



  
**HIGH COURT OF JUDICATURE FOR RAJASTHAN**  
**BENCH AT JAIPUR**

S.B. Civil Writ Petition No.7714/2019

Vaibhav Singh Son Of Late Sh. Janardan Singh Sachan, Aged About 38 Years, Resident Of A-2, Nehru Nagar, Kalyanpur Road, Lucknow-226 022 (Uttar Pradesh)

----Petitioner

Versus

1. State Bank Of India, Through Its General Manager (Net Work-1), The Disciplinary Authority, Administrative And Business Unit (Local Head Office), Tilak Marg, C-Scheme, Jaipur (PIN:-302 005)
2. Chief General Manager (The Appellate Authority), Authority, Administrative And Business Unit (Local Head Office), Tilak Marg, C-Scheme, Jaipur (PIN:-302 005)

----Respondents

For Petitioner(s) : Mr. Sunil Samdaria  
Mr. Arihant Samdaria

For Respondent(s) : Ms. Anita Agarwal  
Mr. Anubhav Agarwal

Mr. Om Prakash Meel, Officer In-Charge

**JUSTICE ANOOP KUMAR DHAND**

**Judgment**

Reserved on 17.09.2024

Pronounced on 27.09.2024

Reportable

For convenience of exposition, this judgment is divided in the following parts:-

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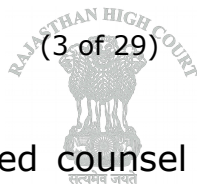


**Factual Matrix of the case:**

1. A challenge has been made by the petitioner to the impugned orders dated 05.12.2017 as well as dated 30.05.2018 by which punishment order of 'Removal from Service' has been passed by the respondents and his appeal against the said order has been rejected respectively.

**Submissions by counsel for the petitioner:**

2. Learned counsel for the petitioner submits that a departmental charge-sheet with four charges was served upon the petitioner along with a list of witnesses, wherein only one witness was kept by the respondents. Learned counsel submits that before commencement of the inquiry, the Inquiry Officer permitted the respondents to adduce the additional evidence. Learned counsel submits that the Inquiry Officer was appointed on 21.10.2016 and vide communication dated 24.10.2016, only one day time was granted to the petitioner to appoint his Defence Representative. Learned counsel submits that though the aforesaid time was extended, some more time ought to have been granted to the petitioner for engaging the Defence Representative and for adducing documents in his defence. Learned counsel submits that when the cross-examination of the witnesses was conducted during the course of inquiry, there was no incriminatory statement made by any of the respondent-Bank witnesses with regard to charges levelled against the petitioner. Learned counsel submits that after completion of inquiry, 10 days time was granted to the petitioner as well as to the respondent-Bank for submitting their



written submissions. Learned counsel submits that the petitioner could not submit the defence arguments within the above stipulated time due to pre-engagement of his Defence Representative in other matters of the bank. Hence, at the request of the petitioner, further time was granted and he submitted his written submissions on 16.04.2017. Prior to filing of the written submissions, the Inquiry Report was prepared a day before i.e. 15.04.2017. Learned counsel submits that as per the provisions contained under the State Bank of Bikaner and Jaipur (Officer's) Service Regulations, 1979 (hereinafter referred to as "SBBJOSR, 1979"), the Inquiry Officer was supposed to act in accordance with the mandate, contained under Regulation 16 but the same was not followed. Hence, under these circumstances, the entire inquiry stood vitiated. Learned counsel submits that before commencement of the inquiry, the petitioner was placed under suspension and his subsistence allowance was stopped by the respondents with effect from 23.03.2016 and the same was not paid to the petitioner till 27.03.2017. Learned counsel submits that the subsistence allowance of the petitioner was withheld by the respondents for a period of about one year without any justified reason. Learned counsel submits that the aforesaid exercise was undertaken by the respondents to starve the petitioner, so that he could not pursue his matter before the Inquiry Officer in a proper manner. Learned counsel submits that the entire proceedings were conducted by the respondents in utter violation of the principles of natural justice. Learned counsel submits that after completion of the inquiry, the Inquiry Officer





submitted its report whereby the petitioner was found guilty in three out of four charges and the matter was placed before the Disciplinary Authority for passing appropriate orders. Learned counsel submits that after considering the entire Inquiry Report, the Disciplinary Authority took a decision of imposing the penalty of 'Reduction to a lower scale in the time scale of pay by one stage for a period of one year with further direction that the petitioner will not earn increment of pay during the period of such reduction and on the expiry of such period the reduction will have the effect of postponing the future increment of his pay' under Regulation 67 (f) of the SBBJOSR, 1979.

