to Rs. 3900 in the terms of Rule 49(e) of the Rules. The Punishing Authority who was the appointing Authority of the appellant relied on the recommendations of the disciplinary authority and imposed the punishment accordingly.

The appellant preferred an appeal against the order of punishment dated 21.10.1991 before the Appellate Authority and pleaded that the punishment imposed upon him was too severe and in fact of the case that only one charge out of seven was proved. The appellate Authority, however, proposed to enhance the penalty imposed upon the appellant to an order of dismissal. He ordered the punishing authority/appointing authority to issue a notice to the appellant under Rule 69(2) of the State Bank of India Officer's Services Rules 1992 (hereinafter called the "Rules) to show cause why the penalty should not be enhanced as proposed. By this time new Rules of 1992 had come into force to regulate the service conditions of the Bank Officers. The appointing authority communicated the above order to the appellant asking him to submit his contentions. The appellant submitted his detailed reply against the proposed order of dismissal. On 10.5.1995 the appellate Authority decided to enhance the penalty inflicted from reduction in basic pay by one stage to removal from service instead of dismissal as earlier proposed on 24.5.1995. The disciplinary authority communicated the above order to the appellant. The appellant through his advocate made an attempt for justice to the Chairman requesting for review in his case. It was replied that Rule 69(3) of the Rules does not provide it mandatory for the Reviewing Authority to make review of each and every order passed by the competent authority. Being aggrieved by the imposition of penalty the appellant filed a writ petition before the High Court and the High Court vide its order dated 7.11.2001 dismissed the writ petition filed by the appellant accepting that the appellate Authority had rightly exercised its power in enhancing the punishment. Thus the Special leave petition. Leave was granted by this Court on 28.10.2002.

We heard Mr. K. Ramamurthy, learned senior counsel for the appellant and Mr. Harish Salve, learned senior counsel for the respondent- bank.

Mr. K. Ramamurthy, learned senior counsel appearing for the appellant submitted before us three contentions:-

1.That the appeal was considered by the Appellate Authority although it was time barred.

2. That the Appellate Authority considered the charge which had not been proved while coming to the conclusion that the punishment was required to be enhanced to one of removal from ser vice and

3. That the order of removal from service could not be sustained as no personal hearing was given to the appellant before the enhancement of punishment even though personal interview was specifically asked for. According to the appellant he had faced the enquiry in unfortunate circumstances as his wife, who was also a bank officer had committed suicide on 26.7.1988, during the pendency of the enquiry against the appellant.

Mr. K. Ramamurthy in support of his contention relied on the following judgments:

1. Ram Chander vs. Union of India & Ors. AIR 1986 SC 1173

2. Ram Niwas Bansal vs. State Bank of Patiala & Anr. !998 (4) SLR 711

3. Makeshwar Nath Srivastava vs. The State of Bihar and Ors. 1971 (1) SCC 662

4. Bhagat Ram vs. State of Himachal Pradesh & Ors.1983 (2) SCC 442

5. Ranjit Thakur vs. Union of India & Ors. 1987 (4) SCC 611

6. Dev Singh vs. Punjab Tourism Development Corporation Ltd. & Anr. 2003 (8) SCC 9

7. State of Madras Vs. Gopala Iyer AIR 1963 Madras 14

8. Kailash Nath Gupta vs. Enquiry Officer (R.K. Rai) Allahabad Bank and Ors., 2003 (9) SCC 480

9. Union of India and Ors. vs. M.A. Jaleel Khan, 1999 SCC (L & S) Cases 637 Mr. Harish Salve, learned senior counsel for the respondent-bank submitted that the order passed by the Appellate Authority was just and proper and it was passed in accordance with the service Rules. He submitted that although the cheque granting loan to appellant's wife in her maiden name had not been encashed by her, the intention of the appellant was clear that there was no extenuating factor to reduce the punishment imposed on the appellant. Mr. Salve further contended that Rule 69(2) of the Service Rules provided that no employee should grant on behalf of the Bank any loan or advance to himself or to his spouse and that the appellant had deceitfully granted such a loan to his wife in her maiden name in order to prevent the offence

