

(12) For the reasons aforementioned this petition succeeds. The impugned order dated 28th April, 2006 (P. 8) is set aside. The respondents are directed to refund a sum of Rs. 4,32,21,206 in respect of assessment year 2002-2003 alongwith interest to the assessee-Society. The assessee 'Society' is further held entitled to statutory interest on delayed payment of refund in respect of assessment year 2002-2003. The interest shall be calculated at the statutory rate of 12 per cent per annum in respect of delay for the first month of delay and at the rate of 18 per cent per annum in respect of delay caused for the subsequent months. However, the 'Society' shall co-operate in finalisation of the assessment proceedings which are pending before the Assessing Authority after the remand by the Appellate Authority.

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**R.N.R.**

*Before Augustine George Masih, J.*

**BANK OF INDIA,—Petitioner**

*versus*

**THE PRESIDING OFFICER, CENTRAL GOVERNMENT,  
INDUSTRIAL TRIBUNAL AND OTHERS,—Respondents**

C.W.P. No. 391 of 1988

27th January, 2009

*Constitution of India, 1950—Art. 226—A bank employee acting in an unfair manner for personal gains—Non-supply of list of witnesses and documents to workman either at stage when charge sheet was issued nor before initiation of enquiry proceedings—Workman also failing to make demand for supply of list of witnesses/documents—Workman admitting all acts alleged to have been committed by him—No prejudice caused to workman due to non-supply of list of witnesses/documents nor for non-grant of time to prepare cross-examination of witnesses—Petition allowed, award of Labour Court ordering reinstatement of workman with full back wages quashed.*

*Held*, that Banking is an Industry which is based more on faith than on anything else as it involves handling of money. A person who is working in the Bank is expected to be honest beyond doubt. The money which is handled by the employees of the Bank, is of the public and it is this faith which would be shattered if the employees start acting in the way the workman has acted in the present case. For personal gains, the workman has acted in an unfair manner and, therefore, no sympathy can be shown to such person.

(Para 11)

*Further held*, that the workman has admitted to the acts committed by him. The only question was whether it was done with an intention to fraudulently giving a benefit which an account holder was not entitled to and for getting credit in his own account and withdrawing the money from the credit which act is prejudicial to the interest of the Bank which would amount to gross misconduct. As is amply clear from the evidence which has been produced during the enquiry proceedings, it was not an innocent act on the part of the workman. Further, in the grounds of appeal submitted by the workman against the order of dismissal, he has said that he is quite innocent and he has neither committed any misconduct as alleged nor he had any such intention. He has been no shortage or loss caused to the Bank occasioned by the acts imputed to him and there has been no damage to the reputation to the Bank or goodwill, customers. He had acted in good faith and according to good practices in vogue in the concerned branch. This shows that the acts which have been imputed to him with regard to handling of the cheques and the relevant entries made therein stand admitted by him. He has been given personal hearing. On the basis of the admissions, he cannot say that any prejudice was caused to him. The award dated 29th October, 1987 of the Labour Court, Chandigarh cannot be sustained as in the facts and circumstances of the present case, no prejudice was caused to the workman due to non-supply of the list of witnesses or the list of documents nor for non-grant of time to prepare the cross-examination of the two witnesses.

(Paras 13 & 14)

Ms. Radhika Suri, Advocate *for the petitioner.*

P.K. Mutneja, Advocate, *for respondent No. 2.*

**AUGUSTINE GEORGE MASIH, J.**

(1) This writ petition has been preferred by the Bank of India challenging the award dated 29th October, 1987 of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh, (Annexure P-1),—*vide* which Paramjit Singh Dhani-respondent No. 2-workman has been reinstated with full back wages with effect from 4th August, 1983 till the date of his reinstatement on the ground that the order of dismissal cannot be sustained. Learned Labour Court has held that as the list of witnesses were not supplied to the workman either before the issuance of charge-sheet or before the start of enquiry and ample opportunity has not been granted to the workman to cross-examine the witnesses, the principles of natural justice having been violated, the enquiry stood vitiated and as a consequence thereof the order of dismissal was unsustainable.