3. Learned counsel submits that the Disciplinary Authority sent the matter to the Chief Vigilance Officer (for short "CVO") for passing appropriate orders. Learned counsel submits that the CVO passed a single line order differing from the view of the Disciplinary Authority and suggested a penalty of "Removal from Service" in terms of Regulation 67(i) of the SBBJOSR, 1979. Learned counsel submits that thereafter the petitioner was called upon for personal hearing vide letter dated 16.10.2017. Learned counsel submits that vide letter dated 26.10.2017, the petitioner requested the Disciplinary Authority to provide him the reasons for coming to the conclusion to impose the said penalty and the fate of charges, the documents and the communication made between the CVO and the Disciplinary Authority. Learned counsel submits that inspite of the aforesaid request made by the petitioner, no heed was paid by the authority concerned. Learned counsel



submits that even after making the aforesaid communication, the material documents were not supplied to the petitioner which has resulted into violation of principles of natural justice. Learned counsel submits that when the matter was taken up by the Disciplinary Authority, no different reasoning was recorded for imposing such a heavy penalty of removal from service upon the petitioner. Hence, under these circumstances, the inquiry proceedings as well as the impugned order of removal of petitioner from service, are not sustainable in the eye of law and the same are liable to be quashed and set aside. In support of his contentions, he has placed reliance upon the following judgments:-

1. **State Bank of India Vs. Anil Kumar Mishra, 2016 SCC OnLine Jhar 1703;**
2. **M.D. Shah Vs. Punjab National Bank, 2019 SCC OnLine Guj 3946;**
3. **Gopal Prasad Vs. Canara Bank, 2010 (120) DRJ 393;**
4. **S. Sheokand Vs. Oriental Bank of Commerce, MANU/PH/0059/2004;**
5. **Oriental Bank of Commerce Vs. S.S. Sheokand, (2014) 5 SCC 172;**
6. **Nagaraj Shivarao Karjagi Vs. Syndicate Bank, (1991) 3 SCC 219;**
7. **State Bank of India Vs. D.C. Aggarwal, (1993) 1 SCC 13;**
8. **UCO Bank Vs. Rajendra Shankar Shukla, (2018) 14 SCC 92;**



9. **Jagdamba Prasad Shukla Vs. State of U.P., (2000) 7 SCC 90;**

10. **Gurdeep Singh Vs. Punjab and Sind Bank & Others, CWP No.14698/2024** decided by Punjab and Haryana High Court vide judgment dated 19.09.2018.

4. Lastly, learned counsel for the petitioner argued that the Inquiry Officer himself was imposed with two penalties, hence under these circumstances, he could not have acted as an Inquiry Officer.

**Submissions by counsel for the respondents:**

5. *Per Contra*, learned counsel for the respondents opposed the arguments raised by the learned counsel for the petitioner and submitted that the petitioner was posted at the post of MMGS Scale III Officer, and the circular dated 28.09.2000, issued by the Government of India, is applicable solely to employees in the SMGS – V Grade and above. Learned counsel submits that it is not necessary to provide the delinquent employee (herein, the petitioner) with copy of the advice or correspondence between the CVO and the Disciplinary Authority. Learned counsel contends that, if at all there are minor lapses during the inquiry proceedings, then such lapses do not undermine the integrity of the entire proceedings.

6. The learned counsel argues that, considering the severity of the charges and the lapses on the part of the petitioner, the Disciplinary Authority acted on the advice of the CVO and decided to remove the petitioner from service, after careful consideration. The counsel further asserts that given the seriousness of the



matter and the charges levelled against the petitioner, the order of removal from service is justified and should not be interfered with by this Court. Therefore, based on these arguments, the petitioner does not merit any leniency from this Court.

In support of her contentions, she has placed reliance upon the following judgments:-

1. **Om Prakash Mann Vs. Director of Education (Basic) and others, (2006) 7 SCC 558;**
2. **State of Karnataka and Another Vs. N. Gangraj, (2020) 3 SCC 423;**
3. **State Bank of India and Another Vs. Bela Bagchi and Others, (2005) 7 SCC 435;**
4. **Divisional Controller Karnataka State Road Transport Corporation Vs. M.G. Vittal Rao, (2012) 1 SCC 442;**
5. **Chairman and Managing Director United Commercial Bank and Others Vs. P.C. Kakkar, (2003) 4 SCC 364;**
6. **Regional Manager, U.P. SRTC Etawah and Others Vs. Hoti Lal and another, (2003) 3 SCC 605;**
7. **T.N.C.S. Corpn. Ltd. and others Vs. K. Meerabai, (2006) 2 SCC 255;**
8. **Ram Saran Vs. I.G. of Police CRPF and others, (2006) 2 SCC 541;**
9. **State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya, (2011) 4 SCC 584;**
10. **Union of India and others Vs. Dalbir Singh, AIR 2021 SC 4504;**



11. **State Bank of India and Another Vs. K.S. Vishwanath, AIR 2022 SC 2531;**

12. **Anil Kumar Upadhyay Vs. Director General, SSB and others, AIR 2022 SC 2008;**

13. **Dy. General Manager (Appellate Authority) and others Vs. Ajai Kumar Shrivastava, (2021) SCC 612.**

7. In rejoinder to the reply, learned counsel for the petitioner submits that it is incorrect on the part of the respondent-Bank to say that the circular dated 28.09.2000 is not applicable to the employee belonging to category where the employee is below the rank of SMGS-V officer. Learned counsel submits that according to the Clause 3.1 of the State Bank of India Vigilance Manual, the Jurisdiction of Central Vigilance Commission (for short "CVC") extends to all the employees of the Public Sector Banks. Learned counsel submits that when the jurisdiction of the CVC extends to all the employees of the Public Sector Banks, then applicability of circular dated 28.09.2000 cannot be restricted to certain sets of employees, hence under these circumstances, the writ petition filed by the petitioner be allowed.

