

(2010) 06 GAU CK 0031**Gauhati High Court****Case No:** W.A. No. 135 of 2008

Nagendra Das

APPELLANT

Vs

United Bank of India and Others

RESPONDENT

Date of Decision: June 8, 2010**Acts Referred:**

- United Bank of India Officer Employees (Discipline and Appeal) Regulations, 1976 - Regulation 4(11), 4(15), 4(18), 4(2), 4(21)

Citation: (2010) 4 LLJ 691**Hon'ble Judges:** Ranjan Gogoi, J; Hrishikesh Roy, J**Bench:** Division Bench**Advocate:** I. Choudhury, P.N. Goswami and R.M. Deka, for the Appellant; S. Dutta, M. Choudhury, D. Baruah and D. Chakraborty, for the Respondent**Final Decision:** Dismissed**Judgement**

Ranjan Gogoi, J.

This appeal is directed against the judgment and order dated March 17, 2008 passed by a learned Single Judge of this Court in a proceeding registered and numbered as W.P. (C) 2828/2005. By the aforesaid judgment and order the writ petition, filed by the Appellant challenging his dismissal from service made by order dated September 17, 2004 has been dismissed. Aggrieved, this appeal has been filed.

2. The facts that would be relevant for an adjudication of the, issue that have arisen in this appeal may, briefly, be noted below.

At the relevant point of time the Appellant-writ Petitioner was working in the Cachar Regional Office of the United Bank of India (hereinafter referred to as the Respondent-Bank). On August 23, 2002 he was placed under suspension for alleged misconduct while serving as the Branch Manager of the Byrnihat Branch from June 28, 1993 to June 29, 1999 and the Madhusoulmari Branch with effect from July 1,

1999 to February 3, 2001. While the Appellant was under suspension a charge memo dated September 12, 2003 was served on him requiring him to furnish his reply to the two charges that were brought against him. On the same date by a separate communication a list of documents on the basis of which the charges leveled were proposed to be established was also furnished to the Appellant. On receipt of the aforesaid charge memo the Appellant by a communication dated October 6, 2003 prayed for one months" time to file his reply on the ground that he was ill. Time, as prayed for, was granted. The Appellant on November 10, 2003 again filed an application seeking further time. The disciplinary authority, however, by order dated December 2, 2003 appointed an Enquiry Officer to enquire into the charges leveled against the Appellant. The said fact was intimated to the Appellant along with the further intimation of the appointment of a presenting officer to present the case on behalf of the department. On receipt of the said communication the Appellant, by his communication dated December 18, 2003, informed the disciplinary authority of his decision to avail of the assistance of one Debabrata Banerjee as the defence assistant. Before the enquiry officer the Appellant submitted a written communication dated January 13, 2004, inter alia, questioning the legality of the disciplinary proceeding initiated against him on various grounds, details of which will be noticed later. Thereafter, it appears that the enquiry against the Appellant was held in the course of which four witnesses were examined by the management in support of the charges and a huge number of documents, exceeding 500, were brought on the record of the disciplinary proceeding. The witnesses examined in support of the charges were cross-examined by the Appellant or his defence assistant. However, no evidence was led by the Appellant in the said proceeding.

3. Thereafter on June 15, 2004 a written brief on behalf of the management of the Respondent Bank was filed before the enquiry officer which was followed by the written brief of the Appellant which was filed on July 2, 2004. On the basis of the records of the proceeding, the enquiry officer submitted a report on July 29, 2004 holding the charges leveled against the Appellant to be proved. The disciplinary authority forwarded a copy of the said report to the Appellant on August 3, 2004 seeking the comments of the Appellant on the findings of the enquiry officer. The Appellant submitted a representation dated August 20, 2004 stating that he has nothing to submit beyond what was already stated by him in his written brief filed on July 2, 2004. Thereafter, the impugned order dated September 17, 2004 was passed by the disciplinary authority dismissing the Appellant from service. Aggrieved, a departmental appeal was filed by the Appellant which was also dismissed on February 1, 2005. It is in these circumstances that the writ petition out of which this appeal has arisen was instituted by the Appellant. The decision in the said writ petition, as already noticed, being adverse to the Appellant the present appeal has been filed.

4. At this stage, the statement of allegations in support of the charges leveled against the Appellant which would give a vivid description of the charges leveled against him may be extracted.

