K. L. Tripathi

Vs

State Bank of India and Others

Civil Appeal No. 1135 of 1978

(CJI Y. V. Chandrachud, R. S. Pathak, Sabyaschi Mukharji JJ)

04.10.1983

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. Shri K. L. Tripathi, the appellant herein joined the State Bank of India in 1955. At the relevant time, he was working as Branch Manager, State Bank of India, Deoria.

2. Certain complaints were received about his conduct from Gorakhpur Branch Manager, Shri R. S. Kapoor, Staff Officer Grade II, who reported to the Head Office on May 5, 1974 that, from the information given to him by some members of the staff of Deoria Branch, namely, Shri M. R. Sharma, Head Clerk, M. S. Gupta, Field Officer and from other enquiries made by him he found that the bills negotiated by the Gorakhpur Branch under a Revolving Letter of Credit No. 20/1 dated March 21, 1974 established by the Deoria Branch on Gorakhpur Branch for Rs. 2 lacs at a time subject to a maximum of Rs. 17 lacs had remained unpaid to the extent of Rs. 12 lacs and that the openers of the Latter of Credit, M/S. Jamuna Prasad Munnilal Jaiswal, Deoria were unable to meet their obligations, In the same letter, he also informed that Deoria Branch had opened another Revolving Letter of Credit No. 20/2 dated April 3, 1974 for Rs. 50,000 per day subject to a maximum of Rs. 10 lacs and that because the clauses of the credit had not been drawn properly, the bills were not negotiated thereunder by his Branch, and were, instead, sent on collection basis. Certain other allegations giving the particulars of the bills and record were mentioned. In those circumstances, the Head Office ordered a preliminary enquiry which was conducted by Shri R. P. Srivastava, Staff Officer, Grade II and having considered his report, the Head Office directed Shri B. D. Sharma. Chief Manager to carry out investigation under the rules governing the services of the officers of the State Bank.

3. Shri Sharma conducted the investigation between June 9 to June 23, 1974 and in the course of investigation, he visited Deoria and Gorakhpur. On September 9, 1974, charges were framed. The information Shri Sharma could gather was that M/s. Jamuna Prasad Munnilal Jaiswal, Station Road, Deoria was a sole-proprietorship concerned with Shri Jamuna Prasad Jaiswal as the sole proprietor. Their business was to deal in scrap iron which they purchased from sugar mills around Deoria and from other sources. The firm maintained a current account only with an average balance of Rs. 10,000. There was no opinion report on record with the Branch. It appeared that the firm had no experience in oil business. Shri Sharma enquired from Mr. Tripathi. From the report of Shri Sharma, it appears that in respect of all relevant entire upon which he has based his conclusion, he asked Shri Tripathi after giving him the gist of the relevant materials gathered from other persons in the absence of the appellant and asked his opinion or explanation in respect of those. We have examined the report of Shri Sharma and find that at all stage in respect of all the matters mentioned in the

report the appellant was associated with the preliminary investigation and his versions or explanations were sought for and recorded.

4. It is significant that in respect of charge (ii) - Letters of Credit No. 20/1 dated March 21, 1974 and No. 20/2 dated March 3, 1974, the petitioner stated as follows :

> That the Revolving Letter of Credit No. 20/1 dated March 21, 1974 for a sum not exceeding Rs. 2 lacs "at a time" subject to a maximum of Rs. 17 lacs was established by me after obtaining the permission of the Regional Manager over telephone. The other Letter of Credit No. 20/2 dated April 3, 1974 for a sum not exceeding Rs. 50,000 "per day" subject to a maximum of Rs. 10 lacs was established in good faiths which was within my power. In so far as compilation of a regular opinion report on the firm is concerned, I may submit that the required particulars had already been collected by the Branch Head Cashier and before issuing the aforesaid Letter of Credit, I had made my own assessment of the firm's credit-worthiness means and their ability to meet their commitments in this regard.

In this connection, I remember to have informed Shri B. D. Sharma, the Investigating Officer that the words "per day" instead of "at a time" were substituted at the instance of Shri A. K. Chatterjee, Manager, S.I.B. Division, Gorakhpur Branch at the material time which I reiterate. It was not my intention to issue clean letter of credit and to this end I used the words "accompanied by once used and unidentified plant lubricating oil in 200 litres each drum". I regret that these words were not properly placed in the Letters of Credit. Both the typists attached to the Branch were no deputation at the material time with the result that formal sanction of the controlling authority was not obtained. On my part I was also awfully busy in inspection of agricultural loans, other important duties, mobilisation of deposits and I had absolutely little time at my disposal, towards correspondence. In these transactions I had always in mind to promote the bank's business interest. I had never intend to jeopardies the bank's interest at any time.