**Discussions & Analysis:**

8. Heard and considered the submissions made at Bar and perused the material available on record.

9. Perusal of the record indicates that the petitioner was working as an Officer on the post of MMGS Scale III as Branch Manager at Reengus, where charge-sheet was served upon the petitioner with the allegation that during the period from





04.06.2012 to 21.09.2014, he committed serious acts of misconduct in discharge of his official duties, as stated in the following Articles of Charges:-

"Article of Charge No.1

Shri Vaibhav Singh, in gross violation of prescribed procedures and in sheer dereliction of duties, has committed the following lapses inasmuch as he (i) approved the limit in CBS more than the sanctioned limits in 11 accounts; (ii) passed / authorized 40 transactions without following the Bank's systems and procedure; (iii) did not conduct post sanctions inspections after disbursement in eight loan accounts; (iv) did not obtain the acknowledgement on the sanction letter in four loan account and did not issue sanction letter in one loan account; (v) did not get executed two loan documents; (vi) did not ensure to get the charge created over agriculture land offered as security in favour of the bank in four KCC loans; (vii) did not verify the KYC documents with originals and did not affix stamp 'verified with originals' in six loans; (viii) did not put his signature on opinion report of Shri Bhagirath Jat; (ix) obtained incomplete filled loan documents; (x) did not affix stamp in personal loan agreement and Deed of Guarantee on one loan account; (xi) did not put his signature on behalf of bank after execution of Personal Loan agreement in one loan account; (xii) did not obtain PDC delivery letter in one Personal Loan account; (xiii) did not conduct and record post sanction inspection in one housing loan account; (xiv) disbursed second installment within 5 days of first installment in one loan account; (xv) opened and approved the CC/OD limit in two loan accounts after death of the borrower; (xvi) disburse the amount in excess of the sanction limit in two loan accounts; (xvii) did not get executed/ retain on records ten loan





documents as these are not available in the branch;  
(xviii) opened and approved three KCC limit accounts before or without the sanction by Competent Authority;  
(xix) obtained undated and blank documents in four loan accounts; (xx) did not obtain application from borrowers before closure of KCC loans in four loan accounts; (xxi) did not put his signature and also did not get signature on Arrangement letter in one account; (xxii) did not ensure signature and seal of the receipt / payment cashier in voucher;

Article of Charge No.2

Shri Vaibhav Singh, in gross violation of prescribed procedures and in sheer dereliction of duties, has committed the following lapses inasmuch as he did not maintain (a) User Management Register; (b) Document Execution Register; (c) Recovery & follow up Register; (d) Missing Voucher Register; (e) Loan application received and disposal register.

Article of Charge No.3

Shri Vaibhav Singh, in gross violation of prescribed procedures and in sheer dereliction of duties (a) did not obtain prior permission of the Competent Authority before lending and borrowings (b) did not disclose the borrowings and lending in annual Assets & Liabilities statement and (c) routed large value transactions in his own account.

Article of Charge No.4

Shri Vaibhav Singh, in gross violation of prescribed procedures and in sheer dereliction of duties, taken credit of Banker's Cheque in his Savings Bank account which was prepared for his leased rent. Thus, he exposed the Bank to the financial risk/loss of Rs.42,525/-."





10. The petitioner submitted a reply to the charge-sheet. After holding an inquiry, the Inquiry Officer found that major charges were proved and some charges were partly proved and the matter was placed before the Disciplinary Authority and the following punishment was proposed against the petitioner:-

“Reduction to a lower scale in the time scale of pay by one stage for a period of one year with further direction that he will not earn increment of pay during the period of such reduction and on the expiry of such period the reduction will have the effect of postponing the future increment of his pay” under Regulation 67 (f) of the SBBJOSR, 1979”

11. Thereafter, the matter was placed before the CVO vide letter dated 07.07.2017 and the CVO differed with proposal of the Disciplinary Authority and suggested the penalty of “Removal from Service” in terms of Regulation 67(i) of the SBBJOSR, 1979 and the reason was assigned as “considering the gravity of lapses” vide letter dated 22.09.2017.

12. After receipt of the letter dated 22.09.2017, the Disciplinary Authority directed the petitioner to appear before it for personal hearing on the quantum of punishment. The petitioner requested the Disciplinary Authority for supplying the following information and documents vide letter dated 26.10.2017:-

“(I) The reasons for coming to the conclusion/proposal to impose a penalty of ‘Removal from Service’ with specific details regarding the fate of the charges and allegations, whether treated as proved or not proved,  
(II) Copies of the complete correspondence between the CVO and the Disciplinary Authority including CVO’s first stage advice and CVO’s second stage advice.