(2) Briefly stated the facts of the case are that the petitioner was employed as a Clerk with the petitioner-Bank with effect from 29th July, 1974 at the Amritsar (Main) branch of the Bank. Between 24th September, 1976 and 28th September, 1976, the workman altered the balances in the ledger in the saving bank account in the name of his father Shri Kartar Singh Dhani, thereby causing a temporary loss to the petitioner-Bank. A charge-sheet was issued to respondent No. 2 and on a departmental enquiry, the charges were stood proved against him. However, keeping in view that it was his first offence in the bank's services and with an intention to give him an opportunity to improve his conduct, a lenient view was taken and a punishment of warning only was issued to him. Thereafter, during the period from 29th August, 1981 and 29th September, 1981, respondent No. 2 committed two acts of gross misconduct showing undue favour to his brother who was proprietor of M/s Dhani Rubber Industries and his friend proprietor of M/s Krishna Industries knowing fully well that there was no sufficient credit balance in their accounts for the cheques to be honoured. He tried to conceal these acts and misappropriated a sum of Rs. 4000. A charge-

sheet was issued to him on 26th March, 1982, wherein, it was mentioned that on 25th August, 1981 while he was working as ledger keeper of the current accounts, a cheque bearing No. 408899 for Rs. 3055-80 P, dated 23rd August, 1981 issued by M/s Krishna Industries in favour of M/s Sudesh Machine Tools was presented for clearing through Punjab National Bank. Since there was no balance in the account the workman was required to make a note to this effect on the cheque but instead of doing so, he initialled the cheque after writing the ledger folio without recording the fact that there were no funds in the account. As a result thereof, the cheque was passed for payment. This cheque was not posted in the drawers account and in this way, he helped the proprietor of M/s Krishna Industries, who is stated to be his friend. Thereafter, on 2nd September, 1981, respondent No. 2 deposited cheque No. 41814, dated 4th August, 1981 for Rs. 4,000 in his personal Savings Bank Account, which was so issued from the account of M/s Dhani Rubber Industries, whose proprietor was his brother. Here again, the workman marked the folio number on the cheque and initialled the same on its back and got it credited and thereafter withdrew the amount from his account. The said cheque was kept by the workman with him and the same was posted in the current account of M/s Dhani Rubber Industries after 11th September, 1981. The charge-sheet was issued to respondent No. 2-workman on 2nd May, 1982 on the above allegations which he did not admit. A departmental enquiry was conducted and on the conclusion of the said enquiry, the charges were found to be proved leading to the passing of order of dismissal on 4th August, 1983 by the Disciplinary Authority after affording him an opportunity of personal hearing.

(3) An appeal was preferred against the order of punishment by the respondent-workman but the same did not find favour with the Appellate Authority despite a personal hearing granted to the workman and the appeal was dismissed. On a demand having been raised by the respondent-workman, the dispute was referred to the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh. The learned Labour Court,—*vide* impugned award dated 29th October, 1997 (Annexure P-1) answered the reference in favour of the workman. Hence, the present writ petition by the Bank.

(4) Counsel for the petitioner-Bank has contended that the findings recorded by the Labour Court with regard to the non-supply of the copy of the list of witnesses and the list of documents cannot be disputed. However, she contends that the real issue to be determined is whether any prejudice was caused to the workman by non-supply of the list of documents or the list of witnesses to be examined during the enquiry. It has been submitted by her that during the course of enquiry, as and when the documents were produced the same were duly supplied to the workman. She has further contended that no demand or objection by the workman to that effect that he has not been supplied with the list of witnesses or the documents along with the charge-sheet or before the start of enquiry, was ever made. As no demand was put forth by the workman and in view of the fact that the documents, reliance whereof has been made by the Bank, during the enquiry were directly related to and as a matter of fact were the cheques and the accounts with which the petitioner was well conversant and had himself handled the same, were not required to be supplied to him. Further, after the initiation of the enquiry, the Inquiry Officer had put him the contents of the charge-sheet and asked him as to whether he accepted those charges which the workman denied. Thereafter, an opportunity was given to him to seek the help of a representative to defend himself, on which he stated he would himself defend the charges against him. At that stage, the documents, so relied upon by the Bank, were put to him, the details whereof have been referred to by the counsel for the petitioner contained in Annexure P-8 namely the copy of the departmental enquiry proceedings dated 23rd August, 1982. Relying upon these proceedings, counsel for the petitioner submits that it is at that stage that all the documents which were being relied upon by the Bank, were brought to the notice of workman, but even then also, the workman did not demand those documents. Further, referring to the proceedings of the enquiry, counsel for the petitioner has pointed out to a note in the enquiry wherein the workman has accepted that he had cleared those cheques and had initialled them. What actually the submission of the workman was that it was not an intentional act on his part rather over draft was made from the accounts of the account holders. It has been submitted during the course of enquiry that as and when the documents were demanded, the same were supplied to the workman.