A(i) You had passed for payment withdrawals/debits on 65 occasions aggregating Rs. 1,31,236.00 in Savings Bank Account No. 1750 standing in your name and on 13 occasions aggregating Rs. 32,700/- in Savings Bank Account No. 1946 standing in the name of Smt. Pranita Das jointly with you, without affecting actual debits in the same accounts as per Annexure-I and thereby derived financial benefit for your personal gain. Corresponding credits are also mentioned in the said Annexures.

(ii) You had made fictitious credits on 10 occasions aggregating Rs. 33,753/- in the Savings Bank Account No. 1750 standing in your name and on 13 occasions aggregating Rs. 38,000/- in the name of Smt. Pranita Das jointly with you, on different dates as mentioned in Annexure-II and thereby derived financial benefit for your personal gain and also allowed undue financial benefit to Smt. Pranita Das for Rs. 500/- on January 22, 1997 against fake credit of Rs. 500/- on January 3, 1997.

(iii) On December 6, 1994, while the opening balance in your S.B. A/c No. 1750 was Rs. 985.59p you had posted one withdrawal of Rs. 500/- on the said account. At the time of drawing balance against such debit you deliberately overcasted the balance by Rs. 1,000/- (actual balance Rs. 485/59p written as Rs. 1485/59p) and thereby derived financial benefit to the tune of Rs. 1,000/- for your personal gain.

(iv) On February 8, 1999 you deliberately posted one credit voucher of Rs. 5,171.00 prepared by you and signed by you jointly with another officer, in the Savings Bank A/c No. 1946, standing in your name jointly with Smt. Pranita Das, as Rs. 15,171.00 and thereby inflated the credit balance of the said account by Rs. 10,000/-. Again on February 22, 1999, you deliberately posted one credit voucher of Rs. 3,100.00, prepared by you and signed by you jointly with another officer, in the Savings Bank A/c No. 1946 standing in your name jointly with Smt. Pranita Das as Rs. 13,100.00 and thereby inflated the credit balance of the said account by Rs. 10,000.00. Thus, by your such fraudulent acts you had derived financial benefit to the tune of Rs. 20,000.00 for your personal gain.

(v) Since the above sums, by which the balances in the aforesaid two accounts bearing No. 1750 and 1946 were inflated were withdrawn from time to time by you, except on January 22, 1997 for Rs. 600/- which was allowed by you to be withdrawn by Smt. Pranita Das. The said two accounts show debit balance of Rs. 1,65,989/- and Rs. 90,700/- respectively after reconstruction of the said accounts by giving effect of all genuine debit and credit transactions.

(i) On August 7, 1999, you had, at the time of releasing one withdrawal form for Rs. 300/- from Savings Bank Account No. 1439 standing in your name maintained with Madhusoulmari Branch, deliberately allowed overcasting of balance of the account by Rs. 10,000.00 (written as Rs. 11,121,24 in place of Rs. 1,121,24).

(ii) You had made fictitious aggregating Rs. 14,000.00 in the Saving Bank Account No. 1439 standing in your name on the following dates:

Date of Credit	Amount(Rs.)
August 17, 1999	1,000.00
December 28, 1999	4,500.00
August 29, 2000	4,000.00
December 18, 1999	3,000.00
February 9, 2000	15,000.00

(iii) You had passed for payment withdrawals/debits on 14 occasions aggregating Rs. 91,447.00 in the Savings Bank A/c No. 1439 standing in your name as given in Annexure-III without effecting actual debits, in the said account and thereby derived financial benefit for your personal gain. The related vouchers pertaining to September 15, 1999 and May 24, 2000 were prepared and signed by you and singly. Corresponding credits against the debit vouchers are also mentioned in the said Annexures.

(iv) On February 7, 2000 you had credited Rs. 30,000.00 in the ledger sheet of Savings Bank A/c No. 1439 standing in your name against cash receipt voucher of Rs. 3,000/-as of February 7, 2000 and thereby made credit of Rs. 27,000/-.

(v) On September 21, 2000, you had allowed fake credit of Rs. 30,000/- in Savings Bank A/c No. 1611 standing in your name jointly with your wife Smt. Geetanjali Das maintained with the said Branch. The amount of such fake credit had been withdrawn from the said Savings Bank Account vide withdrawal form dated September 23, 2000 for Rs. 30,000/- signed by Smt. Geetanjali Das, your wife, which was passed for payment by you.