5. He admitted that amount of Draft No. BS 001560 dated January 12, 1974 for Rs. 75,000 was not credited to "Margin on Documentary Credits Account" before issuing the Letters of Credit. He however stated that margin amount of Rs. 75,000 was lying with the bank as security by means of a draft and the bank's interests were not jeopardised and were fully protected to that extent. The draft was, however, not duly discharged. He admitted that there was delay in retiring of bills he gave certain explanation to the show cause notice.

6. So far as dates of payment of bills No. 30, 35 and 36, he gave his explanation.

7. So far as another matter - telegrams relating to the advising negotiation of bills under Letter of credit No. 20/1 dated March 21, 1974, the appellant stated, inter alia, as follows :

> A representative of FCI, Gorakhpur came to Deoria on April 11, 1974 and handed over Gorakhpur Branch S.C. Nos. 774 to 778 along with a D.O. letter from Shri Maheshwari, Dy. Finance Manage, FCI with a request to arrange for quick payment of the aforesaid bills as they were in urgent need of money. With a view to render helpful service to valued constituent like FCI a Government of India undertaking, the payment advice dated April 11, 1974 in respect of S.C. Nos. 774 to 778 was signed by me before the bills were paid as I was to leave my office for inspection. In this connection, I invite your kind attention to the fact that Shri S. N. Singh was only an

> Acting Accountant and his name appeared in the Officers Grade I column of the Officers list of the Circle. As such I was particular about singing inter office advises of heavy amounts to avoid their being dishonoured by the branch on which they were drawn.

The firm's account showed a credit balance of approximately Rs. 1,02,000 and I had called the proprietor of the firm on that day for depositing sufficient funds in their account so that the bills could be retired by debit to firm's account and it was on his assurance that the payment advice was signed by me in good faith and handed over to Shri S. S. Srivastava, Officer Grade II for delivery to the Corporation's representative only when the required transactions had been put through in the books of the Branch. On April 11, I returned late in the night from inspection and got the news of tragic death of grandmother at my village Ghazipur District.

8. Thereafter he stated that he was mentally disturbed and he left for the village and in conclusion stated as follows in respect of this :

> However, I am sorry for the fact that the full details of the above transaction were not advised to Head Office in time, sincerely regret for this circumstantial omission on my part and assure, Sir, that there was hardly any motive or fraudulent intention behind it.

9. In the end he did not deny the factual basis stated to him as mentioned in the report of Shri Sharma or challenge the veracity or the correctness of any of these facts or the materials mentioned in the report of Shri Sharma. He stated in his reply to the second show cause notice on these pointed as follows :

> It would be clear that whatever was done by me in these transactions was done in good faith and to promote the interest of the bank. There was a conspiracy against me that I had indulged in fraudulent transactions an attempted to misappropriate bank's money are baseless. I never intended to jeopardies the bank's interest. My integrity and bona fide have always been above board during my service of about 20 years in the bank.

10. It is material to record the conclusions reached by Shri Sharma by his investigation upon the basis of which the appellant was charge sheeted. There were as follows :

> Considering all circumstances of the case, I am of the view that Shri Tripathi is responsible for the following irregularities :
>
> (1) The opinion on M/S. Jamuna Prasad Munnilal Jaiswal, a sole-proprietorship concern, has been furnished to FCI in an out of the way manner, is not based on any reliable records of the Branch and contains commitments far beyond the discretionary powers of the Deoria Manager.
>
> (2) The two clean letters of credit - one for Rs. 17,00.000 and the other for Rs. 10,00,000 opened on Gorakhpur Branch were far beyond his discretionary powers and no proper approval therefor had been obtained from the appropriate authority.
>
> (3) Although the letters of credit far exceeding his discretionary powers were established - viz. Nos. 20/1 and 20/2 dated March 21, and April 3, 1974 respectively

these were reported to the controlling authority in per-functory manner on May 6 and May 7, i.e. after the position had already come to their knowledge.

(4) (sic)

(5) DDs for Rs. 6 lacs, negotiated by Gorakhpur Branch and bearing their LBCS Nos. 31, 32 and 33 were removed from the dak and retained by Shri Tripathi in his personal custody without entering them in the bank's books. These were subsequently found in his safe.

(6) The lists of bills aggregating Rs. 6,01,204.50 relating to Gorakhpur Branch LBCS Nos. 31, 32 and 33 (vide item 5 above), after having been entered in the Schedule 8 Book and after having been referred to jointly.

(7) The terms and conditions of letter of credit No. 20/1 dated March 21, 1974 were changed without complying with the required formalities.

(8) The lists of bills aggregating Rs. 6,01,204.50 relating to Gorakhpur Branch LBCS Nos. 31, 32 and 33 (vide item No. 5 above) after having been entered in the Schedule 8 Book and after having been referred to jointly by Shri S. S. Srivastava, Office Grade II and Shri S. N. Singh, Branch Accountant, in the presence of Shri M. S. Gupta Field Officer disappeared while the book was in Shri Tripathi's custody.