(5) Counsel has submitted that the Labour Court has primarily proceeded to hold that the workman has not been given ample opportunity to cross-examine two witnesses, namely Shri S.P. Tewari and Shri K.C. Bansal, Staff Officers. She while referring to the departmental proceedings has taken me through the same wherein at page 89 of the paper book, it has been recorded that Exhibit P-9 which contained the submissions made by Shri S.P. Tewari to the Manager, Amritsar Branch was produced as Exhibit P-9 during the sitting held on 8th September, 1992 a copy whereof was given to the workman on the said date. This factual aspect has not been denied by the workman and it was only on the basis of this document that it was alleged that he was not supplied with the documents and, therefore, he could not proceed with the cross-examination of the witnesses and had sought time to cross-examine them. On this basis, she has contended that the Inquiry Officer had rightly not granted further time to the employee-workman as he was delaying the enquiry proceedings and the deposition of the witness was made in the presence of the workman and the document on the basis of which such deposition was made duly supplied to him earlier which gave him ample time to prepare for cross-examination, if any, to be put on that document. In the light of this with the turning down of the request by the Inquiry Officer as has been recorded in the award there is ample justification for declining adjournment. As regards Shri K.C. Bansal, the other witness, when it is again alleged that time for cross-examination was not granted, it may be noticed that the witness is the person who had detected the non-posting of the cheque on 31st August, 1981 and on his such pointing out as to how the workman had posted the cheque, Staff Officer Mr. K.C. Bansal, through his evidence on 15th September, 1981 has stated that he had cancelled the cheque on 25th August, 1981 pertaining to the account of M/s Krishna Industries in routine along with other cheques after he had verified the signatures of the drawee on the cheque, which also bore the initials of the ledger keeper Mr. P.S. Dhani, the workman. All this was to the knowledge of the workman and he was well conversant with the cheques which were put to him at the very initiation of the enquiry proceedings. He was, therefore, required to cross-examine Shri K.C. Bansal with regard to his deposition before the Inquiry Officer. In the light of this position as the evidence was led in his presence and the

documents were supplied to him during the proceedings but prior to the date when cross-examination of witness was to be done, there was no reason for adjournment of the case for cross-examination as this would have delayed the proceedings. On this basis, counsel justifies the non-grant of adjournment for cross-examination rather she submits that it would have facilitated the enquiry proceedings as everything was fresh, at the time of the departmental proceedings going on at that time.

(6) On this basis, counsel for the petitioner submits that no prejudice having been caused to the workman in the enquiry proceedings not he at any stage, having protested with regard to the non-supply of documents or list of witnesses, it can not be said that the principles of natural justice have not been complied with. As regards the non-grant of adjournment to cross-examine the above two witnesses is concerned, the explanation is forthcoming from the enquiry proceedings which justifies the decision of the Inquiry Officer. She further, referring to the enquiry proceedings, has submitted that large number of dates were granted to the workman where he had sought time to go through the ledger to justify his assertion that it was a regular practice of grant of over draft and ultimately after checking the ledgers which had been demanded by the workman, he had admitted that he was unable to point out any kind of entry to that effect. The said fact finds mention at page 92 of the paper book which relates to the departmental enquiry proceedings dated 22nd September, 1982.

(7) In the light of this, counsel for the petitioner submits that the enquiry proceedings were in accordance with law and therefore, deserve to be upheld. She has relied upon a judgment of the Hon'ble Supreme Court in the case of **Janki Nath Sarangi versus State of Orissa, (1)** to submit that where violation of principles of natural justice is alleged during the enquiry proceedings, the interference in the order of dismissal is only permissible where blatant violation of principles of natural justice has occurred. She has further relied upon the judgment of the Hon'ble Supreme Court in the case of **Firestone Tyre and Rubber Company Limited versus Their workman (2)** for