(vi) To reconcile the differences in the Savings Bank A/cs balances, which would have arisen due to the frauds committed by you to the tune of Rs. 1,72,447/- as mentioned in para-(i) to para - (v) above, the figures of Savings Bank A/c in General Ledger were inflated by you on 10(ten) occasions aggregating Rs. 1,49,047/- as stated below through deliberate casting mistake.

Date of enhancement	Enhancement
August 5, 1999	40,00450.42
September 1, 1999	40,00500.68
September 13, 1999	40,00300.88
December 18, 1999	50,08000.23
February 7, 2000	40,80300.05
April 15, 2000	50,00300.59

June 12, 2000	53,82,380.24
August 26, 2000	52,00,406.55
September 16, 2000	50,00,080.86
January 13, 2001	62,80,809.95

Besides the above, on June 6, 2000, you had deliberately entered on Transfer credit voucher of Rs. 23400/- in Savings Bank Sub-Cash Book showing credit to Savings Bank A/c No. 1575 instead of actual credit to RIP A/c No. 75/2000 which resulted in increase in Savings Bank A/c balance by Rs. 23,400/- and decrease in balance of RIP A/c in the General Ledger by the same amount.

(vii) In order to tally the difference of Rs. 1,72,447/- in the General Ledger caused by deliberate increase in the balance in Savings Bank A/c Head, you had reduced the RIP Account figure in the General Ledger on 11 occasions by Rs. 1,67,447/- and decreased the Interest Payable on RIP figure by Rs. 5000/- on 11 occasions as per Annexure-IV.

(viii) In order to match the difference of Rs. 1,67,447/- in the RIP Account as mentioned in Para (vii) above and to reconcile the RIP Account balance with the figure in General Ledger, you have deliberately enhanced the interest payable on RIP vouchers by sums aggregating Rs. 1,57,447/- on the following 5 occasions:

Debit of Greater Amount	
August 18, 1999	10,000.00
September 21, 1999	2,00,010.00
March 4, 2000	5,50,648.00
June 17, 2000	3,54,560.00
September 21, 2000	5,50,538.00

Besides the above, you had deliberately inflated the figure on Interest payable on RIP A/c in General Ledger on May 25, 2000 by Rs. 10,000/- (actual debit was Rs. 2,702/-but debited in General ledger as Rs. 12,702/-).

(ix) On October 24, 2,000, you had allowed fake credit of Rs. 10,000/- in Savings Bank Account No. 1439 standing in your name with the branch to the debit of ICOC (Instant Credit) without any consideration as is evident from OCC Register of the relevant period of the Bank. Related debit and credit vouchers were prepared and signed by you singly and thus derived financial benefit of Rs. 10,000/- for your personal gain.

(x) On November 14, 2000, you made excess debit of Rs. 10,000/- (Rs. 95,000/- in place of Rs. 85,000/-) in P/L Interest on RIP Account to liquidate the fake debit of Rs. 10,000/- in ICOC (Instant Credit) Account made by you on October 24, 2000.

(xi) Since the sums by which the balances in the Savings Bank Account No. 1439 and 1611 were inflated, were withdrawn from time-to-time, those two accounts show debit balances of Rs. 1,52,447/- and Rs. 30,000/-respectively on reconstruction by giving effect of all genuine debit and credit transactions in those two Savings Bank Accounts bearing No. 1439 standing in your: name and 1611 standing in your name jointly with Smt. Geetanjali Das, your wife.

Thus by your such irregular acts you had misappropriated Bank's fund to the tune of. Rs. 4,39,136/- exposing the Bank to a financial loss to the tune of Rs. 4,39,136/-plus applicable interest thereon.

5. Specific notice of the communication dated January 13, 2004 filed by the Appellant before the enquiry officer may also be had at this stage in view of the arguments that have been advanced at the hearing. In the said communication dated January 13, 2004, the Appellant had contended that the disciplinary proceeding against him had been initiated, *inter alia*, for *mala fide* and oblique purposes and also that reasonable opportunity for defence had been denied to him at the stage of framing of the charge. The Appellant had contended that the charges were framed on the basis of a report of an "outside, agency/investigating officers" and further that the disciplinary authority was having sufficient prior knowledge of the "particular matter" which may lead to a biased conclusion.