(9) The Gorakhpur Branch Manager was advised by him that Gorakhpur Branch LBC No. 30 had been paid on March 20, 1974 whereas it was actually paid on April 2, 1974 and that the Branch's LBCS Nos. 34, 35 and 36 had been paid at all.

(10) Although a number of bills negotiated by Gorakhpur Branch under the letter of credit had been outstanding no efforts were made by Shri Tripathi for recovering the bank's dues.

(11) Telegrams from Gorakhpur Branch advising Deoria Branch of the negotiations done under the letter of credit were received at the Branch but were not attended to although huge sums were involved.

(12) The letter of credit No. 20/2 was opened by him on April 3, 1974 irrespective of the fact that a large sum of money was already due from the drawees who were unable to pay promptly.

(13) Five SCS, aggregating Rs. 2.5 lacs received from Gorakhpur Branch bearing their S. Nos. 774 to 778 for collection were paid on April 11, 1974 by debit to IBI Account instead of the drawee's account.

(14) The plea that since he (Shri Tripathi) was going out for inspection on April 11, 1974 and so was in hurry, he signed the SC payment advice of bills referred to in item No. 12, above in order to avoid inconvenience to Shri Ramji Singh, FCI representative is not supported by circumstantial evidence. I am satisfied from the evidences available that he did not go out on inspection at 10.15 a.m., that he was in the office till late afternoon and that the inspection plea put up by him is afterthought.

(15) The bills received for collection from Gorakhpur Branch were not entered in Branch Books in the normal manner on receipt but were detained and entered at later dates suiting circumstances.

I therefore hold that Shri Tripathi has committed the above irregularities wilfully, violating the established practices and defying the bank's instructions and had done so with the motive of helping unauthorisedly M/S. Jamuna Prasad Munnilal Jaiswal who were otherwise not in a position to handle from their own resources, transactions involving a turnover of Rs. 27 lacs within the limited period mentioned in the letters of credit.

11. Thereafter on this basis, on June 19, 1975 the appellant was issued a show-cause notice. In the said show-cause notice, the appellant was communicated of three charges. These charges were mainly based on the report of Shri Sharma as mentioned hereinbefore. First charge was furnishing of opinion report to the Fertilizer Corporation of India in an unauthorised manner. Second charge was about the appellant's conduct in opening two clean Revolving Letters of Credit Nos. 20/1 dated March 21, 1974 and the other 20/2 dated April 3, 1974. The third charge was about irregularities in respect of the opening of Letters of Credit and payment of bills negotiated there-under. Sufficient particulars of these charges were mentioned and these appear in the charge-sheet which we need not set out in extenso. The appellant was charged as follows :

* * *##

(a) had acted in a manner highly prejudicial to the bank's interest;

(b) had exposed the bank's interest to serious risk;

(c) had attempted to defraud the bank which act on your part casts serious aspersions on your integrity and bona fides; and

(d) had wilfully and knowingly furnished incorrect particulars, concealed/withheld information/particulars to/from Gorakhpur Branch (negotiating Branch) controlling authority and flagrantly violate bank's rules and instructions with a view to cover up your attempts to misappropriate bank's money and/or to defraud the bank.

It is thus evident that as the Branch Manager you had failed miserably to safeguard the bank's interest; on the contrary you had wilfully/knowingly committed gross irregularities in the opening of the aforesaid Letters of Credit and payment of bills drawn thereunder and attempted to defraud the bank. Your actions, which have seriously jeopardised the bank's interests and exposed the bank to grave financial risks, cast grave doubts on your integrity and bona fides. It is, therefore, proposed to proceed against you in terms of Rule 49 read with Rule 50 of the State Bank of India (Officers and Assistants) Service Rules. You are, therefore, required to submit to us your written statement in defence in terms of Rule 50(2) ibid in respect of the aforesaid charges within 15 days of the receipt hereof; also, if you so desire, you may apply for a hearing in person with the undersigned. Please note that in the event of your failure to submit the reply within this period, it will be understood that you have no defence to offer.

12. In his reply dated November 5, 1975, the appellant had dealt with the different allegations mentioned in the charge-sheet. So far as the first charge was concerned regarding issuance of opinion report fixing estimates arbitrarily and giving over-estimates as mentioned in the charge-sheet, the appellant admitted the facts but stated that it was done out of ignorance and he further

stated this was, however, done by me out of enthusiasm".

13. Regarding Charge (ii), what he had stated has been set out hereinbefore.

14. It may be mentioned that regarding Charge (ii), his reply was that the words which ought to have been there "accompanied by once used and unidentified plant lubricating oil in 200 litres each drum" which were safeguard for encashments pursuant to the letters of credit, were important and significant. He accepted that those words were not properly placed in the letters of credit. As would appear from the report of Shri Sharma that the appellant had admitted that he had changed the words "at a time" and had used the words "per day". The appellant's defence was that he meant the same thing.