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(1) 1970 (1) LLJ 356

(2) 1967 (2) LLJ 715

the said proposition and thereafter on the judgment of the Hon'ble Supreme Court in the case of **Central Bank of India, Ltd. versus Karunamoy Banerjee (3)** to contend that the facts of the present case and that one before the Hon'ble Supreme Court were similar and the Hon'ble Supreme Court in that case has categorically held that whether an opportunity is to be given to an employee to cross-examine the witnesses which has not been availed by the workman, it cannot be said that the principles of natural justice have been violated. She has relied upon the judgments of the Hon'ble Supreme Court **Canara Bank versus Debashish Dass, (4) & Canara Bank versus B.K. Avasthy (5)** to contend that if the grounds of prejudice or violation of principles of natural justice are not raised by the employee either in the memorandum of appeal or at the time of preferring appeal before the Appellate Authority and in the appeal findings of the disciplinary officer or disciplinary authority are challenged,, then the question of prejudice does not arise. Post-decisional hearing would obliterate procedural deficiency of pre-decisional hearing and, therefore, there cannot be any violation of the principles of natural justice.

(8) On the other hand, counsel for the respondent-workman has submitted that a domestic enquiry was held with a pre-determined mind against the workman and this he submits referring to the proceedings of the enquiry, that at the very outset the Inquiry Officer had put him direct questions with regard to the irregularities which are alleged to have been committed by him. He submits that the workman was cross-examined on those documents which were not supplied to him and he had been put certain disadvantageous questions to him even before the documents were proved during the enquiry proceedings. He further submits that although the handling of the cheques has been accepted by the workman but he states that no loss has been caused to the Bank as the money which is stated to have been over-drawn stood deposited with the Bank rather the Bank has on the over-draft earned interest and, thus, no loss was caused to the Bank. He submits that due to non-supply of the list of witnesses as well as the documents reliance whereof has

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(3) 1967 ILJ 739

(4) AIR 2003 SC 2041

(5) AIR 2005 S.C. 2090



been made by the Management against the workman, he could not prepare his defence properly. He states that the allegation that the account of M/s Krishna Industries was of the friend of the workman is wrong. He had overdraft facility as had been requested by him, which has come in the enquiry proceedings that he had orally been granted, the workman had proceeded to make the relevant entries in the record. As regards the cheque of Rs. 4,000 of M/s Dhani Rubber Industries relating to workman's brother, he submits that after putting that amount into his account, the same was utilized by the workman on various occasions as is clear from the charge-sheet itself. He submits that the amount was transferred in the account of the workman on 2nd September, 1981 and thereafter the amount of Rs. 600 was withdrawn first on 2nd September, 1981, thereafter Rs. 700 on 4th September, 1981, Rs. 200 on 5th September, 1981, Rs. 1700 on 7th September, 1981, Rs. 300 on 9th September, 1981, Rs. 200 on 17th September, 1981, Rs. 50 on 19th September, 1981 and Rs. 250 on 21st September, 1981. It would not be out of place to mention here that the balance in this account of the workman as on 31st August, 1981 was Rs. 0.22 and on 31st September, 1981 it again was Rs. 0.22. The reasoning put-forth by the counsel for the petitioner for targeting the workman is that there was large scale procedural mess in the bank because of which he was made the scape-goat so that the officials are not held responsible. He submits that the workman was only a Clerk and was doing the work of the ledger keeper. The responsibility primarily is that of the bank officials to clear the cheques and to save these officials, the workman has been made to suffer. He has referred to the proceedings before the Inquiry Officer to submit that although it has been admitted by the workman that he had initialled the cheques and other documents but it was never with a *mala fide* intention or with an intention to cause loss to the Bank. He, however, submits that during the enquiry proceedings, the workman had not been given ample opportunity to defend himself rather the Inquiry Officer proceeded with a pre-determined mind to hold the workman guilty and in that process he had not given him ample opportunity to prepare the cross-examination with regard to the two witnesses i.e. S.P. Tewari and K.C. Bansal and, therefore, denied opportunity to defend himself during the enquiry proceedings. The basic principle for holding a fair and proper enquiry is that the delinquent

employee should be given ample opportunity to defend himself and the same having been denied to the workman, the enquiry stood vitiated and, therefore, cannot be relied upon to pass an order of punishment against the workman.