(III) Copy of appeal filed by the Bank in SLPNO 16541 of 2010 of the Hon'ble Supreme Court of India as mentioned in your letter VIG/PCA/2058 dated 16.10.2017."

13. But none of the information and documents were supplied to the petitioner and vide impugned order dated 05.12.2017, the following penalty order was passed:-

"Appointing Authority's Final View:-

After perusal of all the relevant records, Charge Sheet, the Inquiry Proceedings, Brief of presenting Officer/Defence along with Exhibits, the inquiring Authority's report and submission of Shri Vaibhav Singh, I observe that out of 25 imputations leveled against Shri Vaibhav Singh, Officer MMGS-III, 20 imputations are proved, 3 imputations are partly proved and 2 imputation is not proved.

It has been observed that the official has violated the Bank's prescribed system and procedure and misused the delegated powers in sanctioning/ disbursement of loan while posted at the Reengus Branch. Considering all the aspects of the case in totality, the lapses established against the official, I am inclined to take a stiff view in the matter and consider that the ends of justice would be adequately met by imposing the penalty of "Removal from Service" on Shri Vaibhav Singh, MMGS III, In terms of Rule 67 (i) of SBBJOSR 1979. The period of suspension will be treated as not on duty."

14. Aggrieved by the aforesaid impugned order dated 05.12.2017, the petitioner filed an appeal but the same was rejected by the appellate authority vide impugned order dated 30.05.2018.



15. The communication made between the Disciplinary Authority and the CVO reveals that the Disciplinary Authority has altered its penalty order dated 07.07.2017 of "reduction to a lower scale in the time scale of pay by one stage for a period of one year and stoppage of annual increment" to that of "removal from service" at the behest of the CVO. The terminology of the communication suggest that though the Disciplinary Authority was of the opinion of imposing a penalty of reduction to lower scale upon the petitioner, the CVO suggested for imposing punishment of "Removal from Service" and on the basis of the above suggestion of CVO, the Disciplinary Authority has changed the punishment order of "Reduction to a lower scale" to "Removal from Service". Thus, the Disciplinary Authority has acted on the basis of suggestion of CVO and the impugned order has been passed in terms of Regulation 67(i) of the SBBJOSR, 1979.

**Judgments on the issue involved in this writ petition:**

16. At this stage, it would be apposite to refer to the observations made by the Hon'ble Supreme Court in the case of **Satyendra Chandra Jain v. Punjab National Bank**, reported in **(1997) 11 SCC 444**, while examining the *pari materia* provision of the Punjab National Bank Officer Employees' (Discipline & Appeal) Regulations, 1977 apropos the recommendation of the advice of the CVC for imposition of punishment on the employee, which is reproduced as under:-

"15. We are not even remotely impressed by the arguments of counsel for the Bank. Firstly the bank itself seems to have felt as alleged by the petitioner and not denied by the Bank in its counter



that the compulsory retirement recommended by the Central Vigilance Commission was too harsh and excessive on the petitioner in view of his excellent performance and unblemished antecedent service. The Bank appears to have made two representations; one in 1986 and another in 1987 to the Central Vigilance Commission for taking a lenient view of the matter and to advise lesser punishment to the petitioner. Apparently those representations were not accepted by the Commission. The disciplinary authority and the appellate authority therefore have no choice in the matter. They had to impose the punishment of compulsory retirement as advised by the Central Vigilance Commission. The advice was binding on the authorities in view of the said directive of the Ministry of Finance, followed by two circulars issued by the successive Chief Executives of the Bank. The disciplinary and appellate authorities might not have referred to the directive of the Ministry of Finance or the Bank circulars. They might not have stated in their orders that they were bound by the punishment proposed by the Central Vigilance Commission. But it is reasonably foreseeable and needs no elaboration that they could not have ignored the advice of the Commission. They could not have imposed a lesser punishment without the concurrence of the Commission. Indeed they could have ignored the advice of the Commission and imposed a lesser punishment only at their peril.

16. The power of the punishing authorities in departmental proceedings is regulated by the statutory Regulations. Regulation 4 merely prescribes diverse punishment which may be imposed upon delinquent officers. Regulation 4 does not provide specific punishments for different misdemeanors except classifying the punishments as minor or major. Regulations leave it to the discretion of the punishing authority to select the appropriate punishment having regard to the gravity of the misconduct proved in the case. Under Regulation 17, the appellate authority may pass an order confirming, enhancing, reducing or completely setting aside the penalty imposed by the disciplinary authority. He has also power to express his own views on the merits of the matter and impose any appropriate punishment on the delinquent officer. It is quasi-judicial power and is unrestricted. But it has been completely fettered by the direction issued by the Ministry of Finance. The Bank has been told that the punishment advised by the Central Vigilance Commission in every case of disciplinary proceedings should be strictly adhered





to and not to be altered without prior concurrence of the Central Vigilance Commission and the Ministry of Finance.