15. In respect of these charges, he admitted the facts and used expressions like these I regret that due to inadvertence - was not credited".

16. Another explanation was that he was awfully busy in inspection of agricultural loans. Another charge was that he did not ensure prompt payment of the bill on receipt. He admitted in his reply that this was so but stated that the Gorakhpur Branch created complications and he was put to harassment". He admitted that he furnished in respect of Charge (iii)(d) in the show cause notice, incorrect particulars, regarding payment of bills negotiated but stated that he was regretting these things.

17. Another explanation for these matters was that he had to leave office frequently and early during the day for inspection. He admitted in reply to Charge (iii)(e) that he used to receive covers and passed these on to Shri Srivastava. In respect of Charge (iii)(f) - telegraphic advices from Gorakhpur Branch for negotiations of bills - his reply was that he had not attended to these and amount was not recovered. But his explanations was that it was handled by the Branch Accountant and it was not possible or necessary for him, because of his pre-occupation to attend to these telegrams personally.

18. In spite of making allegations against some officer, he did not ask to cross-examine any of these officers in respect of the matters stated against him. He merely asked for personal hearing. He wanted an opportunity to expose the conspiracy. It may be stated, however, that the appellant was given a personal hearing. Even in respect of the matters of conspiracy, he did not ask any opportunity to cross-examine the officials. The appellant did not ask for any opportunity in the reply to lead evidence in support of his defence. He admitted, however, in his reply that the facts he was stating had already been explained to Shri. Sharma during his preliminary investigation.

19. Thereafter on May 1, 1976, the appellant received a letter from the Chief General, Manager intimating to him that in accordance with the independent investigation conducted under rule 50(1) of the State Bank of India (Officers and Assistants) Services Rules governing the appellant's service in the bank, the statement of charges served dated June 19, 1975 and the appellant's reply thereto dated November 5, 1975 were submitted to the Local Board at its meeting held on April 28, 1976 and it was resolved that the appellant be dismissed from the service in terms of Rule 49(f) of the aforesaid service rules. Thereafter the appellant by the said rule was required to submit his written statement showing cause why the penalty proposed should not be imposed upon the appellant. The appellant was further informed that if no reply was received, the State Bank of India's authority will presume that the appellant had no submissions to make. Along with the said letter, a copy of the statement of charges and a copy of the report of the Investigating Officer who investigated,

consisting of investigation in respect of each of the allegations and the appellant's explanations to the allegations during the time of the preliminary investigation and the facts and materials gathered during the preliminary investigation in which the appellant participated as mentioned thereinbefore was sent.

20. The appellant on June 18, 1976 submitted a reply. These have been set out in pages 107 to 129 (of the Paper Book) - Annexure 4 to the affidavit of Shri K. P. Rau filed in these proceedings. Apart from the detailed reply which had already been submitted by the appellant, a reading of the explanation submitted by the appellant made it clear according to the appellant that none of the charges could be made the basis of any disciplinary action specially action of dismissal. He referred to his excellent record from 1967 to 1973 in which he stated that the entry of appellant's performance was 'excellent' in 1970; that he was an asset to the institution. He further stated that even if there was some technical fault on account of certain interpretation of rules mentioned in the report, the appellant had sought guidance of the Field Officer and further submitted that on account of technical mistake where the bank has not suffered any monetary loss or any other type of loss and in view of his long service for more than 20 years during which the appellant's service as Officer Grade I was excellent, no action could or should be taken against the appellant.

21. He further stated that the facts and circumstances reveled that the enquiry was in violation of the principles of natural justice and he mentioned the statements against him were alleged to have been recorded during the course of enquiry but while recording those statements the appellant was never informed nor any statement was taken in presence of the appellant. The statements were not signed in his presence. Thereafter he made allegations of bias of certain officers. The appellant further stated that so far as the report of the enquiry officer regarding the opinion report of the firm, M/s. Jamuna Prasad Munnilal Jaiswal was concerned, the appellant had not committed any breach of the rules as he had obtained permission on telephone from the competent authority and this fact was brought to the notice of the enquiry officer the investigation. He also mentioned that the fact that trunk-call was booked appears from the register. He stated that he was not guilty of the charges. The main grievance was that the enquiry officer only took the statement of the appellant and none of the statements on which reliance was placed was recorded in the presence of the appellant. The appellant prayed that the penalty proposed may not be imposed. His explanation along with other necessary papers was forwarded to the Executive Committee of the Central Board and the Central Board in its meeting duly considered the same and directed that the appellant be dismissed from the bank's service with immediate effect. The appellant was duly communicated to the said effect on October 19, 1976.