6. In the written brief dated July 2, 2004 submitted by the Appellant before the enquiry officer, apart from questioning the relevance of the various documents mentioned therein to the determination required to be made in the disciplinary proceeding, the Appellant had also contended that the enquiry officer had not allowed the defence assistant to be present on the first day of the enquiry which was held on December 30, 2003. Furthermore, in the said written brief it was also contended that no opportunity was given to the Appellant to produce his list of documents and witnesses. More specifically, the Appellant had contended that in the course of the enquiry proceeding the Appellant had sought for permission to go to the Madhusoumari Branch of the Bank to ascertain the genuineness of certain documents, certified copies of which were produced in the course of the enquiry but the said prayer was turned down by the enquiry officer. Additionally it was contended that many of the documents, details of which are available in the written brief produced in the course of the enquiry proceedings were photocopies and not the original documents. Besides some of such documents did not tally with the originals thereof.

7. Another significant fact that must be taken note of at this stage is that the Appellant at no stage of the proceedings against him had submitted his written statement denying the charges. In the communication dated January 13, 2004 addressed to the enquiry officer the charges levelled were staged to be *mala fide* and for oblique purposes whereas in the written brief the stand taken by the Appellant had been otherwise, details of which have already been noted. It would

also be necessary to notice, at this stage, that before the learned Single Judge the Appellant had advanced one single plea in support of the case sought to be made out, namely, that only certified copies of the documents relied upon were exhibited before the enquiry officer and some of such documents did not match with the originals.

8. Against the aforesaid backdrop the submissions now advanced before us by the learned Counsel for the Appellant, Sri I. Choudhury, may be taken note of. Sri Choudhury has submitted that the charges levelled against the Appellant by the charge memo dated, September 12, 2003 are vague and that prior to submission of his reply inspection of the documents relied upon in support of the charges was not allowed to the Appellant. In fact, according to Sri Choudhury, the prayer for extension of time, made by the Appellant by his letter dated November 10, 2003 was for the aforesaid purpose i.e. to inspect the relevant documents. The disciplinary authority having refused the said prayer for extension of time and instead having appointed the enquiry officer, the Petitioner was denied his right of inspection of the relevant documents. Sri Choudhury has also contended that the charges levelled against the Appellant are based on the reports of investigation carried out by some outside agencies. Copies of the said reports had not been furnished to the Appellant thereby affecting his right of a fair opportunity to defend himself. It is the further contention of Sri Choudhury, learned Counsel for the Appellant, that the enquiry officer had personal knowledge of the subject matter of the enquiry for which reason there was a real likelihood of bias. Continuing, Sri Choudhury has submitted that the conduct of the proceeding particularly the: refusal of the enquiry officer to allow the defence assistant of the Appellant to be present on the first day of the enquiry i.e. December 30, 2003 and the manner in which additional documents were received in the course of the enquiry would fortify the plea of bias raised against the enquiry officer. In this regard, Sri Choudhury has further submitted that in the last stages of the enquiry, additional documents were brought on record by the presenting officer and the Appellant was given only 15 minutes time to inspect the said documents which action of the enquiry officer is not in consonance with the requirement of a reasonable opportunity of defence. It is on the aforesaid broad basis that the punishment imposed on the Appellant has been sought to be assailed in the present appeal.

9. In reply, Sri S. Dutta, learned Counsel appearing for the Respondent Bank, has submitted that a reading of the charge-sheet and the statement of allegations in support of the charges leveled would leave no room for doubt that the contention with regard to vagueness of the charges brought against the Appellant are wholly unfounded. Sri Dutta, by referring to the provisions of Rule 6 of the United Bank of India Officer Employees" (Discipline and Appeal) Regulations, 1976, has submitted that the stage for inspection of documents by a charged official would arise after the appointment of the enquiry officer and not at the stage of submission of reply to the show cause notice. Placing the record of proceedings held against the Appellant, Sri