come into light. He also submitted that the loan was sanctioned by the appellant to his wife in her maiden name under a Scheme called SEEUY, (Scheme for Educated Unemployed Youth), which clearly reveal the evil intention of the appellant to grant the loan which is meant only for Educated Unemployed Youth. Mr. Salve contended that dishonest intention of the appellant is clear and therefore will not be continued in service of the Bank as he was holding a responsible position of Bank Manger. Adverting to Rule 34(3)(1) Mr. Salve submitted that this is a rule of integrity and when it is breached the Bank cannot have an officer like the appellant in their bank as Manager.

Mr. Salve in support of his submission relied on the following judgments:-

1. Disciplinary Authority-cum-Regional Manager and Others vs. Nikunja Bihari Patnaik, (1996) 9 SCC 69

2. Union of India & Anr. Vs. Jesus Sales Corporation, 1996 (4) SCC 69

3. State Bank of Patiala & Ors. vs. S.K. Sharma, 1996(3) SCC 364

4. Regional Manager, U.P. SRTC. Etawah & Ors. vs. Hoti Lal & Anr.2003 (3) SCC 605
As already noticed, the Enquiry Officer found the appellant guilty of Charge No. 5 alone. However, appellate Authority while proposing to enhance the punishment has also relied on charge No.1. Therefore, we shall consider the arguments advanced by the learned senior counsel for the appellant on Charge No.1 and Charge No.5 with reference to the pleadings and records and the judgments cited above at the Bar.

The findings of the disciplinary authority show that the bank had found guilty of only one charge, which had been established against him that namely he had granted loan under the scheme meant for Educated Unemployed Youth to his wife. Although the cheque for the loan which was sanctioned, had not been encashed, the intention of the appellant to disburse the same in a dishonest way to his wife was amply proved. Rule 34(3)(1) reads as follows:

"34(3)(1) No employee shall grant on behalf of the State Bank any loan or advance to himself or his spouse, a joint Hindu Family of which he or his spouse is a member or a partnership with which he or his spouse is connected in any manner or a trust in which he or his spouse is trustee, or a private or public limited Company, in which he or his spouse hold substantial interest."

Charge No. 5 relate to the sanction of loan by the appellant to his wife which reads as follows:-

"You granted loan under SEEUY scheme to your spouse thereby violating Rule No. 34(3) of the State Bank of India (Supervising Staff) Services Rules."

Since the Appellate Authority had considered charge No. 1 also while proposing to enhance punishment, we extract herein below charge No.1:-

> "You while working as Branch Manager, Konkan Bhavan Branch, fraudently received excess amounts on account of double payments of T.E. Bills. You acted dishonestly and in a manner unbecoming of the Bank's Official. You have violated Rule No. 32(4) of the State Bank of India (Supervising Staff) Service Rules."

It is also pertinent to notice that the appellant in his appeal before the Appellate Authority admitted that he had committed misconduct of disbursing the loan to his wife in a Scheme, which is meant for Educated Unemployed Youth. Mr. Ramamurthy submitted that the appeal filed by the appellant should not have been considered as the same was time barred and cannot in our opinion be accepted. The appeal was required to be filed within 45 days of the date of receipt of the order appealed against. The order of the Disciplinary Authority is dated 23.10.1991 and the appeal was filed by the appellant on 10.1.1992. The appellant was well aware while filing the appeal that his appeal was not filed within the period of limitation as provided under Rule 51(2) of the Service Rules. The appellant having filed the appeal cannot now go around and say that the appeal should have been dismissed on the ground of limitation. The reason is obvious. We, therefore, do not find any merit or substance in the submission in regard to the consideration of the appeal on merits even though it is time barred. It has to be presumed, that delay, if any, was condoned by the Appellate Authority while entertaining the appeal and decide the same on merits. Rule 69(5) expressly provides that the authority competent thereunder may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified thereunder for anything required to be done thereunder or condone any delay. This rule is corresponding to Rule 51(2) of the old Rule.