22. On November 4, 1976 writ application under Article 226 was filed by the appellant in the Allahabad High Court alleging contravention of the State Bank of India (Officers and Assistants) Service Rules and on February 2, 1978, the Allahabad High Court by its judgment held that the rules had no statutory effect and as such, the writ application was dismissed. The appellant, being the petitioner therein, has now come up by special leave to this Court under Article 136 of the Constitution. It appears that the main controversy before the Allahabad High Court was whether Rule 50 of the aforesaid rules in force at the relevant time has been complied with or not. On behalf of the State Bank of India, it was urged that the said rules not having been framed under the State Bank of India Act, these had not statutory force and as such the appellant could not enforce any statutory right. In that, the application under Article 226 of the Constitution was held not to be maintainable.

23. The points for consideration urged before us in this appeal were mainly :

(i) that in conducting the enquiry resulting in the dismissal of the appellant, the principles of natural justice had been violated and the appellant was not given a fair opportunity to defend himself;

(ii) whether Rule 50 of the said rules as prevalent prior to July 25, 1970 had been complied with or not;

(iii) whether the procedure envisaged under Rule 50 contained requirement of due compliance with the principles of natural justice.

24. In this connection it may be mentioned that if the rules were not statutory but merely contract between the parties, one of the points urged before us was that can a party contract on a basis different from the principles of natural justice ? It may be mentioned further that the said rules came into effect from January 1, 1958 and the appellant had signed the agreement in accordance with rules on June 9, 1974.

25. In dealing with the points in controversy at this stage it may be relevant to refer to the relevant rules. Rule 49(f) which dealt with the employee who committed any breach of the rules and regulations of the Bank, or displayed negligence, inefficiency or indolence or who knowingly did anything detrimental to the interests of the bank or in conflict with its instructions or committed any breach of discipline or was guilty of any other acts of misconduct would be liable for the penalty of, inter alia, dismissal.

26. Sub-rule (1) of Rule 50 of the said rules mentioned above postulates that the Managing Director, if he is satisfied that there was a prima facie case for proceeding against an employee, may investigate the case himself or appoint any other investigating officer and submit an independent report in writing. Sub-rule (2) of Rule 50 envisages that brief statement of the charges together with the grounds on which the charges are based should be communicated in writing to the employee. The employee should be required to submit a written statement in defence and given an opportunity to be heard in person if desired by him, and he shall also be given facilities for access to the records of the bank for the purpose of preparing his written statement. The Managing Director for the reasons to be recorded in writing, may refused such access if in his opinion such records were not strictly relevant or it was not desirable in the interests of the bank to allow such access.

27. Thereafter sub-rule (3) envisages that the report of officer who investigated the case together with the employee's statement and a further report in writing by the Managing Director or the Secretary and Treasurer, indicating the charge or charges against the employee, shall be laid for consideration, in the case of an employee serving in or under Central Officer, before the Executive Committee and in the case of an employee serving in a Circle, before the Local Board. The Executive Committee or the Local Board as the case may be shall make such order as they consider in the circumstance fit and proper but if they consider it fit for imposing a penalty mentioned in clause (e) or clause (f) of Rule 49, the employee shall be given a further opportunity to state in writing by a specified date why such penalty shall not be imposed. "For this purpose the charge or charges against him together with a copy of the report of the officer who investigated the case and specific penalty proposed to be imposed shall be communicated to him by the Managing Director or the Secretary and Treasurer, as the case may be." If the employee given a reply, that reply will be taken into consideration and the Executive Committee will convey its decision in writing to the employee concerned. This rule, it may be mentioned, has been altered with effect from July 25, 1975. We are, however, not concerned with the said amended rule.

28. The main argument of Mr. Garg, counsel for the appellant, was that the requirements of Rule 50 of the aforesaid rules have not been complied with. He submitted that the materials against the appellant were gathered in his absence and he was not allowed to cross-examine the witnesses, and that evidence against him was not recorded in his presence. He urged that only an opportunity to show cause, after he had replied the charges against him which were based on materials, gathered behind him for imposition of penalty, was given. He submitted that reasonable opportunity under the rules required that materials against a person should not be gathered behind his back and he should be given an opportunity to cross-examine, if necessary, the persons who had supplied the materials or given evidence against him. He further submitted that the delinquent officer should also be given an opportunity to rebut such evidence. Mr. Garg submitted that infraction of this procedure under the rules will make the investigation bad as basic fundamental requirement of an opportunity was implied in the rule. The impugned order should be struck down as having been passed in violation of the principles of natural justice.

