



AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 58 of 2000

P.K. Nigam

.....Petitioner(s)

Versus

P.N.B. and others

.....Respondent(s)

Counsel for Petitioner(s)	: Smt. B. Godiyal, Mahendra Pratap Singh, Mrityunjay Pratap Singh, P.k.srivastava, Pt. S. Chandra, U.p. Singh, Vikas Singh
Counsel for Respondent(s)	: K.b. Sinha, Avdhesh Shukla, D.p.s.chauhan, N.k. Seth, Shailendra Kumar, Virendra Misra

Reserved

Court No.34

HON'BLE GARIMA PRASHAD, J.

1. Heard Sri Mahendra Pratap Singh, learned counsel for the petitioner and Sri Avadhesh Shukla, learned counsel for the respondents.
2. The petitioner was employed as a peon in Punjab National Bank. In this Writ Petition, he has challenged the order dated 21.05.1999 dismissing him from service and the appellate order dated 28.09.1999 affirming that punishment. He attained the age of superannuation in 2018. Reinstatement is no longer possible, but the legality of the disciplinary action and his claim to consequential service and retiral benefits remain for consideration.

3. The petitioner was appointed on 06.02.1986 and placed under suspension on 07.11.1994 in contemplation of disciplinary proceedings. As no charge-sheet was served for a considerable period, he filed Writ Petition No. 636 (S/S) of 1996. By an interim order dated 06.09.1996, the Bank was required to serve the charge-sheet within fifteen days, failing which the petitioner was to be paid full salary.

4. The Bank served a charge-sheet dated 19.09.1996. The main allegation was that the petitioner had helped to open an account in the name of Vijay Kumar, retained or controlled the cheque book, facilitated withdrawals and participated in transactions involving about Rs.3,15,700/-. The other allegations concerned entries made by him on payment instruments, his access to Bank records, the disappearance of the cashier's payment log book and two cash orders. The petitioner denied the charges on 28.09.1996 and sought copies of the documents needed for his defence.

5. The Writ Petition No. 636 (S/S) of 1996 was disposed of on 27.11.1996 with a direction to complete the inquiry within three months, subject to the petitioner's cooperation. If the inquiry was not completed within that period, the Bank was required to consider his reinstatement and payment of full salary. The inquiry was not completed within three months. The Bank states that it sought recall or extension of the order, but no order granting further time has been placed before this Court.

6. The inquiry commenced in January 1997 and continued until November 1998. The petitioner maintains that the documents sought by him were neither supplied nor made available and that several proceedings were held in his absence. He also states that the inquiry was conducted at Unnao without payment of travelling and daily allowance,

though he had been permitted to reside in Lucknow because of his financial and family circumstances.

7. The Bank disputes these assertions. According to the inquiry report, the petitioner and his representative repeatedly remained absent, sought adjournments and did not produce defence evidence despite several opportunities. The Bank maintains that the venue was shifted to Lucknow on some dates, the management witnesses were cross-examined and the inquiry was delayed because the petitioner did not cooperate.

8. The management evidence was closed on 26.10.1998. On 06.11.1998, the defence representative asked that the management brief be supplied before he presented the defence. The Inquiry Officer did not accept that request at that stage. The petitioner approached the disciplinary authority, but the decision of the Inquiry Officer was upheld. When the petitioner and his representative did not appear on the later dates, the inquiry was closed on 24.11.1998.

9. The Inquiry Officer divided the allegations into six charges. Charges 1 and 2 were held fully proved, charge 3 partly proved and charges 4 to 6 proved. On the allegations concerning access to, disappearance of or tampering with Bank records, the report stated that no concrete evidence or witness had been produced. The Inquiry Officer nevertheless relied on circumstantial evidence. On the main allegation, the report relied substantially on the statement attributed to Vijay Kumar and the management witnesses.

10. The petitioner received the inquiry report and a notice dated 17.05.1999 on 18.05.1999. He was required to appear for personal hearing on 20.05.1999 and submit his representation by 21.05.1999. He

appeared and submitted a written representation. On 21.05.1999, the disciplinary authority dismissed him from service. His appeal was rejected on 28.09.1999, after which he filed the present Writ Petition.

