

PETITIONER:
BANK OF INDIA

Vs.

RESPONDENT:
APURBA SAHA

DATE OF JUDGMENT 14/12/1994

BENCH:
VENKATACHALA N. (J)
BENCH:
VENKATACHALA N. (J)
AHMADI, A.M. (J)

CITATION:
1994 SCC (2) 615 JT 1993 Supl. 188
1993 SCALE (4) 659

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by VENKATACHALA, J.- Leave is granted. Learned counsel on both sides are heard.

2. Order of Orissa High Court setting aside the order made by the appellant-Bank of India discharging the respondent from its employment has been impugned in this appeal.

+ From the Judgment and Order dated November 5, 1992 of the Orissa High Court in O.J.C. No. 3627 of 1989
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3. In the year 1981, the appellant-Bank ordered a departmental enquiry against the respondent, who was a Clerk-cum-Cashier in its Suliapada Branch in accordance with clause 19.5(j) of the First Bipartite Settlement dated October 19, 1966. The respondent was called upon by the Enquiry Officer to answer the charges of misconduct levelled against him. The respondent, instead of filing a written explanation answering the charges, denied them orally. He did not cross-examine the witnesses of the Bank as and when each of them was examined-in-chief. He wanted the Enquiry Officer to complete the examination-in-chief of all the Bank's witnesses and make them available for cross-examination at once. Since the Enquiry Officer wanted the respondent or his representative to cross-examine the witnesses of the Bank as and when each of them was examined-in-chief, both of them boycotted the inquiry. The copies of the evidence of Bank's witnesses recorded by the Enquiry Officer in the absence of the respondent and his representative, were, however, sent to the respondent and his representative. Thereafter, the Enquiry Officer also sent letters to the respondent and his representative to file his written arguments, if any. Recorded evidence and letters of the Enquiry Officer although received by the respondent and his representative, they did not respond. The Enquiry Officer prepared his report of inquiry, on the basis of evidence recorded by him. In that report he found

the respondent guilty of the charges levelled against him and sent the same to the Disciplinary Authority. The Zonal Manager, Orissa Zone, who was to act as Disciplinary Authority, agreed with the findings of the Enquiry Report. Consequently, he issued a show cause notice to the respondent calling upon him to show cause as to why he should not be dismissed from the Bank's service on the basis of the Inquiry findings which were accepted by him. In the reply sent to this show-cause notice, the respondent requested for exonerating him from the charges levelled against him. But the Disciplinary Authority, which did not accept the reply, ordered discharge of the respondent from appellant-Bank's service with one month's pay and allowances purporting to act under clause 19(5)(j) of the First Bipartite Settlement and made an order accordingly on November 2, 1987. Appeal of the respondent filed against that order before the Appellate Authority was dismissed on February 4, 1989. The Orissa High Court by its order made in a writ petition filed by the respondent, found that the principles of natural justice were violated in the course of holding the disciplinary proceedings against the respondent and set aside the orders of the Disciplinary Authority and the Appellate Authority.

4. Having regard to the arguments addressed by learned counsel on both sides we have gone through the papers and seen that the High Court's view that there was violation of principles of natural justice, in conducting the disciplinary proceedings against the respondent, was wholly unjustified. The records of the disciplinary proceedings show that the respondent had avoided filing of the written explanation for the charges of misconduct levelled against him and also had for no valid reason refused to participate in the disciplinary proceedings. A bank employee who had refused to avail of the

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opportunities provided to him in a disciplinary proceeding of defending himself against the charges of misconduct involving his integrity and dishonesty, cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself of the charges levelled against him and the disciplinary proceeding conducted against him by the Bank employer had resulted in violation of principles of natural justice of fair hearing.

5. Hence we are constrained to hold that the order of the High Court impugned in this appeal is liable to be interfered with and set aside.

6. We, therefore, allow this appeal, set aside the order of the High Court and dismiss the writ petition filed by the respondent in the High Court.

7. However, in the facts of the case, we make no order as to costs.

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