In regard to the second contention that the consideration of the charge which had not been proved by the appellate authority, Mr. Ramamurty submitted that the appellate authority had considered the charges which were not proved while enhancing the punishment. According to Mr. Ramamurthy, the appellate authority was mere concerned with charge No. 5 regarding disbursement of loan to the wife of the appellant in violation of Rule 33(1) of the Service Rules and that the Order of the Appellate Authority does not in any manner disclose that the same was passed by considering the circumstances germane to the charge against the appellant which had been proved. Even accepting the contention of Mr. Ramamurthy on Charge No.1, the appellant cannot come out of the charge No. 5, which is more serious and grave in nature. However, we observe that the observations made by the Appellate Authority on Charge No.1 while considering charge No.5, should be treated only as a passing observation and at the same time we cannot ignore or close our eyes in regard to the finding of the appellate authority on Charge No. 5 which is more serious and grave in nature. The appellate authority had enhanced the punishment imposed by following the procedure laid down in the service Rules and we see no reason to interfere with the same. As already noticed, the appellant had himself admitted his misconduct and therefore, there is no reason why the appellate authority's finding on charge No. 5 should not be accepted.

The third contention relate to non-grant of personal hearing to the appellant before the enhancement of the punishment. Mr. Ramamurthy submitted that personal interview was not given

to the appellant though it has been expressly asked for in his reply to the proposal for the enhancement of penalty. According to him, if a personal interview/hearing was given, the appellant would perhaps be able to express more and convince the appellate authority on the proposal for enhancement of penalty. He further submitted that the penalty imposed on the appellant is not justified without affording an opportunity of personal hearing to the appellant at the enquiry and at the time of recommending for punishment granted to him. The imposition of penalty of removal from service is not just considering the nature of facts and that an order of enhancement of punishment by the appellate authority is not just when it is not recommended by the disciplinary authority/appointing authority and that too in the appeal filed by the delinquent employee. It is the contention of Mr. Ramamurthy that the High Court failed to appreciate that the enquiry and imposition of penalty cannot stand in the eyes of law as there is no opportunity given to the appellant to explain his stand during the enquiry or before the penalty was imposed on the appellant by the appointing authority. It is his further submission that the High Court has failed to appreciate that penalty as enhanced by the appellate authority for reduction in scale to removal from service is not just according to the nature of offence. It is submitted that though there were seven charges framed against the appellant, out of which, only one was proved by the enquiry officer that is an offence committed under Rule 34(3)(1) of the Service Rule, 1972. The imposition of penalty of removal was unwarranted, therefore, he submitted that the bank cheque issued by the appellant was not encashed, it was only an attempt, which has been found to be proved by the Enquiry Officer against the appellant and there has been no loss caused to the Bank. This apart, the appellate authority for imposing the enhanced punishment relied on the reasons, which were not part of the charge of the enquiry. Winding up his arguments Mr. Ramamurthy contended that the impugned actions of the Bank are arbitrary, unreasonable, unfair and violative of the statutory rights as also the principles of natural justice and moreover, no loss whatsoever accrued to the Respondent Bank as no disbursal of the relevant loan took place. He pleaded that the punishment of removal be set aside and the punishment imposed by the disciplinary authority be restored and justice rendered to the appellant.

It is true that the appellate authority has proposed to enhance the punishment and imposed the penalty of dismissal on the appellant. However, the appellate authority was convinced with regard to the explanation submitted by the appellant and reduced the penalty further considering the adverse family circumstances, which could be seen from the following observation in the appellate order:-

> "I, therefore, direct that the earlier penalty of reduction in basic pay by one stage imposed on him by the Appointing Authority be enhanced to removal from service in terms of Rule 67(g) of the State Bank of India Officers Service Rules. The tentative decision taken while serving the show cause notice was to dismiss Shri Sirur from service. Although, considering the acts of misdemeanour of the appellant, this was the appropriate penalty, I have taken a lenient view of the matter because of his adverse family circumstances. Removal from service would enable him to draw higher terminal benefits as compared to dismissal. The removal will take effect from the date of communication of this order and the intervening period will be treated as under suspension. I order accordingly."