17. We are indeed surprised to see the impugned directive issued by the Ministry of Finance, Department of Economic Affairs (Banking Division). Firstly, under the Regulation, the Bank's consultation with Central Vigilance Commission in every case is not mandatory. Regulation 20 provides that the Bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle. Even if the Bank has made a self-imposed rule to consult the Central Vigilance Commission in every disciplinary matter, it does not make the Commission's advice binding on the punishing authority. In this context reference may be made to Art. 320(3) of the Constitution. The Art. 320(3) like Regulation 20 with which we are concerned provides that the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted on all disciplinary matters affecting a civil servant including memorials or petitions relating to such matters. This Court in A.N. D'Silva v. Union of India ((1962) Suppl (1) (SCR) 968) has expressed the view that the commission's function is purely advisor. It is not an appellate authority over the inquiry officer or the disciplinary authority. The advice tendered by the Commission is not binding on the Government. Similarly, in the present case, the advice tendered by the Central Vigilance Commission is not binding on the Bank or the punishing authority. It is not obligatory upon the punishing authority to accept the advice of the Central Vigilance Commission.

18. Secondly, the Ministry of Finance, Government of India has no jurisdiction to issue the impugned directive to Banking institutions. The Government may regulate the Banking institutions within the power located under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. So far as we could see, Section 8 is the only provision which empowers to the Government to issue directions. Section 8 reads: "Every corresponding new bank shall, in the discharge of its functions, be guided by such directions in regard to matters of policy involving public interest as the Central Government may, after consultation with the Governor of the Reserve Bank, give."

19. The corresponding new bank referred to in sec. 8 has been defined u/s. 2(f) of the Act to mean a banking company specified in column 1 of the





First Schedule of the Act and includes the Syndicate Bank. Section 8 empowers the Government to issue directions in regard to matters of policy but there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in different cases. The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. The impugned directive of the Ministry of Finance is, therefore, wholly without jurisdiction and plainly contrary to the statutory Regulations governing disciplinary matters.”

17. In an analogous situation in the case of **Nagaraj Shivarao**

**Karjagi** (supra), the Hon’ble Supreme Court has held thus:

“19 The corresponding new bank referred to in sec. 8 has been defined u/s. 2(f) of the Act to mean a banking company specified in column 1 of the First Schedule of the Act and includes the Syndicate Bank. Section 8 empowers the Government to issue directions in regard to matters of policy but there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in different cases. The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. The impugned directive of the Ministry of Finance is, therefore, wholly without jurisdiction and plainly contrary to the statutory Regulations governing disciplinary matters.”





18. The Hon'ble Supreme Court has articulated that the punishment to be imposed upon the delinquent employee, whether, minor or major, depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case and they cannot act under the dictation of the CVC or of the Central Government. It is further asserted that no third party like the CVC or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. The impugned directive issued by the Ministry of Finance and the impugned order based on the opinion of Vigilance Department were held to be wholly without jurisdiction and contrary to the statutory regulations governing disciplinary matters and were set aside by the Hon'ble Supreme Court.

19. In the case of **Anil Kumar Mishra** (supra), the Disciplinary Authority recommended punishment of "lowering of Basic-Pay to the bottom of MMGS-II for a period of 4 years and the period of suspension to be treated as not on duty" however, the Appointing Authority/Competent Authority took a decision to impose the penalty by "reduction to Grade of JMGS-I and the period of suspension to be treated as such". The Disciplinary Authority sent the entire record to the CVO of the Bank and the CVO differing with the Competent Authority suggested penalty of removal from service. Thereafter, the penalty of removal from service was



passed and challenging the same the aggrieved employee approached the court. The High Court, while setting aside the punishment order, observed as follows:

**"14.** The dictionary meaning of the word "consultation" is "deliberation, or a meeting for deliberation". The Black's Law Dictionary, VIII<sup>th</sup> edition refers to the expression "consultation" as "the act of asking the advice or opinion of the someone (such as a lawyer) or a meeting in which parties consult or confer". Corpus Juris Secundum (Vol. 16-A, 1956 Edn., p. 1242) also recognises that the word "consult" is frequently used to mean "to discuss something together, or to deliberate". The expression "consultation" is capable of giving different meanings in different context. Various statutes and rules have also provided consultation between two authorities and while interpreting the nature of consultation in different situations, the Hon'ble Supreme Court has held that it would depend on the facts of each case. For example, the word "consultation" occurring in Article 124 of the Constitution of India was given a particular meaning having regard to the significant context in which it was used. The expression "wherever necessary" in Rule 70 amply demonstrates that it is not obligatory on the part of the Bank to consult Central Vigilance Commission in all cases having vigilance angle. Rule 70 when examined in the context of provisions contained in Rule 67 to Rule 69 makes it abundantly apparent that the consultation with the Central Vigilance Commission envisaged under Rule 70 is an executive act which takes place wherever the Bank feels the need for consultation. The procedure prescribed under Rules 68 and 69 is elaborate and provides guidelines for conduct of the domestic enquiry by the Disciplinary Authority and the Central Vigilance Commission has no role to play thereunder. Though, Rule 70 does not refer to Disciplinary Authority or the Appointing Authority and it is primarily for the Bank to consult the Central Vigilance Commission in cases with vigilance angle, any consultation by the Disciplinary Authority or the Appointing Authority with the Central Vigilance Commission must therefore, remain confined to procedural aspects and not on a matter of substantive





nature such as, the question of penalty. It is well settled that the Disciplinary Authority is the sole judge of facts and the question of punishment falls exclusively within the domain of the Disciplinary Authority.