29. We are of the opinion that Mr. Garg is right that the rules of natural justice as we have set out hereinbefore implied an opportunity to the delinquent officer to give evidence in respect of the charges or to deny the charges against him. Secondly, he submitted that even if the rules had no statutory force and even if the party had bound himself by the contract, as he had accepted the Staff Rule, there cannot be any contract with a Statutory Corporation which is violative of the principles of natural justice in matters of domestic enquiry involving termination of service of an employee. We are in agreement with the basic submission of Mr. Garg in this respect, but we find that the relevant rules which we have set out hereinbefore have been complied with even if the rules are read that requirements of natural justice were implied in the said rules or even if such basic principles of natural justice in respect of the order passed in this case. In respect of an order involving adverse or penal consequences against an officer or an employee of Statutory Corporations like the State Bank of India, there must be an investigation into the charges consistent with the requirements of the situation in accordance with the principles of natural justice as far as these were applicable to a particular situation. So whether a particular principle of natural justice has been violated or not has to be judged in the background of the nature of charges, the nature of the investigation conducted in the background of any statutory or relevant rules governing such enquiries. Here the infraction of the natural justice complained of was that he was not given an opportunity to rebut the materials gathered in his absence. As has been observed in On Justice by J.R. Lucas, the principles of natural justice basically, if we may say so, emanate from the actual phrase "audi alteram partem" which was first formulated by St. Augustine (De Duabus Animabus, XIV, 22 J.P. Migne, PL. 42, 110).

30. In dealing with particular situation we must formulate the actual principles to be applied in a particular situation. Hence it may be illustrated as J.R. Lucas - On Justice (page 86) has done it, thus :

> Hence, when we are judging deeds, and may find that a man did wrong, there is a requirement of logic that we should allow the putative agent to correct misinterpretations of disavow the intention imputed to him or otherwise disown the action. God needed to ask Adam 'Hast thou eaten of the tree whereof I commanded thee that thou shouldest not eat ?' because it was essential that Adam should not be blamed or punished unless he had done exactly that deed. If the serpent had planted the evidence, or if he had beguiled Adam into eating it under the misapprehension that it came from another, non-forbidden tree, then Adam had not sinned and should not have been expelled from Eden. Only if the accused admits the charge, or, faced with the accusation, cannot explain his behaviour convincingly in any other way, are

we logically entitled to conclude that he did indeed do it.

31. Wade in his Administrative Law, Fifth Edition at pages, 472-475 has observed that it is not possible to lay down rigid rules as to when the principles of natural justice are to apply : nor as to their scope and extent. Everything depends on the subject-matter, the application of principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth.

32. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept of fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitable from part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been causes to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement.

33. The party who does not want to controvert the veracity of the evidence from record or testimony gathered behind his back cannot except to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases.

34. The principles of natural justice will, therefore, depend upon the facts and circumstances of each particular case. We have set out hereinbefore the actual facts and circumstances of the case. The appellant was associated with the preliminary investigation that was conducted against him. He does not deny or dispute that. Information and materials undoubtedly were gathered not in his presence but whatever information was there and gathered namely, the versions of the persons, the particular entries which required examination were shown to him. He was conveyed the information given and his explanation was asked for. He participated in that investigation. He gave his explanation but he did not dispute any of the facts nor did he ask for any opportunity to call any evidence to rebut these facts. He did ask for a personal hearing, as we have mentioned hereinbefore and he was given such opportunity of personal hearing. His explanations were duly recorded. He does not allege that his version has been improperly recorded nor did he question the veracity of the witnesses or the entries or the letters or documents shown to him upon which the charges were framed and upon which he was found guilty. Indeed it may be mentioned that he was really consulted at every stage of preliminary investigation upon which the charges were based and upon which proposed action against him has been taken. In that view of the matter, we are of the opinion, that it cannot be said that in conducting the enquiry or framing of the charges or arriving at the decision, the authorities concerned have acted in violation of the principles of natural justice merely because the evidence

was not recorded in his presence or that the materials, the gist of which was communicated to him, were not gathered in his presence. As we have set out hereinbefore, indeed he had accepted the factual basis of the allegations. We have set out hereinbefore in extenso the portions where he had actually admitted the factual basis of these allegations against him, where he has not questioned the veracity of the witness of the facts or credibility of the witnesses or credibility of the entries on records. Indeed he has given explanation namely, he was overworked, he had consulted his superiors and sought their guidance, his conduct has not actually, according to him caused any financial risk or damage to the bank concerned. Therefore, in our opinion in the manner in which the investigation was carried out as a result of which action has been taken against him cannot be condemned as bad being in violation of the principles of natural justice. Had he, however, denied any of the facts or had questioned the credibility of the persons who had given information against him, then different considerations would have applied and in those circumstances, refusal to give an opportunity to cross-examine the persons giving information against him or to lead evidence on his own part to rebut the facts would have been necessary and denial of such opportunity would have been fatal. But such is not the case here as we have mentioned hereinbefore.

35. Our attention was drawn to the new rules called 'State Bank of India (Supervising Staff) Service Rules' which were first introduced on July 25, 1975 and thereafter from time to time amended which laid down detailed procedure for gathering the information and procedure for recording of the evidence etc. We are, however, not concerned with those rules as at relevant time when the enquiry was conducted, these rules were not in force.