We shall now advert to the decision cited by the learned senior counsel for the appellant. R.P. Bhatt vs. Union of India & Ors. 1986(2) SCC 651. This decision was cited by the learned senior counsel to the effect the rules casting the duty on the appellate authority to consider the relevant factors set-forth in Rule 27(2) of the Rules which are relevant in the above case :-

> (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
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> (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
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> (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;"
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> Ram Chander vs. Union of India and Ors. AIR 1986 SC 1173. This case was cited for the proposition that an opportunity should be given to the delinquent officer to exonerate himself from the charge by showing that the evidence adduced at the enquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case. This Court observed as follows: " ..such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair-play and justice also require that such a personal hearing should be given."

In Ram Niwas Bansal vs. State Bank of Patiala and Anr. 1998(4) SLR 711, this Court held:-

> "14. Under Regulation 70 of the Regulations wide power and discretion has been vested in the appellate authority. The appellate authority is under obligation to consider
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> (a) whether the findings are justified or not;
>
> (b) whether the penalty is excessive or inadequate; and

> (c) it may pass any order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority, which imposed the punishment, or any other authority, as it may deem fit in the circumstances of the case.

20. Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of audi alterm partem, which mandates that no one shall be condemned unheard is part of the rules of natural justice. Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must always be does fairness in action demand that an opportunity to be heard should be given to the person affected?

The law must now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of justice must be held to be applicable."

In this case the Court has further observed the personal hearing would be a necessary facet of the principle of natural justice before the appellate authority. (Emphasis provided).

Makeshwar Nath Srivastava vs. The State of Bihar and Ors. (1971 (1) SCC 662). This judgment was cited that the appellate authority in an appeal by the aggrieved party may either dismiss his appeal or allow it either wholly or partly and uphold or set aside or modify the order challenged in such appeal. It cannot surely impose on such an appellant a higher penalty or condemn him to a position worse than the one he would be in if he had not hazarded to file an appeal.

Yoginath D. Bagde vs. State of Maharashtra and Anr. (1999 (7) SCC 739). Referring to Para 29 and 30 of the above judgment it was argued that the Service Rules enables the disciplinary authority to disagree with the findings of the enquiring officer or any article of charge. The only requirement is that it shall record its reasoning for such disagreement. It is again observed:

> "It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed."

Bhagat Ram vs. State of Himachal Pradesh and Ors. (1983(2) SCC 442). This judgment was cited in regard to the contention that the punishment was excessive:

> "12. In the facts and circumstances of this case herein threadbare discussed, we are of the opinion that the appellant was not afforded a reasonable opportunity to defend himself and accordingly the enquiry and consequential order of removal from service are vitiated.

> 13. That conclusion poses another question as to what relief we should give in this appeal. Ordinarily where the disciplinary enquiry is shown to have been held in violation of principle of natural justice the enquiry would be vitiated and the order based on such enquiry would be quashed by issuance of a writ of certiorari. It is sell settled that in such a situation, it would be open to the Disciplinary Authority to hold the enquiry afresh. That would be the normal consequence.
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> 15. We may adopt the same approach. Keeping in view the nature of misconduct, gravity of charge and no consequential loss, a penalty of withholding his increments with future effect will meet the ends of justice. Accordingly, two increments with future effect of the appellant be withheld and he must be paid 50 per cent of the arrears from the date of termination till the date of reinstatement."

In Ranjit Thakur vs. Union of India and Ors. 1987(4) SCC 611 , it is again observed as under :-

> "In Bhagat Ram vs. State of Himachal Pradesh, this Court held :
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> It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution.
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> The point to note, and emphasise is that all powers have legal limits."