11. On 21.11.2006, this Court directed the Bank to produce the original record of the inquiry and disciplinary proceedings. The record was not produced. According to an affidavit filed by the petitioner, learned counsel for the Bank stated before the Court on 10.02.2010 that the record had been misplaced while the files were shifted from Lucknow to Kanpur.

12. The Bank then filed Civil Miscellaneous Application No. 7360 of 2012. It stated that the record was not available and had perhaps been lost or misplaced when administrative control of the Unnao branch was shifted from Lucknow to Kanpur. The Bank sought exemption from producing the record and requested that no adverse inference be drawn because photocopies of the available papers were already before the Court.

13. The petitioner objected to that application. He alleged that the explanation was an afterthought and that the record had been withheld because it would disclose manipulation of the inquiry. He pointed out that the Bank had not stated when the record was lost, who had custody of it, whether the loss was reported, what search was made, whether reconstruction was attempted or whether responsibility was fixed.

14. Learned counsel for the petitioner submitted that the documents sought in the reply to the charge-sheet were not supplied and that the petitioner was denied a fair opportunity to present his defence. He further submitted that the findings were based on conjecture, only three days were allowed to respond to the inquiry report, and the disciplinary

and appellate authorities did not fairly consider the petitioner's representations. According to him, the Bank's failure to produce the original record prevents it from proving that the documents and opportunities claimed in its counter affidavit were actually given. Reliance is placed on *Managing Director, ECIL, Hyderabad v. B. Karunakar and others*, (1993) 4 SCC 727.

15. Per contra, learned counsel for the Bank submitted that a departmental inquiry is governed by the standard of preponderance of probabilities and not by the strict rules of evidence applicable to a criminal trial. The petitioner and his representative cross-examined the management witnesses but repeatedly failed to participate and did not lead defence evidence. The charges concerned financial integrity in a bank and were serious. He further submitted that the Court cannot reappraise the evidence merely because another view is possible. Relying on *State of Uttar Pradesh v. Rajit Singh*, (2022) 15 SCC 254, he submitted that any defect in the inquiry should lead to its continuation from the stage at which the defect occurred.

16. Having considered the rival submissions and the material on record, the main issue before the Court is whether the disciplinary proceedings can be held to be vitiated when the employer fails to produce the material documents during the inquiry, does not supply copies of those documents to the delinquent employee and, despite a direction of the Court, also fails to produce the original inquiry record on the plea that it has been misplaced. If the disciplinary proceedings are found to be vitiated, it will then be necessary to decide whether a fresh inquiry can now be directed after the petitioner's retirement.

17. Judicial review of a departmental inquiry is confined to examining whether the prescribed procedure was followed, whether the employee received a fair opportunity of defence and whether the findings are based on some evidence. A departmental inquiry is governed by the standard of preponderance of probabilities. The evidence is not reassessed merely because another view may also be possible.

18. In *Managing Director, ECIL, Hyderabad v. B. Karunakar and others (supra)*, the Supreme Court recognised the employee's right to receive the inquiry report and make an effective representation before the disciplinary authority takes its final decision. A breach of procedure must be examined in the light of the prejudice caused.

19. The petitioner had sought the preliminary inquiry report, the first information report and the report sent by the branch to the higher authority. The Presenting Officer opposed the request on the ground that those documents were not referred to in the charge-sheet. At the same time, 34 management exhibits were taken on record and 14 management witnesses were identified. The inquiry report does not establish that copies of all the documents used against the petitioner were supplied to him.

20. The Bank's affidavit does not identify the documents supplied to the petitioner, the dates of supply or the part of the inquiry record where supply was noted. The original record would have shown which documents were produced, whether copies were supplied, what objections were raised, how they were decided, what the witnesses stated and whether they were cross-examined. It was also necessary to examine the Bank's case that the petitioner alone delayed the inquiry and failed to participate.

21. The order dated 21.11.2006 directing production of the original record was thus not an empty formality. The Bank had conducted the disciplinary proceedings and relied on them to support the dismissal. It was required to preserve and produce the record after the disciplinary action was challenged before this Court.