36. We may also mention that the appellant has contended that there is no evidence that the appellant has actually defrauded the bank or actual loss or damage has been causes to the bank or actual risk has been incurred by the bank. That is true. But the charge against the appellant was that he had so conducted himself which exposed the bank to grave risk and for which his explanation was not accepted, after considering his explanation and after personal hearing reasonably an opinion may be formed that his conduct was such that defrauding of the bank might have been caused. These were the charges against him and these are the charges upon which he was accused. Therefore, whether actual loss or damage had been causes or not, is, in our opinion, immaterial. In that view of the matter, we are of the opinion that the arguments on this aspect of the matter on behalf of the appellant cannot be accepted. In that view of the matter, it is not necessary to express any opinion on the question whether these rules under which the enquiry was conducted were statutory rules or not and as such whether the appellant has any statutory remedy against the orders impugned.

37. Reliance was placed in support of his argument by Mr. Garg on a decision of this Court in the case of Phulbari Tea Estate v. Workmen (AIR 1959 SC 1111 : (1960) 1 SCR 32 : (1959) 2 LLJ 663), where it would appear from the facts set out at page 1113 of the Report that the delinquent had no opportunity of asking questions to the witnesses after knowing they had said against him. In this case as we have mentioned hereinbefore, the appellant was communicated the gist of what had been gathered in his absence and even then he did not deny these information nor did he ask any opportunity to cross-examine the witnesses either regarding the veracity of the material that was gathered against him or on the credibility of the persons who had given evidence.

38. Reliance was also placed on the observations in the decision of this Court in Khem Chand v. Union of India (1958 SCR 1080 : AIR 1958 SC 300 : (1959) 1 LLJ 167). That however, was a case dealing with the requirements under Article 311(2) of the Constitution.

39. In that decision, the Court was concerned with the expression 'reasonable opportunity of showing cause under Article 311(2) of the Constitution'. The facts of that case were entirely different from the facts of the instant case. However, Das C.J., dealing with opportunity to show cause explained at pages 1096-97 of the Report the position under the said Article as follows :

> .... If the opportunity to show cause is to be a reasonable one it is clear that he should be informed about the charge or charges levelled against him and the evidence by which it is sought to be established, for it is only then that he will be able to put forward his defence. If the purpose of this provision is to give the government servant an opportunity to exonerate himself from the charge and if this opportunity is to be a reasonable one he should be allowed to show that the evidence against him is not worthy of credence or consideration and that he can only do if he is given a chance to cross-examine the witnesses called against him and to examine himself or any other witness in support of his defence. All this appears to us to be implicit in the language used in the clause, but this does not exhaust his rights. In addition to showing that he has not been guilty of any misconduct so as to merit any punishment, it is reasonable that he should also have an opportunity to contend that the charges proved against him do not necessarily require the particular punishment proposed to be meted out to him. He may say, for instance, that although he has been guilty of some misconduct it is not of such a character as to merit the extreme punishment of dismissal or even of removal or reduction in rank and that any of the lesser punishments ought to be sufficient in his case.
>
> To summarise : the reasonable opportunity envisaged by the provision under consideration includes -
>
> (a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;
>
> (b) an o__pportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of s defence; and finally
>
> (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposed to inflict one of the three punishments and communicates the same to the government servant ....

40. In substance, in the facts and circumstance of this case, the provision of the rules under which the enquiry was conducted, the procedure mentioned above has been followed. Here also the appellant was allowed to show that the evidence against him was not worthy of credence or consideration. The evidence was discussed. His explanation was sought for and recorded. The materials and other recorded were shown to him. He did not asked for any chance to cross-examine the witness or to examine himself or any other witnesses in support of his defence. Indeed, as we have noted before, he admitted the facts. He was also given in addition an opportunity of showing that he has not been guilty of any such misconduct as to merit the particular punishment proposed to be meted out to him. This opportunity was given. He gave his explanation and that was considered.

He asked for a personal hearing which, we have noted in this case, was duly given to him. We are, therefore, of the opinion that the aforesaid passage relied on behalf of the appellant would not be of any assistance to the appellant in this case.

41. It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been causes to the appellant by the procedure followed. See in this connection the observations of this Court in the case of Jankinath Sarangi v. State of Orissa ((1969) 3 SCC 392). Hidayatullah, C.J., observed there at page 394 of the Report : ".... there is no doubt that if the principles of natural justice are violated and there is a gross case this Court would interfere by striking down the order of dismissal; but there are cases and cases. We have look to what actual prejudice has been causes to a person by the supposed denial to him of a particular right". Judged by this principle, in the background of the facts and circumstances mentioned before, we are of the opinion that there has been no real prejudice causes by infraction of any particular rule of natural justice of which appellant before us complained in this case. See in this connection the observations of this Court in the case of Union of India v. P. K. Roy ((1968) 2 SCR 186 : AIR 1968 SC 850 : (1970) 1 LLJ 633) where this Court reiterated that (SCR p. 202) the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula and its application depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme any policy of the statute and other relevant circumstances discloses in a particular case". See also in this connection the observations of Hidayatullah, C.J., in the case of Channabasappa Basappa Happali v. State of Mysore ((1971) 2 SCR 645 : (1971) 1 SCC 1 : AIR 1972 SC 32). In our opinion, in the background of facts and circumstances of this case, the nature off investigation conducted in which the appellant was associated, there has been no infraction of that principle. In the premises, for the reasons aforesaid, there has been in the fact and circumstances of the case, no infraction of any principle of natural justice by the absence of a formal opportunity of cross-examination. Neither cross-examination nor the opportunity to lead evidence by the delinquent is an integral part of all quasi-judicial adjudications.