In Dev Singh vs. Punjab Tourism Development Corporation Ltd. and Anr. 2003 (8) SCC 9, this Court held:

> "Applying the said principles laid down by this Court in the cases noted hereinabove, we see that in this case the appellant has been serving the respondent Corporation for nearly 20 years with unblemished service, before the present charge of misconduct was levelled against him. The charge itself shows that what was alleged against the appellant was misplacement of a file and there is no allegation whatsoever that this file was either misplaced by the appellant deliberately or for any collateral consideration. A reading of the charge-sheet shows that the misplacement alleged was not motivated by any ulterior consideration and at the most could be an act of negligence, consequent to which the appellant was unable to trace the file again. The disciplinary authority while considering the quantum of punishment came to the conclusion that the misconduct of the nature alleged against the appellant should be viewed very seriously to prevent such actions in future, whereby important and sensitive records could be lost or removed or destroyed by the employee under whose custody the records are kept. Therefore, he was of the opinion that a deterrent punishment was called for, forgetting for a moment that no such allegation of misplacing of important or sensitive record was made in the instant case against the appellant and what he was charged of was misplacement of a file, important or sensitiveness of which was not mentioned in the charge-sheet. Therefore, in our

> opinion, the disciplinary authority was guided by certain facts which were not on record, even otherwise, we are of the opinion that when the Service Bye-Laws applicable to the Corporation under Service Bye-law 17 provide various minor punishments, we fail to appreciate why only maximum punishment available under the said Bye-laws should be awarded on the facts of the present case. We think the punishment of dismissal for mere misplacement of a file without any ulterior motive is too harsh a punishment which is totally disproportionate to the misconduct alleged and the same certainly shocks our judicial conscience. Hence, having considered the basis on which the punishment of dismissal was imposed on the appellant and the facts and circumstances of this case, we think to avoid further prolonged litigation it would be appropriate if we modify the punishment ourselves. On the said basis, while upholding the finding of misconduct against the appellant, we think it appropriate that the appellant be imposed a punishment of withholding of one increment including stoppage at the efficiency bar in substitution of the punishment of dismissal awarded by the disciplinary authority. We further direct that the appellant will not be entitled to any back wages for the period of suspension. However, he will be entitled to the subsistence allowance payable up to the date of the dismissal order."

In Kailash Nath Gupta vs. Enquiry Officer (R.K. Rai), Allahabad Bank and Ors. (2003 (9) SCC 480), this Court held:

> "In the background of what has been stated above, one thing is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is stated that there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject-matter of his removal from service. The stand of the appellant as indicated above is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the Bank (which he quantifies at about Rs.46,000) that can be recovered from the appellant. As the reading of the various articles of charges go to show, at the most there is some procedural irregularity which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service."

In Union of India and Ors. vs. M.A. Jaleel Khan, (1999 SCC (L & S) Cases 637), this Court held:

> "5. The learned counsel appearing for the respondent submitted that the act of the appellate authority in enhancing the punishment without giving a reasonable opportunity to the respondent cannot be sustained. He also submitted that for refusing to vacate the accommodation allotted to the railway servant, the authorities cannot invoke the Service Rules.

> 6. We have considered the submission of the counsel on both sides and also appreciated the facts of this case. We have seen earlier that the respondent had given a solemn undertaking to vacate the premises when the main allottee vacated the same. Notwithstanding such solemn undertaking, the refusal to vacate the premises when the main allottee vacated the accommodation cannot be appreciated or encouraged. The authorities are, therefore, right in initiating disciplinary proceedings on the facts of this case. However, the punishment imposed by the appellate authority by issuing notice to enhance the punishment given by the disciplinary authority requires some consideration. The disciplinary authority, after taking into consideration the facts and circumstances concerning the charge, has imposed the punishment as noticed above. The appellate authority in the appeal filed by the respondent has issued notice for enhancing the punishment. No doubt the appellate authority has jurisdiction to issue such a notice but the question is whether the facts and circumstances of the case warrant such enhancement of the punishment. On the facts, we are of the view that the enhanced punishment given by the appellate authority dismissing the respondent is too harsh and, therefore, we set aside the order of the appellate authority to that extent and restore the punishment imposed by the disciplinary authority."