...

**15.** In the penalty order the Appointing Authority has recorded that he has applied his mind independently and on examination of the case in its entirety, he came to a conclusion that the respondent failed to serve the Bank with utmost honesty, integrity, devotion and diligence however, the fact remains that letter dated 07.02.2002 written by the Dy. General Manager (Vig.) to the Chief Vigilance Officer discloses that the Competent Authority had "ordered" the penalty of "reduction to the grade of JMGS-I in terms of Rule 67(g) of State Bank of India Officers' Service Rules". The fact that the Appointing Authority did not accept the recommendation of the Disciplinary Authority to impose penalty of "lowering of Basic-Pay to the bottom of MMGS-II for a period of 4 years" and decided to impose penalty of "reduction to the Grade of JMGS-I", unerringly discloses that the Appointing Authority had taken a final decision in the matter and mere use of the expression "tentatively" in the appellate order dated 15.01.2003 would not lend credence to the plea raised on behalf of the appellant-Bank that the Appointing Authority, upon independent assessment of the materials brought during the domestic enquiry, has taken a decision to impose penalty of removal from service. The contention that the Competent Authority had formed a tentative opinion falls to the ground when it is observed that the Appointing Authority did not accept the recommendation of the Disciplinary Authority to impose penalty of "lowering down of Basic-Pay to the bottom of MMGS-II for a period of four years." It may so happen, that an authority before taking a final decision in the matter may agree, tentatively, to accept the recommendations and at this stage it may not invite serious scrutiny of records by the said authority however, the situation would be entirely different when an authority disagrees with the recommendations forwarded to it. In such a situation, an application of mind to the relevant materials would





*be inferred on the part of the authority so disagreeing with the recommendations forwarded to it. In normal circumstances also, it does not stand to reasons that the authority without application of mind, would form a tentative opinion to disagree with the recommendations forwarded to it. Considering the undisputed documents the inescapable conclusion which arrives, is that, the Appointing Authority, before he passed the final order dated 20.03.2002, had taken a final decision in the matter. Had this been a case in which the consultation with the Chief Vigilance Officer took place before the Appointing Authority/Competent Authority took a decision in the matter, the situation could have been different. In that situation, the recommendation of the Chief Vigilance Officer would have been "just another material" which was placed before the Appointing Authority. But, the situation is entirely different in the present case.*

**21.** *While arriving at the conclusion that the penalty order is vitiated on account of consultation with the Chief Vigilance Officer, another related issue which requires to be addressed is, whether the respondent was entitled for supply of a copy of communication dated 07.02.2002 or not. The learned Single Judge held that the recommendation of the Chief Vigilance Officer made behind the back of the respondent and without his knowledge was in breach of the rules of fair play. The issue is, in fact, concluded by the decisions of the Supreme Court. In "State Bank of India v. D.C. Aggarwal" (1993) 1 SCC 13, without taking a decision on the recommendation of the Enquiring Authority who had exonerated the employee, the government sent the record to the Central Vigilance Commission who disagreed with the findings recorded by the Enquiring Authority and recommended that the penalty of removal from service may be imposed upon the delinquent employee. A copy of the Central Vigilance Commission's recommendation was not furnished to the employee and the Disciplinary Authority acted on the recommendation of the Central Vigilance Commission. The facts in the said case were different from the present case only to the extent that Central Vigilance Commission had examined the facts of the case and arrived at a finding of guilt of the delinquent employee which was contrary to the findings of the*



Enquiring Authority. Such findings were accepted by the Disciplinary Authority without giving opportunity to the employee to comment upon the Central Vigilance Commission's report. In the said case also the Disciplinary Authority took the final decision on the recommendation of the Central Vigilance Commission. The Supreme Court found the order of punishment vitiated on account of non-supply of report of Central Vigilance Commission. The decisions in D.C. Aggarwal and Nagraj cases were noticed by the Hon'ble Supreme Court in "Oriental Bank of Commerce v. S.S. Sheokand" (2014) 5 SCC 172 wherein, it has been held thus;

20. "..... It is quite possible to say that the bank management did arrive at its decision to maintain a major penalty at a later stage on its own, and not because of the dictate of CVC, but at the same time it has got to be noted that CVC report had been sought by the management of the Bank, and thereafter the punishment had been imposed. As observed in SBI[(1993) 1 SCC 13], may be that the disciplinary authority had recorded its own findings, and had arrived at its own decision, but when this advice from CVC was sought, it could not be said that this additional material was not a part of the decision-making process. When this report was not made available to the respondent, it is difficult to rule out the apprehension about the decision having been taken under pressure. Any material, which goes into the decision-making process against an employee, cannot be denied to him. In view of the judgment in Disciplinary Authority-cum-Regl. Manager, the decision of the Bank could have been approved on merits, however, the two judgments in Nagaraj Shivarao Karjagi [(1991) 3 SCC 219] and SBI lay down the requisite procedure in such matters, and in the facts of this case, it will not be appropriate to depart from the dicta therein. On this yardstick alone, the part of the judgment of the High Court interfering with the punishment will have to be sustained".