Dutta has submitted that the Appellant had inspected all the documents relied upon in support of the charges and had also signed the necessary certificate(s) in this regard. The contention advanced, therefore, is not correct on facts, according to Sri Dutta. Insofar as the investigation carried out by the outside agency is concerned, Sri Dutta has submitted that the essential details in this regard are awfully lacking in the pleadings contained in the writ petition. In any case, the charges being self-sufficient and duly supported by relevant documents the aforesaid ground now advanced cannot be a basis to find any error with the enquiry held. The allegation of bias against the enquiry officer has been denied by Sri Dutta by pointing out that there are no pleadings in this regard whatsoever in the writ petition and, in any case, the Appellant at no point of time had sought for a change of the enquiry officer. Referring to the record of the proceeding placed before the Court, Sri Dutta has submitted that some additional documents were introduced by the presenting officer on May 11, 2004 pursuant to the leave obtained from the enquiry officer at the very outset of the proceeding. Sri Dutta has also pointed out that it has been recorded by the enquiry officer in the proceeding book that the said documents were inspected by the Appellant and who had also voluntarily signed the necessary inspection certificate. It has also been pointed out by Sri Dutta that no objection in this regard was taken by the Appellant at any stage of the disciplinary proceeding.

10. In the present case it has been already noticed by us that the Appellant/writ Petitioner had projected one single issue before the learned Single Judge though in the present appeal he seeks to enlarge the same by urging additional pleas. An appeal being a continuation of the writ proceeding, so long as the grounds sought to be urged in the appeal are contained in the pleadings made in the writ petition there should be no serious difficulty for the appellate Court to consider the said additional grounds particularly in a case where an extreme penalty of dismissal has been inflicted on the aggrieved person. This is the spirit and perspective in which we have proceeded to consider the somewhat enlarged grounds urged in the appeal before us as compared to the proceedings before the learned Single Judge.

11. The first ground urged i.e. that the charges are vague would require a mention from the Court only for an outright rejection of the same. The statement of allegations in support of the charges which has been elaborately extracted in the present order would leave no room for doubt that the aforesaid ground urged is wholly without any merit and/or substance and that the charges leveled against the Appellant have been indicated with all clarity and precision and all material particulars in support of the charges had been disclosed to the charge-sheeted officer.

12. A consideration of the second ground urged i.e. denial of the right of inspection of the documents relied upon in support of the charges would require the Court to extract Regulation 6 of the United Bank of India Officer Employees" (Discipline and Appeal) Regulations, 1976.

6. Procedure for imposing major penalties:

(1) No order imposing any of the major penalties specified in Clauses (e), (f), (g) and (h) of regulation 4 shall be made except after an inquiry is held in accordance with this regulation.

(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an officer employee, it may itself enquire into, or appoint any other public servant (hereinafter referred as the inquiring authority) to inquire into the true thereof.

Explanation- When the Disciplinary Authority itself holds the inquiry any reference to sub-regulation (8) to sub-regulation (21) to the inquiring authority shall be construed as a reference to Disciplinary Authority.

(3) Where it is proposed to hold an inquiry, the Disciplinary Authority shall frame definite and distinct charges on the basis of the allegations against the officer employee and the articles of charge, together with a statement of the allegations on which they are based, shall be communicated in writing to the officer employee, who shall be required to submit within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), or within such extended time as may be granted by the said Authority, a written statement of his defence.

(4) On receipt of the written statement of the officer employee, or if no such statement is received within the time specified, an enquiry may be held by the Disciplinary Authority itself, or if it considers it necessary so to do appoint under sub-regulation (2) an Inquiring Authority for the purpose:

Provided that it may not be necessary to hold an inquiry in respect of the articles of charge admitted by the officer employee in his written statement but shall be necessary to record its findings on each such charge.

(5) The Disciplinary Authority shall, where it is not the inquiring authority, forward to the inquiring authority;

(i) a copy of the articles of charges and statements of imputations of misconduct or misbehaviour.

(ii) a copy of the written statement of defence, if any, submitted by the officer employee;

(iii) a list of documents by which and list of witnesses by whom the articles of charge are proposed to be substantiated;

(iv) a copy of statements of the witnesses, if any;

(v) evidence proving the delivery of articles of charge under sub-regulation (3);

(vi) a copy of the order appointing the "Presenting Officer" in terms of sub-regulation (6).

(6) Where the Disciplinary Authority itself enquires or appoints an inquiring authority for holding an inquiry, it may, by an order, appoint a public servant to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(7) The officer employee may take the assistance of any other officer employee but may not engage a legal practitioner for the purpose.

(8)(a) The inquiring authority shall be given notice in writing specifying the day on which the officer employee shall appear in person before the inquiring authority.

(b) On the date fixed by the inquiring authority, the officer employee shall appear before the inquiring authority at the time, place and date specified in the notice.

(c) The inquiring authority shall ask the officer employee whether he pleads guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the officer employee concerned thereon.