42. Another aspect of the violation of the principles of natural justice that was urged before us on behalf of the appellant was that the final order did not contain reasons. In this connection reliance was placed on the observations of this Court in the case of Siemens Engineering and Manufacturing Co. of India v. Union of India (1976 Supp SCR 489 : (1976) 2 SCC 981 : AIR 1976 SC 1785) where this Court observed that if courts of law were to be replaces by administrative authorities and tribunals were essential then administrative authorities and tribunals should afford fair and proper hearing to the persons sought to be affected by the orders and give sufficiently clear and explicit reasons in support of the orders made by them. The Court, further, observed, that rule requiring reasons to be given in support of an order is like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

43. It may be mentioned that the facts in that case were different. In the instant case though reasons have not been expressly stated, these reasons were implicit namely, the nature of the charges, the explanation offered and the reply of the appellant to the show cause notice. These appear from a fair reading of the order impugned in this case. It, further, appears that there was consideration of those facts and the decision was arrived at after consideration of those reasons. It is manifest, therefore, that absence of any denial by the appellant, indeed admissions of the factual basis and nature of the explanation offered by the appellant were considered by the authority to merit the imposition of the penalty of dismissal. Such a conclusion could not, in the facts and circumstances of the case, be considered to be unreasonable or one which no reasonable man could make.

44. Counsel relied on the observations of this Court in the case of Union of India v. H. C. Goel ((1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38) at pages 723-726 of the Report. These observations were made again in the context of jurisdiction of the High Court to interface with the orders passed under Article 311(2) read along with Civil Service (Classification, Control and Appeal) Rules. The Court rejected the plea made in that case that even if the enquiry officer made findings against the public servant, the Government could never re-examine the matter so that even if the Government was satisfied that the findings against the public servant were erroneous, the Government must proceed on the basis that the public servant was guilty and impose some punishment on him. That is not the position here. In this case, there is no evidence that the disciplinary authority was not satisfied with the findings arrived at in the investigation. This case, therefore id of no assistance in deciding the controversy before us.

45. Another decision of this Court was relied on by counsel for the appellant, namely, the decision in the case of Barium Chemicals Ltd. v. Company Law Board (1966 Supp SCR 311 : AIR 1967 SC 295 : (1966) 36 Com Cas 639). That case arose under proceedings in respect of an Order passed by the Company Law Board section 237(b) of the Companies act appointing four inspectors to investigate the affairs of the appellant company, on the ground that the business of the appellant company was being conducted with intent to defraud its creditors, members or any other persons and that the persons concerned in the management of the affairs of the company having connection therewith were guilty of fraud, misfeasance and other misconduct towards the company and its members. Bachawat, J., at page 342 of the Report was of the opinion that in view of the circumstances disclosed therein, without more, could not reasonably suggest that the business of the company was being conducted to defraud the creditors, members and other persons or that management was guilty of fraud towards the company and its members. From the observation of Shelat, J. in that decision , it appears that he was also inclined to take the same view. The facts of the instant case are, however, different. It has to be emphasised that the appellant was not charged for defrauding the bank. He was charged mainly for the conduct which suggested that he acted improperly and in violation of the principles on which sound banking business should ne conducted. The charge against the appellant was that he had acted in violation of procedure of the bank, he had disregarded all safeguards in sanctioning the overdrafts, encashing bills and his conduct had exposed the bank to have risks and that he had flagrantly violated the bank rules and instructions with a view to cover up attempts to misappropraite bank's money after defrauding the bank. Whether actual misappropriation had been caused or bank was defrauded or not were not relevant in respect of the charges against him.

46. For the reason aforesaid, this appeal fails, but for reasons different from those given by the High Court, and is accordingly dismissed but without any order as to costs.

47. We must, however, observe in conclusion that having regard to the record of the service of the

appellant prior to the conduct revealed in this case and further in view of the fact that actually no loss has been occasioned to the bank by the improper conduct of the appellant, if bank considers in the interest of justice that the appellant should be given some job or employment in some capacity which might mitigate or compensate in some measure the grave loss suffered by the appellant consequent on the dismissal order, the bank might consider taking such a course of action.

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