**22.** In view of the aforesaid decisions, on admitted facts, it is held that non-supply of communication dated 07.02.2002 of the Chief Vigilance Officer to the





respondent renders the penalty order dated 20.03.2002 unsustainable."

20. In the case of **Gopal Prasad** (supra), the main point involved was whether the impugned order of the disciplinary authority being completely based on the dicta of the CVC/CVO and without its own independent application of mind, was illegal or not. The Delhi High Court therein observed as under:

**27.** *In the present case, it is evident after comparison of the initial view taken by the DA vide his letter dated 15.01.2005 and the final order of punishment passed by him on 05.03.2005, it is clear without any doubt that the order of services was not only entirely based upon the dicta of the CVO/CVC but was also completely contrary to the bank's earlier stand/decision which was arrived at, upon his own independent application of mind. The reasons assigned by the DA in his order dated 05.03.2005 for imposing the punishment of removal from service upon the petitioner, is exactly opposite to the reasons assigned by the bank in his letter dated 15.01.2005 by concluding that the charges against the petitioner, at worst, amounted to procedural irregularities.*

**28.** *The reasons assigned by the DA in his order dated 05.03.2005 are almost the same to the reasoning given by the CVO in his letter dated 22.12.2004. Hence, DA took a different stand from his earlier stand.*

**29.** *One can easily come to the conclusion that the DA had exactly followed the command of the CVO and imposed the punishment of removal from service as directed, it was only on an appeal preferred by the petitioner wherein the order passed by the DA was brought to the notice of the Appellate Authority, the punishment was altered. In case, the order passed by the DA is in line with the letter dated 15.01.2005 the petitioner would have continued to be in service albeit at a lower scale w.e.f. 05.03.2005.*

...  
**31.** *The decision of the Hon'ble Supreme Court in the case of Nagaraj Shivrao Karjagi v. Sydicate Bank, (1991) 3 SCC 219 is directly applicable to the facts of*





the instant case. In the present case, the bank in question had recommended a lesser punishment upon the delinquent which was not agreed upon by the CVC, whereupon the Supreme Court at Paras 16 & 17 held that it was only for the disciplinary authority alone to decide upon the imposition of punishment. While setting aside the orders passed by the disciplinary and the appellate authority in the said case, it was held in Para 19 that "The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the CVC or the Central Government. No third party like the CVC or the Central Govt. could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment should they impose on the delinquent officer". The claim of the respondent that in the said case there was a Circular from the Ministry of Finance, making the advice of the CVC binding does not render the rate of the said judgment as invalid. The conclusions drawn therein by the Apex Court with respect to the power of imposition of punishment solely being vested with the disciplinary authority without any interference by any third party like the CVC holds equally good in the instant case. It was in that context that besides the orders of the disciplinary authority and the appellate authority, the Apex Court chose to quash the directive issued by the Ministry of Finance as well, in the said case. Paras 16, 17 and 19 of the decision of the Apex Court are reproduced hereunder:

"16. The power of the punishing authorities in departmental proceedings is regulated by the statutory Regulations. Regulation 4 merely prescribes diverse punishment which may be imposed upon delinquent officers. Regulation 4 does not provide specific punishments for different mis-demeanours except classifying the punishments as minor or major. Regulations leave it to the discretion of the punishing authority to select the appropriate punishment having regard to the gravity of the misconduct proved in the case. Under Regulation 17, the appellate authority may pass an order confirming, enhancing, reducing or completely setting aside the penalty imposed by the





disciplinary authority. He has also power to express his own views on the merits of the matter and impose any appropriate punishment on the delinquent officer. It is quasi-judicial power and is unrestricted. But it has been completely fettered by the direction issued by the Ministry of Finance. The Bank has been told that the punishment advised by the Central Vigilance Commission in every case of disciplinary proceedings should be strictly adhered to and not to be altered without prior concurrence of the Central Vigilance Commission and the Ministry of Finance.

17. We are indeed surprised to see the impugned directive issued by the Ministry of Finance, Department of Economic Affairs (Banking Division). Firstly, under the Regulation, the Bank's consultation with Central Vigilance Commission in every case is not mandatory. Regulation 20 provides that the Bank shall consult the Central Vigilance Commission wherever necessary, in respect of all disciplinary cases having a vigilance angle. Even if the Bank has made a self imposed rule to consult the Central Vigilance Commission in every disciplinary matter, it does not make the Commission's advice binding on the punishing authority. In this context, reference may be made to Article 320(3) of the Constitution. The Article 320(3) like Regulation 20 with which we are concerned provides that the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted-on all disciplinary matters affecting a civil servant including memorials or petitions relating to such matters. This Court in *A.N. D'Silva v. Union of India*, [1962] Su 1 SCR 968 has expressed the view that the Commission's function is purely advisory. It is not an appellate authority over the inquiry officer or the disciplinary authority. The advice tendered by the Commission is not binding on the Government. Similarly, in the present case, the advice tendered by the Central Vigilance Commission is not binding on the Bank or the punishing authority. It is not obligatory upon





the punishing authority to accept the advice of the Central Vigilance Commission.