Thus Mr. Ramamurthy, submitted in view of the plethora of decisions cited as above, the punishment ought not to have been enhanced without offering an opportunity of personal hearing/interview and that such an enhancement of punishment imposed without considering the adequacy or inadequacy is wholly illegal and is therefore be set aside. He further submitted that the appellant joined Bank as a clerk in the year 1963 and had to his credit 26 years of meritorious service and therefore, the bank should consider the above service and the family background and must take a lenient view in the peculiar facts and circumstances of the case and order reinstatement and also by restoring the penalty imposed by the disciplinary authority. Concluding his submissions he said that the appellate authority has gravely erred in enhancing the punishment, when it is not warranted in the facts of this case.

Mr. Salve invite our attention to the pleadings and also the statement made by the appellant in Annexure P-4 at page 36 wherein he has stated that the total amount which was to be reimbursed to the appellant aggregated to 6,000/- and there was no response to personal or official requests and that since he had no money to pay income-tax as per the instructions he debited the suspense account of the Branch and took part amount while working in Madras Circle. The above statement was stated in his own appeal. Inviting our attention to the show cause notice by the appellate authority, he submitted that the charge that had been held as established by the enquiry authority is that the appellant granted loan to his wife in her Maiden name and also disbursed term loan of Rs. 25,000/- to her and also obtained the subsidiary for the said loan and therefore it was submitted that the gravity of the charge is enormous and the intention to sanction the loan to his wife is clear and proved. He had also further submitted that as regards Charge No. 1 that the appellant had freely debited suspense account and credited his personal account on the plea of non-payment of certain official claims. The claims were admissible to him under the Service Rules and therefore it is evident that the appellant exercised his official position and took excess amount on account of payment of

T.A. Bills. According to Mr. Salve, the charge proved against the appellant is that the appellant has a propensity to misuse the official position to the detriment of the bank. The appellant sanctioned the loan by using wife's maiden name, and such a tendency on the part of the Manager of the Bank must be treated firmly. Therefore, he submitted that the decision to enhance the punishment imposed on the appellant and decided to dismiss the appellant from service in place of reduction in basic pay by one stage as already decided is not improper. Mr. Salve also submitted that in terms of Rule 69(2) second proviso, the appellate authority has ordered that the show-cause notice be issued to the appellant as to why the enhanced penalty should not be imposed upon him. Mr. Salve also invited our attention to the detailed explanation submitted by the appellant to the proposal of the appellate authority to enhance the penalty and also the order passed by the appellate authority imposing the punishment of removal from service. Mr. Salve cited some decisions in order to show the current trend of cases on natural justice in disciplinary proceedings. He said the appellate authority has considered the detailed representation and for the reasons recorded has reduced the penalty of dismissal to the removal. It is also his contention that the appellant has not challenged the rule 69(2) and Rule 69(5). A reading of the above rule show that the appellate authority shall give a show cause notice to the officer as to why the enhanced penalty should not be imposed upon him and shall pass final order after taking into account the representation, if any, submitted by the officer and that this rule does not provide for a personal hearing or a personal interview. Mr. Salve is right in his above submissions. A reading of the show-cause notice and the final order passed by the appellate authority clearly go to show that the appellate authority has thoroughly considered the detailed submissions made by the appellant and has reached its conclusion on the facts and circumstances of the case and has modified the proposed penalty of dismissal to that of the penalty of removal. There is total application of mind on the part of the appellate authority in arriving at the conclusion in regard to punishment.

Union of India and Anr. vs. Jesus Sales Corporation (1996(4) SCC

69).

The above judgment was cited for the proposition as to taking into consideration the facts and circumstances of each case to exercise discretion. and that it does not flow from the rule that before exercising such discretion the appellate authority should hear the appellant and that this discretion can be exercised by the appellate authority as the said authority may deem think proper. He further contended that whenever a statute vest discretion in an authority to exercise the statutory power, such authority can exercise the same in an unfettered manner and that whenever an unfettered discretion has been exercised, courts have refused to countenance the same. He also invited our attention to para 5 of the above judgment which is to the following effect:-

> " .The courts cannot insist that under all circumstances and under different statutory provisions personal hearings have to be afforded to the persons concerned. If this principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. Many statutory appeals and applications are disposed of by the competent authorities who have been vested with powers to

> dispose of the same. Such authorities which shall be deemed to be quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the appellants or applicants concerned, but it cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the case may be. When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved."