22. The explanation given by the Bank is incomplete. It states that the record was “perhaps” lost or misplaced during shifting, but does not state when the shifting took place, when the loss was discovered, what searches were made, who had custody of the file or why the record was not reconstructed. No contemporaneous report of the loss has been placed before the Court.

23. Although there is no evidence before the Court to record a finding that the inquiry was manipulated, the admitted loss of the record has a direct bearing on the Bank’s case. The Bank relies on the inquiry to support the dismissal but cannot produce the record required to examine whether the inquiry was fair.

24. The photocopies available on record show the broad chronology, the charge-sheet, the inquiry report and the impugned orders. They do not show whether the documents were supplied, how the evidence was recorded, what objections were raised and whether the petitioner had a fair opportunity to defend himself. The inquiry report also records that charges 4 and 5 were treated as proved even though no concrete evidence or witness had been produced. The complete depositions and exhibits concerning the main charge are not available. Their contents, and the fairness of the procedure by which they were recorded, cannot be presumed.

25. The petitioner was also given very little time after receipt of the inquiry report. He received the report and notice on 18.05.1999, appeared for hearing on 20.05.1999 and was required to submit his representation by 21.05.1999. The dismissal order was passed that very day. Two clear days were not enough to examine the findings of an inquiry conducted over nearly two years and respond to the proposed punishment of dismissal.

26. The disciplinary and appellate authorities proceeded on the basis that adequate opportunity had been given. The Bank had to establish this from the inquiry record. As that record is not available, the Bank has not shown that the petitioner received the necessary documents or an effective opportunity of defence. This has caused real prejudice to him. The denial of a fair opportunity of defence therefore vitiates the dismissal order dated 21.05.1999 and the appellate order dated 28.09.1999.

27. The consequence of setting aside the disciplinary action must now be considered. *State of Uttar Pradesh v. Rajit Singh (supra)* states the ordinary rule that, when a punishment is set aside because of a procedural defect, the employer may continue the inquiry from the stage at which the defect occurred. That course depends on the applicable service rules and the facts of the case. In *Bhagirathi Jena v. Board of Directors, O.S.F.C. and others*, (1999) 3 SCC 666, the Supreme Court held that disciplinary proceedings cannot continue after retirement in the absence of a provision permitting such continuation.

28. In the present case, the petitioner attained superannuation in 2018, and the Bank has not placed before the Court any provision in the Bipartite Settlement or the applicable service rules permitting the

disciplinary proceedings to continue or be instituted after retirement. A fresh inquiry cannot therefore be directed. The loss of the original record and the passage of more than three decades provide an additional practical reason against such a course.

29. Quashing the dismissal and appellate orders restores the petitioner's service status as it stood before 21.05.1999. Since no fresh inquiry can now be held and the petitioner attained superannuation in 2018, his service must be treated as continuing until that date. He is accordingly entitled to continuity of service, notional pay fixation and computation of pension and other admissible retiral benefits on that basis.

30. The question of back wages depends on the facts of the case. The petitioner did not work during that period, and the charges against him were serious. At the same time, he has pursued this Writ Petition since 2000, and the Bank's failure to preserve and produce the inquiry record prevented a lawful examination of the disciplinary action and delayed the decision. Taking these factors together, the petitioner is entitled to fifty per cent of the salary as back wages.

31. Accordingly, the Writ Petition is allowed and both the dismissal order dated 21.05.1999 and the appellate order dated 28.09.1999 are quashed. As a result, the respondents shall treat the petitioner as having remained in continuous service until his superannuation in 2018, re-fix his pay notionally and determine his pension and other admissible retiral benefits on that basis. They shall also pay him fifty per cent of the salary and allowances as back wages for the period from 21.05.1999 to the date of superannuation, after making lawful adjustments.

32. The entire exercise shall be completed and the amount found due shall be paid within three months from the date a certified copy of this

judgment is produced before the competent authority. Any retiral dues not paid within that period shall carry simple interest at six per cent per annum from the expiry of three months until payment. There shall be no order as to costs.

(Garima Prashad,J.)

October 12, 2026

Kuldeep