19. The corresponding new bank referred to in Section 8 has been defined under Section 2(f) of the Act to mean a banking company specified in column 1 of the First Schedule of the Act and includes the Syndicate Bank. Section 8 empowers the Government to issue directions in regard to matters of policy but there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in different cases. The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See: De Smith's Judicial Review of Administrative Action, Fourth Edition, p. 309). The impugned directive of the Ministry of Finance, is therefore, wholly without jurisdiction, and plainly contrary to the statutory Regulations governing disciplinary matters."

...

**37.** In view of the facts and circumstances of the case and the law laid down by the Apex Court as stated above, the writ petition is allowed. The order of the Disciplinary Authority dated 05.03.2005 and the subsequent order passed thereon by the Appellate Authority are set aside. Consequently, the recommendation of the Disciplinary Authority dated 28.10.2004 by which the punishment of "reduction to a lower grade i.e. from MMG Scale III to MMG Scale II and his basic pay to be fixed at Rs. 9820/-" be



deemed to be the punishment imposed upon the petitioner."

**Reasoning:**

21. In the present case, the Disciplinary Authority was left with no option but to alter and impose the punishment, as advised and coerced by the CVO. In the facts and circumstances, the punishment of "Removal from Service" was imposed on the advice of the CVO. The CVO has specifically recommended for imposing of penalty of "Removal from Service" in the communication made between him and the Disciplinary Authority, though the Disciplinary Authority, after taking into consideration the inquiry report, earlier took a decision to impose the penalty of "reduction to a lower scale" upon the petitioner, as according to Disciplinary Authority it commensurated with the misconduct. Thus, the action of the Disciplinary Authority in kneeling down before the dictates of the CVO is against the authoritative pronouncements of the Hon'ble Supreme Court and therefore, the same is required to be set aside in exercise of the extraordinary jurisdiction conferred to this Court under Article 226 of the Constitution of India.

22. Another issue to be considered by this Court is whether the punishment of "reduction to a lower scale" converted to "removal from service", which is admittedly an aggravated form of punishment, without providing opportunity of hearing to the petitioner, is legally sustainable in law or not. The Disciplinary Authority, after taking into consideration, the inquiry report passed an order of "reduction to a lower scale" and was consistent in its stand until the communication made between the



Disciplinary Authority and the CVO, after which the Disciplinary Authority altered its penalty order of "reduction to a lower scale" to "removal from service". It is apt to mention here that there was no new material placed before the Disciplinary Authority to impose the penalty of removal from service except the communication made between the Disciplinary Authority and the CVO. Thus, it would be safe to observe here that if the Disciplinary Authority forms an opinion to substitute a lesser penalty with a higher one, on the basis of advice of the CVO, then the principles of natural justice mandate that such a penalty should be imposed upon the petitioner only after supplying the copy of the advice of the CVO and affording an opportunity of hearing to the petitioner. It is an admitted fact that the communication/advice of the CVO was never communicated to the petitioner, and such act of the respondents amounts to violation of principles of natural justice because the impugned order of removal of the petitioner is based on the advice of CVO only. Accordingly, on this aspect as well, the impugned order of removal from service imposed on the petitioner cannot be sustained.

23. The judgments relied upon by counsel for the respondents, with due respect, are not applicable to the facts of the present case.

24. This Court is cautious of the settled proposition of law that scope of interference in punishment order passed by the Disciplinary and Appellate Authority is very limited. The Court can interfere with the punishment order if there is a violation of



principles of natural justice or the authority was not competent to hold the inquiry. The Court can interfere and can see whether:

- a. the inquiry is held by a competent authority;
- b. the inquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching to a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- i. the finding of fact is based on no evidence.

25. This Court has not touched the merits of the inquiry report and findings made thereupon by the Disciplinary Authority. This Court has made limited interference in the punishment order dated 05.12.2017, which has been passed without making available the new material to the petitioner and the same has



been passed simply on the basis of opinion and suggestion of CVO vide letter dated 22.09.2017.

**Conclusion:**

26. In view of the discussions made hereinabove, the impugned order dated 05.12.2017 stands quashed and set aside. As a consequence thereof, the order dated 30.05.2018 passed in the appeal also stands quashed. The respondents are directed to convert the punishment of "Removal from service" of the petitioner into the punishment originally opined by the Disciplinary Authority vide order dated 07.07.2017. The respondents are directed to grant necessary consequential benefits to the petitioner accordingly.

27. It goes without saying that the compliance of this order would be made by the respondents within a period of three months from the date of receipt of certified copy of this order.

28. The writ petition accordingly stands partly allowed.

29. Stay application as well as all applications (pending, if any) stand disposed off.

30. No costs.

(ANOOP KUMAR DHAND),J

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