(d) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the officer employee concerned pleads guilty.

(9) If the officer employee does not plead guilty, the inquiring authority shall adjourn the case to a later date not exceeding 30 days or within such extended time as may be granted by the inquiring authority.

(10)(a) The inquiring authority shall, where the officer employee does not admit all or any of the articles of charge, furnish to such officer employee a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be proved.

(b) The inquiring authority shall also record an order that the officer employee may for the purpose of preparing his defence-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents listed;

(ii) submit a list of documents and witnesses that he wants for the inquiry;

(iii) be supplied with copies of statements of witnesses, if any, recorded earlier and the inquiring authority shall furnish such copies not later than three days before the commencement of the examination of the witnesses by the inquiring authority;

(iv) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery or production of the documents referred to in item (ii).

NOTE: The relevancy of the documents and the examination of the witnesses referred to in item (ii) shall be given by the officer employee concerned.

(11) The inquiring authority shall, on receipt of the notice for the discovery or production of the documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept with a requisition for the production of the documents on such date as may be specified.

(12) On the date of receipt of the requisition under sub-regulation (11), the authority having the custody or possession of the requisitioned documents, shall arrange to produce the same before the inquiring authority on the date, place and time specified in the requisition:

Provided that the authority having the custody or possession of the requisitioned documents may claim privilege if the production of such documents will be against the public interest or the interest of the bank. In that event, it shall inform the inquiring authority accordingly.

(13) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses produced by the Presenting Officer shall be examined by the Presenting Officer and may be cross-examined by or on behalf of the officer employee. The Presenting Officer shall be entitled to re-examine his witnesses on any points on which they have been cross-examined, but not on a new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(14) Before the close of the case, in support of the charges, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the charge-sheet or may itself call for new evidence or recall or re-examine any witness. In such case the officer employee shall be given opportunity to inspect the documentary evidence before it is taken on record, or to cross-examine a witness, who has been so summoned. The inquiring authority may also allow the officer employee to produce new evidence, if it is of opinion that the production of such evidence is necessary in the interests of justice.

(15) When the case in support of the charges is closed, the officer employee may be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the officer employee shall be required to sign the record. In either case a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(16) The evidence on behalf of the officer employee shall then be produced. The officer employee may examine himself in his own behalf, if he so prefers. The witnesses produced by the officer employee shall then be examined by the officer employee and may be cross-examined by the Presenting Officer. The officer

employee shall be entitled to re-examine any of his witnesses on any points on which they have been cross-examined, but not on any new matter without the leave of the inquiring authority.

(17) The inquiring authority may, after the officer employee closes his evidence, and shall, if the officer employee has not got himself examined, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the officer employee to explain any circumstances appearing in the evidence against him.

(18) After the completion of the production of the evidence, the officer, employee and the Presenting Officer may file written briefs of their respective cases within 15 days of the date of completion of the production of evidence.

(19) If the officer employee does not submit the written statement of defence referred to in sub-regulation (3) on or before the date specified for the purpose or does not appear in person, or through the assisting officer or otherwise fails or refused to comply with any of the provisions of these regulations, the inquiring authority may hold the inquiry ex parte.

(20) Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor and partly recorded by itself:

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as herein before provided.

(21)(i) On the conclusion of the inquiry the inquiring authority shall prepare a report which shall contain the following:

- (a) a gist of the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) a gist of the defence of the officer employee in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and the reasons therefor.

Explanation- If, in the opinion of the inquiring authority, the proceedings of the inquiry establish any article of charge, different from the original article of charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the officer employee has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority, where it is not itself the Disciplinary Authority, shall forward to the Disciplinary Authority the records of inquiry which shall include--

- (a) the report of the inquiry prepared by it under Clause (i);
- (b) the written statement of defence, if any, submitted by the officer employee referred to in sub-regulation (15);
- (c) the oral and documentary evidence produced in the course of the inquiry.
- (d) written briefs referred to in sub-regulation (18), if any; and
- (e) the orders, if any, made by the Disciplinary Authority and the inquiring authority in regard to the inquiry.

