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STATE BANK OF BIKANER AND JAIPUR

v.

AJAY KUMAR GULATI

JULY 16, 1996

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[B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.]

*Service Law :*

*Disciplinary inquiry—To be held afresh—Stage from which to be conducted de novo—Explained.*

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*Constitution of India, 1950 :*

*Article 136—Scope of—Held, it is not advisable to interfere with the order of the High Court even if a view other than that taken by the High Court is also possible.*

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The respondent was subjected to disciplinary inquiry. The inquiry officer found the charges to have been established and gave his report accordingly. The respondent submitted his objections to the said report. The disciplinary authority, in order to give further opportunity to the respondent to put his defence, ordered the inquiry to be conducted afresh and appointed another inquiry officer. The respondent challenged the order of the disciplinary authority in a writ petition before the High Court, which disposed of the matter giving certain directions. Aggrieved, the employer-Bank filed the present appeal.

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Dismissing the appeal, this Court

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**HELD : 1.** The High Court was right in holding that the enquiry should not be from the very beginning; the Department's evidence was already completed and some evidence of the employee was also recorded; the new enquiry officer should proceed to give opportunity to the employee to produce his documentary and oral evidence and also consider the question of recalling any witness for further cross-examination by the employee and then proceed to decide the matter afresh. The High Court has given reasons for the direction it has given, in suppression of the orders of the notified disciplinary authority. It cannot be said that the view taken by the High Court is not a possible view. It is not advisable under

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Article 136 of the Constitution to interfere with the order of the High Court, even if another view of the matter is possible. [646-A-F] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9226 of 1996.

From the Judgment and Order dated. 6.9.95 of the Delhi High Court in C.W.P. No. 405 of 1995. B

A.K. Sikri and Ms. Madhu Sikri for the Appellant.

Manoj Goel and Ms. Abha R. Sharma for the Respondent. C

The Judgment of the Court was delivered by

**B.P. JEEVAN REDDY, J.** Leave granted. Heard the counsel for the parties.

This appeal is preferred by th employer, State Bank of Bikaner and Jaipur against the judgment and order of the Delhi High Court giving certain directions with respect to the scope of disciplinary enquiry to be conducted against the respondent- employee. D

A disciplinary enquiry was held against the respondent with respect to certain grave charges. The enquiry officer reported that the charges were established. Respondent submitted his comments and objections to the report of the enquiry officer. After considering the report and the objections, the disciplinary authority passed the following order on April 29, 1994. It is indeed a communication addressed to the respondent: E

"With reference to your representation dated the 16th December, 1993, with regard to proceedings and findings of the Enquiry Officer constituted earlier to go into the charges against you, we have carefully gone into the points raised by you in your representation and having applied our mind dispassionately have observed that though his findings are sufficient for taking a view in the matter, to expel every iota of doubt and to provide every opportunity to you to put your defence, another opportunity in the name of justice may be given to you to make your position clear. F G

I have, therefore, issued orders for *conducting the enquiry against* H

A *you afresh* and have appointed Shri S.K. Supekar, Branch Manager, D.N. Market, Ahmedabad as Enquiry Officer *to conduct* the necessary departmental enquiry. The notice dated 29.4.1994 issued by me in this respect is enclosed.

B The date, time and place of the enquiry will be advised to you by the Enquiry Officer. You are advised to remain available to him as and when required. Please also finalise the selection of your representative for defending your case, before the commencement of the proceedings in case you wish to engage one.

C Please acknowledge receipt.

Yours faithfully,

sd/-

C.K. MISHRA

D Notified Disciplinary Authority."

On the same day, the very same authority addressed another communication to Sri S.K. Supekar, Branch Manager, State Bank of Bikaner and Jaipur, D.N. Market, Ahmedabad intimating that he has been appointed the enquiry officer and asking him to commence the enquiry on  
E May 26, 1994 and complete the same within the period prescribed. The communication reads as follows :

F "The abovenamed was issued charge sheet no. DGM/ DPS/159 dated 24.9.1991 for committing certain acts of misconduct while posted as ALPMO at Amar Colony, New Delhi branch. Following the denial of charge by Shri Gulati, matter was got enquired into. Enquiry Officer has since submitted the Enquiry report. Keeping in view the representation made by Shri Gulati and with a view to give him full opportunity to put up his defences, it has been decided by me to *get the matter enquired afresh* and have appointed you as  
G Enquiry Officer. I forward herewith the copies of the following documents for your perusal and necessary action.

1. Note dated 29.4.94 issued by me appointing you as Enquiry Officer.

H 2. Copy of Order dated 29.4.1994, appointing Shri G.S. Talwar as

Bank's Representative. A

3. Copy of Charge Sheet no . DGM/DPS/159 dated 24/09/1991 issued to Shri A.K. Gulati.

4. Time schedule of the enquiry.

5. Copy of letter no. DGM/DPS/ dated 29.4.1994 addressed to Shri A.K. Gulati. B

You are advised *to commence the enquiry* on 26.5.1994 as mentioned in the schedule of enquiry. You are further advised to complete the enquiry within the given schedule by holding the same on day to day basis without break. Please note that your report must reach me positively within the stipulated period as detailed in the enclosed time schedule. C

Yours faithfully,

sd/-

(C.K. Mishra)

Notified Disciplinary Authority" D

The respondent questioned the aforesaid proceedings/order dated April 29, 1994 by way of a writ petition (C.W. No. 405 of 1995) in the Delhi High Court. Though several grounds were raised in the writ petition, the only question urged before the High Court, as it appears from the order of the High Court was, from which stage of proceeding should the *de-novo* enquiry commence. It would be appropriate to extract the order of the High Court in its entirety: E

"This writ petition can be disposed of at this stage as now the only question addressed before us is as to from what state of the proceedings, the *de novo* enquiry should commence. A new enquiry officer has been appointed vide impugned order and impugned order has ordered *de novo* enquiry which, according to our view, was not justified. The reason given for holding fresh enquiry is that petitioner's grievance that he had not been given proper opportunity for defending his case by leading documentary and oral evidence has been accepted by the department and for affording reasonable opportunity of hearing to the petitioner for giving his full defence, *de novo* enquiry has been ordered. F  
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A We are of the view that the enquiry should not be from the very beginning. The Department's evidence has already been completed and some evidence of the petitioner has also been recorded. The New Enquiry Officer should now proceed to give opportunity to the petitioner to produce his documentary and oral evidence and also consider the question of recalling any witness for further cross-examination by the petitioner and then proceed to decide the matter afresh.

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The petitioner be given his dues according to the rules.

C With these directions, this writ petition is disposed of. Parties are left to bear their own costs. The application is also disposed of."

D In this appeal, it is contended by the appellant-Bank that there is no warrant for the High Court to direct that the enquiry to be conducted hereinafter should be confined to the recording of the evidence to be adduced by the respondent alone. The learned counsel for the appellant contends that no reasons are given in support of the direction made by the High Court.

E We are not prepared to agree. The High Court has given reasons for the direction it has given, in superession of the orders of the notified authority. We are unable to say that the view taken by the High Court is not a possible view. Acting under Article 136, we do not think it advisable to interfere with the order of the High Court, even if we find that another view of the matter is possible.

F The appeal is dismissed accordingly. No costs.

R.P.

Appeal dismissed.