

(2010) 04 PAT CK 0236

Patna High Court

Case No: LPA No. 893 of 2009

Chandra Prabha Srivastava and
Others

APPELLANT

Vs

The State Bank of India and
Others

RESPONDENT

Date of Decision: April 22, 2010

Final Decision: Dismissed

Judgement

Mihir Kumar Jha, J.

Heard learned Counsel for the Appellants.

2. The Appellants, being the heirs and legal representative of one Late Ajay Kumar Srivastava, an employee of the State Bank of India (hereinafter referred to as "the Bank"), have preferred this appeal against the order dated 23.4.2009 passed by the learned Single Judge in CWJC No. 12561 of 2002 whereby and whereunder the writ application filed by Late Ajay Kumar Srivastava (hereinafter referred to as "the original writ Petitioner") came to be dismissed.

3. Be it noted, in the said writ petition the original writ Petitioner had assailed his order of punishment of dismissal from service of the Bank and its affirmance by the appellate authority vide impugned orders dated 8.1.2001 and 25.6.2002 respectively.

4. Mr. Mukeshwar Dayal, learned Counsel appearing on behalf of the Appellants, has submitted that the right to sue to the Appellants, being the heirs and legal representatives of the original writ Petitioner still survives at least in respect of the monetary relief which may become available to the Appellants in the event the aforesaid order of punishment against the original writ Petitioner assailed in the writ application is set aside. He has in this background proceeded to assail the impugned order of the learned Single Judge on merits by raising the following plea, namely:-

(a) The Bank did not supply the relevant documents as demanded by the original writ Petitioner as a result whereof he could not defend himself properly in the departmental proceeding.

(b) The Bank also did not conduct ? and complete the departmental enquiry though ex-parte in a fair and objective manner and the charges were proved even without leading of any oral evidence and/or proving the documents.

(c) The order of punishment by way of dismissal of service of the original writ Petitioner was also unsustainable because he had already retired from the service severing relationship with the employer and the extension of the service given by the Bank only for the purposes of completing the enquiry was equally vitiated, inasmuch as, the original writ Petitioner was not paid a farthing by way of subsistence allowance.

Counsel in this context had also placed reliance on the judgment of the Apex Court in the case of [Roop Singh Negi Vs. Punjab National Bank and Others](#), and [Kumar Upendra Singh Parimar Vs. B.S. Co-Opt. Land Dev Bank Ltd. and Others](#),

5. In order to appreciate the afore mentioned submissions it would thus be necessary to have a recount of some of the basic facts which, of course, have also been noticed in the impugned order of learned Single Judge. The original writ Petitioner was a permanent employee of the Bank since 1958 and was placed under suspension by an order dated 12.5.1983 in contemplation of a departmental proceeding. Since the allegations against the original writ Petitioner were related to embezzlement and misappropriation of funds of the Bank, a substantive criminal case was also instituted by the C.B.I., against him on 23.6.1983. The Bank thereafter had also called for explanation from the original writ Petitioner vide its letter dated 16.9.1983 but did not submit such explanation by taking a plea of pendency of investigation in the criminal case. In the criminal case, the C.B.I., had ultimately filed charge-sheet on 31.12.1984 but even thereafter the original writ Petitioner did not submit his comments by now taking a ground that his defence may be prejudiced in the pending trial. In such circumstances as the original writ Petitioner was going to superannuate from the service of the Bank w.e.f. 16.11.1997, the Bank had issued a memo of charge on 9.9.1997 and additional memo of charge on 3.11.1997 directing him to file his written statement of defence. The original writ Petitioner however did not submit his written statement of defence and thus his services were extended beyond 16.11.1997 in terms of Rule 20 (B) of State Bank of India Officers Service Rules till the conclusion of his departmental proceedings.