13. From Regulation 6(1)(b) it is clear and; evident that an opportunity of inspection of the relevant documents is required to be given by the inquiring authority. In the present case in the minutes of the proceedings of enquiry held on January 13, 2004 it has been clearly recorded that inspection of the documents originally filed Serial No. 1 to 417 (pertaining to Barnihat Branch and Sl. No. 1 to 126 (pertaining to Madhusoulmari Branch) as well as the additional documents sought to be introduced on January 13, 2004 were duly inspected by the Appellant and certificate of inspection was signed by him. If this is what is revealed by the records in original placed before the Court the contentions with regard to denial of opportunity to inspect the documents has to be held to be entirely untenable.

14. The third ground urged on behalf of the Appellant, viz., that the investigation carried out by some outside agencies had formed the basis of the charge-sheet is not the pleaded case of the Appellant. No material particulars in support of the said plea has also been pleaded by the Appellant. A preliminary investigation by some other agency can very well form the basis of a charge-sheet initiating a departmental/disciplinary proceeding. So long as the charges are sought to be proved by documents to which the charge-sheeted officer is given a free access and the report of earlier investigation is not relied upon the charge-sheeted officer cannot have any complaint. Only when the conclusion of guilt is sought to be arrived at by relying on the report of such earlier investigation there may be a legitimate grievance in this regard. In the present case a consideration of the elaborate enquiry report leaves no room for doubt that the findings of the enquiry officer were independently arrived at by the enquiry officer on the basis of the documents and materials proved and established in the courses of the enquiry proceeding.

15. The plea with regard to likelihood of bias on the part of the enquiry officer is not the pleaded case of the Appellant in the writ petition. Except for making a vague and omnibus statement that the enquiry officer had knowledge of the matter and there was possibility of a biased conclusion made in the letter dated January 13, 2004, there is no other reference so far, as the plea of bias is concerned. Is the Court to understand that a person who had prior knowledge of the subject matter of enquiry is inherently incapacitated from acting as the enquiry officer? The answer to the above must be in the negative. That apart, the argument advanced at the hearing by the learned Counsel for the Appellant that the enquiry officer had demonstrated a likelihood of bias from the very outset i.e. on December 30, 2003 by refusing to allow the defence assistant of the Appellant to participate in the enquiry and that such bias continued till May 13, 004 when the enquiry officer allowed 15 minutes time to the Appellant to examine the additional documents can hardly be accepted. No request for a change of the enquiry officer was made by the Appellant at any stage. Rather, it appears from the materials on record that the Appellant freely participated at all stages of the enquiry held against him. Specifically in this regard it must be noted that the stand taken by the Appellant that the enquiry officer did not permit his defence assistant to attend the first day of the enquiry has been answered by the enquiry officer himself in the order passed on the said date by recording that as the date of enquiry was fixed well before the date of appointment of the defence assistant, no notice could be issued to the said defence assistant.

16. Insofar as the additional documents are concerned, while it is correct that such documents were introduced it must also be taken note of that there was a prior leave already granted by the enquiry officer to the presenting officer to introduce additional documents, if so required. When the said documents were introduced the enquiry officer adjourned the proceeding for a little while and mentioned that the proceeding would remain adjourned for 15 minutes which should be sufficient time to enable the Appellant to inspect the documents which are limited in number (12). For all the aforesaid reasons the Court is inclined to take the view that the plea with regard to bias or likelihood of bias on the part of the enquiry officer would have no firm legs to stand.

17. The point urged before the learned Single Judge that the documents relied upon in the disciplinary proceeding were more certified copies and not the original document and further that some of such certified copies did not tally with the originals had surprisingly not been urged before us at the hearing of the appeal. Nevertheless we have considered the aforesaid aspect of the matter also and in this regard we respectfully concur with the view taken by the learned Single Judge to hold that the Bankers" Books Evidence Act, 1891 would have no application to a disciplinary proceeding under the Regulations of the Bank in force. In this regard, the learned Single Judge also recorded that the difference in the certified copies and the originals as alleged by the Appellant is in respect of an endorsement in the certified copies to the following effect-"Certified to be true copy and signed for and

on behalf of the Bank". Naturally, the said endorsement could not have been there in the original documents: Our perusal of the records of the enquiry proceeding as placed before us, therefore, leaves us satisfied that the said proceeding was conducted by giving full opportunity to the Appellant and the finding recorded by the learned Single Judge to the same effect is perfectly justified.

18. For all the aforesaid reasons we find no merit whatsoever in this appeal. We accordingly dismiss the appeal but having regard to the facts and circumstances of the case we leave the parties to bear their own costs.