(9) I have given my serious consideration to the submissions put-forth by the counsel for the parties. The facts are not in dispute. The workman was not supplied with the list of witnesses and the documents either at the stage when the chargesheet was issued to him nor before the initiation of the enquiry proceedings. It is also not in dispute that no demand for supply of the list of witnesses or the documents was ever made by the delinquent employee. It is an admitted position that during the course of enquiry as and when the documents were produced by the respondent-witnesses during their deposition, the copies of such documents were supplied to the workman. The acts which are alleged to have been committed by the delinquent employee has been admitted by him during the enquiry proceedings and apart from that the said acts have been, on the basis of the documents and the evidence, proved against him. The only submission which has been put-forth is that the *mala fide* intention which has been attributed to the workman was not correct rather he had proceeded to act in accordance with the practice prevalent in the Bank. This submission, cannot be accepted for the reason that it has come out during the enquiry proceedings, as has been pointed out by the counsel for the petitioner from the enquiry proceedings, that the workman has not been able to show even a single instance of similar nature from the ledgers, which he had demanded, to substantiate the claim of this act being a common practice adopted and followed by the Bank. It heavily weighs on the mind of this Court that cheque No. 41814, dated 4th August, 1981 for Rs. 4000 was deposited by the workman in his own saving bank account on 2nd September, 1981. The workman marked the folio number and initialled the same on the back of the cheque and got it credited in his account and, thereafter on various dates withdrew the amount from his account. Before deposit of Rs. 4000 in his account, the balance was only Rs. 022 as on 31st August, 1981 and then against after the amount stood withdrawn on various dates i.e. 2nd September, 1981,

4th September, 1981, 5th September, 1981, 7th September, 1981, 9th September, 1981, 17th September, 1981, 19th September, 1981 and 21st September, 1981 the balance was Rs. 0.22. The intention, therefore is apparent.

(10) It does not end here. The cheque was kept by the workman with him and the same was posted in the current account of M/s Dhani Rubber Industries whose proprietor was none else but his brother only on 11th September, 1981 and that too when Mr. K.C. Bansal has pointed out the fraud and cancelled the cheque.

(11) Banking is an Industry which is based more on faith than on anything else as it involves handling of money. A person who is working in the Bank is expected to be honest beyond doubt. The money which is handled by the employees of the Bank, is of the public and it is this faith which would be shattered if the employees start acting in the way the workman has acted in the present case. For personal gains, the workman has acted in an unfair manner and, therefore, no sympathy can be shown to such person.

(12) A contention was raised by counsel for the respondent-workman that the workman had been put to test at the very initiation of the enquiry. A perusal of the enquiry proceedings would show that the workman had been given ample opportunity to explain his conduct. It was only with an intention to ascertain whether the enquiry was actually required or not. This was an occasion where he was given an opportunity to explain his position, when the documents were put to him on which the bank wanted to place reliance for proving the charges alleged against him. It has been admitted and the disciplinary proceedings also show that after the conclusion of evidence of the bank, the respondent-workman was given ample opportunity to produce his own evidence and to clarify his stand as is apparent from the records of the departmental proceedings. It, therefore, cannot be said that the workman was not given ample opportunity to defend against the charges levelled against him. At this stage, reference to the judgment of the Hon'ble Supreme Court reliance whereof has been laid by the counsel for the petitioner which on facts and on law would be applicable to the present case

needs to be made. The said judgment is **Central Bank of India Ltd. versus Karunamoy Banerji** (6). In this case, the Labour Court held that the enquiry proceedings are violative of the principles of natural justice on the following three reasons and thereafter proceeds to explain the consequences thereof;

- “(i) In the inquiry, the respondent-employee has been examined, even in the first instance, and he was cross-examined to elicit points in support of the charge;
- (ii) the respondent was not allowed to cross-examine witnesses; and,
- (iii) the respondent was prejudiced in his defence as he had to conduct his defence without the assistance of the union, during the enquiry.

There can be no controversy that the principles of natural justice must be observed in the conduct of a domestic enquiry, and the workman concerned must be allowed reasonable opportunity to defend himself. It has also been held by this Court that rules of natural justice require that the workman, proceeded against, should be informed clearly of the charges levelled against him; witnesses should be normally examined in the presence of the employee, in respect of the charges; if statements, taken previously and given by witnesses, are relied on, they should be made available to the workman concerned; the workman should be given a fair, opportunity to cross-examine witnesses; he should be given a fair opportunity to examine witnesses, including himself, in support of his defence; and the enquiry officer should record his findings, based upon the evidence so adduced.