Mr. Salve invited our attention to Para 17 of the Judgment in State Bank of Patiala & Ors. vs. S.K. Sharma, 1996(3) SCC 364, which deals with the opinion of the House of Lords in United Kingdom. He also drew our attention to S.L. Kapoor vs. Jagmohan, 1980) (4) SCC 379 and Managing Director ECIL vs B. Karunakar's, 1993 (4) SCC 727 in para 25, 26 and 28. The decisions relied on and cited above make one thing clear namely principles of natural justice cannot be reduced to any hard and fast formulae and as said in Russel v. Duke of Norfold (1949) 1 All ER 109, these principles cannot be put in a strait jacket. Their applicability depends upon the context and the facts and circumstances of each case. The objective is to ensure a fair hearing, a fair deal to a person whose rights are going to be affected. In our opinion, the approach and test adopted in Karunakar's case (supra) should govern all cases where the complaint is not that there was no hearing, no notice, no opportunity and no hearing) but one of not affording a proper hearing that is adequate or a full hearing or violation of a procedural rule or requirement governing the enquiry.

On proportionately of punishment imposed, Mr. Salve cited Chairman and Managing Director, United Commercial Bank & Ors. vs. P.C. Kakkar, 2003(4) SCC 364. In the above case it was observed:-

> "In B.C. Chaturvedi vs. Union of India, 1995(6) SCC 749, it was observed :
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> 18. A review of the above legal position would establish that the disciplinary authority, and on appeal the Appellate Authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

The learned senior counsel also relied on para 14 of the above judgment. Replying on the above passage, Mr. Salve submitted that the appellant, the Branch Manger of a Bank is required to exercise higher standards of honesty and integrity when he deals with the money of the depositors and the customers and, therefore, he is required to take all possible steps to protect the interest of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of the bank Officer. According to Mr. Salve, good conduct and discipline are inseparable for the functioning of every officer, Manager or employee of the Bank, who deals with public money and there is no defence available to say that there was no loss or profit resulted in the case, when the manager acted without authority and contrary to the rules and the scheme which is formulated to help the Educated Unemployed Youth. Mr. Salve's above submissions is well merited acceptance and we see much force in the said submission.

The Bank Manager/Officer and employees and any Bank nationalised/or non-nationalised are expected to act and discharge their functions in accordance with the rules and regulations of the Bank. Acting beyond one's authority is by itself a breach of discipline and Trust and a misconduct. In the instant case Charge No. 5 framed against the appellant is very serious and grave in nature. We have already extracted the relevant rule which prohibits the Bank Manager to sanction a loan to his wife or his relative or to any partner. While sanctioning the loan the appellant do not appear to have kept this aspect in mind and acted illegally and sanctioned the loan. He realized the mistake later and tried to salvage the same by not encashing the draft issued in the maiden name of his wife though the draft was issued but not encashed. The decision to sanction a loan is not an honest decisions. The Rule 34(3)(1) is a rule of integrity and therefore as rightly pointed out by Mr. Salve, the respondent Bank cannot afford to have the appellant as Bank Manager. The punishment of removal awarded by the Appellate Authority is just and proper in the facts and circumstances of the case. Before concluding, we may usefully rely on the judgment Regional Manager, U.P. SRTC. Etawah & Ors. vs. Hoti Lal & Anr. reported in 2003(3) SCC 605. Wherein this Court has held as under:-

> "If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background, conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal."

We entirely agree with the above observations made in the above judgment.

We have, therefore, no hesitation in dismissing the appeal filed by the appellant and confirming the order passed by the Division Bench of the High Court. However, we make it clear that in the peculiar facts and circumstances of the case the appellant will be entitled to full pension and gratuity irrespective of his total period of service. No costs.