So far as grounds (ii) and (iii) given by the labour court are concerned, it is clear from the record of the enquiry proceedings, that the respondent was permitted

to put questions to Sri Bhatena and Sri Savkar, who were examined during the enquiry. We have also referred to the fact that the enquiry officer has recorded that the respondent has stated that he has no further questions to be put to them. We have also referred to the fact that the enquiry proceedings show that the respondent was specifically asked as to whether he wanted to examine or cross-examine the three other officers, whose conduct was also under enquiry, and who had made certain statements against the respondent, but the respondent categorically stated that he did not like to examine or cross-examine any of these persons. The respondent has not stated, even in the representations made by him to the managing director, that he was not given any opportunity to cross-examine the witnesses produced in the inquiry. Again, even in his evidence before the labour court, the respondent has categorically stated that he had not made any request in writing for being represented by the union, at the inquiry. Apart from the fact that he has no such right, even factually it is seen that he made no such request. Therefore, the findings of the tribunal that the respondent was not permitted to cross-examine the witnesses during the domestic enquiry, and that he was prejudiced in his defence because he was not permitted to have the assistance of the union, are both erroneous. Then the question is as to whether the inquiry proceedings can be considered to have been conducted in violation of the rules of natural justice, inasmuch as the respondent was examined, even in the first instance. We have already indicated that, as a fact, it is borne out by the records that the respondent so far as the inquiry against him was concerned, was examined, in the first instance, and Sri Bhatena and Sri Savkar, were examined later. Accordingly to the labour court, the object of the management, in examining the

respondent, in the domestic enquiry even in the first instance, was to have the charges substantiated by statements got out of the mouth of the employee, rather than to examine witnesses for the bank, in support of the charges. It is the further view of the labour court that the respondent has been, so to say, cross-examined, just to elicit points in substantiation of the charges. These circumstances, according to the labour court, violate the principles of natural justice and, such vitiate the domestic enquiry. In this contention, the labour court has relied upon certain observations, contained in the judgment of this Court in Associated Cement Companies Ltd. *versus* Their workmen (1963—II L.L.J 396 at 400) *viz* :

..... It seems to us that it is not fair in domestic enquiries against the industrial employees that at the very commencement of the enquiry, the employee should be closely cross-examined even before any other evidence is led against him.....”.

and drawn the inference that under no circumstances should a workman, whose conduct is the subject of disciplinary proceedings, by a domestic tribunal, should be examined, in the first instance. We are of the opinion that no such conclusion could be drawn from the decision, referred to above. In that case, it will be seen, the management had charge-sheeted one Malak Ram, with disorderly behaviour when a cinema show was being given. Malak Ram, at all stages, stoutly denied his having taken part in any hooliganism or to rowdyism, as alleged by the management. Under those circumstances, instead of adducing evidence, in the first instance, regarding the allegations made against Malak Ram, in the domestic enquiry, the management commenced the proceedings with a very close examination of Malak Ram himself. The nature of the

questions put to him also clearly indicated that the worker was being cross-examined, and answers sought to be elicited in support of the allegations made by the management. This Court, in coming to the conclusion that the conduct of an enquiry, in that manner, constitutes a very serious infirmity, made, the observations quoted above. Therefore, it will be seen, that in that case, when the workman concerned was totally denying the allegations made against him, it was the duty of the management to let in evidence, in the first instance, to substantiate its allegations, and permit the workman to cross-examine those witnesses and also permit him to let in independent evidence, in defence of his plea; and this Court emphasised that the normal rules to be followed, in such enquiries, is as stated above.

In the case before us, we have already referred to the various proceedings that have taken place, from which will be seen clearly that the workman was, at all stages, admitting the truth of the allegations made against him, by the management. In his communication, dated 17th March, 1961, as well as, in his reply to the charges; made by him on 20th June, 1961, he has categorically admitted that he has committed a mistake in permitting the constituents concerned to overdraw, without obtaining the sanction of the appropriate authorities. Even when the enquiry proceedings began, he had stated that he had nothing more to add, in respect of the charges framed against him. When once the workman himself has, in answer to the charge levelled against him, admitted his guilt, in our opinion, there will be nothing more for the management to enquire into. That was the position in the case before us. Therefore, we are not inclined to agree with the reasoning of the labour court that when there has been an admission of guilt, by the respondent himself, it can

still be stated that there is a violation of the principles of natural justice merely because of the fact that the workman was examined in the first instance. Nor are we impressed with the further view, expressed by the labour court, that the way in which answers were elicited from the workman, showed that there has been a cross-examination by the management to obtain points in substantiation of the charges. We have gone through the entire examination of the respondent at the domestic enquiry and we are satisfied that there is no such infirmity. In fact, the question of the management trying to obtain answers to support the charges, does not arise at all, in this case, because the respondent has consistently admitted his guilt, at all stages. On the other hand, the nature of the questions put to the respondent clearly indicates that the management, when once the workman had admitted his guilt, was only giving him an opportunity to explain his conduct or to refer to circumstances, if any, which could be taken into account in extenuation of his conduct. The management has also permitted the respondent to put questions to the other two witnesses examined during the enquiry, *viz.*, Sri Bhatena and Sri Savkar.

We must, however, emphasize that the rules of natural justice, as laid down by this Court, will have to be observed, in the conduct of a domestic enquiry against a workman. If the allegations are denied by the workman, it is needless to state that the burden of proving the truth of those allegations, will be on the management; and the witnesses called by the management, must be allowed to be cross-examined by the workman, and the latter must also be given an opportunity to examine himself and adduce any other evidence that he might choose, in support of his plea. But, if the workman admits his guilt, to insist upon the



management to let in evidence about the allegations, will, in our opinion, only be an empty formality. In such a case, it will be open to the management to examine the workman himself, even in the first instance, so as to enable to offer any explanation for his conduct, or to place before any explanation for his conduct, or to place before the management any circumstances which will go to mitigate the gravity of the offence. But, even then, the examination of the workman, under such circumstances, should not savour of an inquisition. If, after the examination of the workman, the management chooses to examine any witnesses, the workman must be given a reasonable opportunity to cross-examine those witnesses and also to adduce any other evidence that he may choose.”

(13) In the present case, the workman has admitted to the acts committed by him. The only question was whether it was done with an intention to fraudulently giving a benefit which an account holder was not entitled to and for getting credit in his own account and withdrawing the money from the credit which act is prejudicial to the interest of the Bank which would amount to gross-misconduct. As is amply clear from the evidence which has been produced during the enquiry proceedings, it was not an innocent act on the part of the workman. Further, in the grounds of appeal submitted by the workman against the order of dismissal, he has said that he is quite innocent and he has neither committed any misconduct as alleged nor he had any such intention. He has been no shortage or loss caused to the Bank occasioned by the acts imputed to him and there has been no damage to the reputation to the Bank or goodwill, customers. He had acted in good faith and according to good practices in vogue in the concerned branch. This shows that the acts which have been imputed to him with regard to handling of the cheques and the relevant entries made therein stand admitted by him. He has been given personal hearing. On the basis of the admissions, he cannot say that any prejudice was caused to him.

(14) In the light of the above facts and circumstances of this case and in the light of the judgments of the Hon'ble Supreme Court in the case of **Central Bank of India versus Karunamoy and others and Canara Bank versus B.K. Avasthy**, (*supra*) the award dated 29th October, 1987 of the Labour Court, Chandigarh, (Annexure P-I), cannot be sustained as in the facts and circumstances of the present case, no prejudice was caused to the workman due to non-supply of the list of witnesses or the list of documents nor for non-grant of time to prepare the cross-examination of the two witnesses, namely, S.P. Tewari and K.C. Bansal.

(15) Consequently, the writ petition is allowed and the impugned award dated 29th October, 1987 passed by the Labour Court, Chandigarh (Annexure P-I) is hereby quashed.

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**R.N.R.**

*Before Permod Kohli, J.*

**SURINDER KUMAR KHURANA,—Petitioner**

*versus*

**HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH AND OTHERS,—Respondents**

C.W.P. No. 10326 of 1999

11th December, 2008

*Constitution of India, 1950—Arts. 14, 16 and 226—Punjab Civil Services Rules, Vol. I, Part I, Chapter III-Rl. 3.15—Appointment as Clerk through competitive test—Promotion to temporary post of Steno-typist—Lien on post of Clerk ordered to be maintained—Option for senior scale in cadre of clerks invited—Conditional option—Request for retention of lien in cadre of Clerks specifically made—Department ordering to exclude from cadre of clerks for promotion—Neither request for retention of lien considered nor order excluding name for promotion from cadre of clerks communicated—Provisions of Rl. 3.15 provide that Government*