6. At this stage it is significant to note that the original writ Petitioner had challenged the very initiation of the departmental proceeding in CWJC No. 6364 of 1998 by raising several pleas including that the charges in the departmental proceeding and the subject matter of the criminal case was one and the same. A further plea was raised by the original writ Petitioner that he had already

superannuated from service and, therefore, on account of severance of the relationship between him and the Bank there could not have been a departmental proceeding. A plea of denial of subsistence allowance and, thus, prejudice on that count in the departmental proceeding was also raised by the original writ Petitioner. All these pleas of the Petitioner however on being examined by this Court in the aforesaid writ application did not find favour and by a reasoned order dated 21.12.1998 the said writ application C.W.J.C. 6364 of 1998 was dismissed with only one observation that the original writ Petitioner would be entitled for payment of subsistence allowance.

7. It, however, appears that as regard to the part of the order of this Court dated 23.12.1998 directing for payment of subsistence allowance to the writ Petitioner the Bank had filed a review, Civil Review No. 74 of 1999, on the ground that in the extended period of service such the employee of the Bank is paid provisional pension and, as such, the payment of subsistence allowance over and above provisional pension was not envisaged under the Rules of the Bank. Such plea of the Bank was accepted and the review to that extent was allowed by the order of this Court dated 1.8.2000.

8. After dismissal of the original writ petition, the original writ Petitioner, however, had boycotted the departmental proceeding and did not choose to appear before the Enquiry Officer and in such circumstance, the Enquiry Officer having conducted an ex parte departmental proceeding had found all the five charges proved on the basis of twenty-eight documents adduced in evidence by the presenting officer of the Bank and submitted his Enquiry Report on 29.6.2000. The Bank thereafter had also furnished a copy of enquiry report to the original writ Petitioner on 6.7.2000 but then Petitioner did not choose to file any response/reply to the findings of enquiry whereafter, the Bank had passed the order of punishment on 8.1.2001. It needs special emphasis that the original writ Petitioner, who had neither participated in the enquiry nor had filed his comments to the enquiry report, had however assailed his order of punishment by filing an appeal which was rejected by a speaking order dated 25.6.2002 in the following terms:

4. ?Being aggrieved by the order of the Appointing Authority, Shri Shrivastava preferred an appeal dated 22nd February, 2001 raising the following points/issues for reconsideration of the penalty already imposed by the Appointing Authority:

(i) He was placed under suspension in May 83 and the Disciplinary Authority kept silence for a period of nearly 14 years to decide the case. The opportunity to submit show-cause was also not given to him in spite of the request made to the Disciplinary Authority for supply of necessary documents.

(ii) Though the departmental enquiry was initiated against him but till the invocation of Rule 19 (3), no such proceeding was initiated. Thus, the said invocation was not in accordance with the rules and the dismissed from service after his retirement has

no locus standi.

(iii) The Enquiry Officer has not assigned any reason to prove the allegations either documentary or oral but simply giving his findings mechanically. The Disciplinary Authority, while inflicting punishment, did not consider the documentary evidence and also he had not followed the usual norms of the bank not to impose punishment when identical charges were subjudice before the criminal court.

5. I have gone through the Enquiry-Report, Disciplinary Authority's observations and other relevant record of the case put up to me. After careful examination of the issues raised by Shri Shrivastava in the appeal, I ob-" serve as under:

i. As the matter was also being investigated by the CBI authorities and criminal proceeding against him was subjudice, the initiation of enquiry proceeding was delayed. The Appellant was also not in favour of the departmental proceedings being initiated which is evident from the fact that he had filed a writ petition in the High Court of the Judicature at Patna with a pray to withhold the disciplinary proceeding initiated by the Bank which was subsequently rejected. The Appellant was never denied perusal of relevant records/documents of the case at the branch to facilitate submission of show-cause to the Bank.

ii. The argument of the Appellant that the departmental proceeding was not initiated by the Bank before invocation of Rule 19 (3) of SBI Officers' Service Rules is not correct. Because the "charge-sheet" dated 9th September, 1997 amendments thereto dated 3.11.1997 was served on Shri Shrivastava well before he retired from the Bank's service on 30th November, 1997. As the departmental proceedings, including the enquiry process, could not be completed before his retirement, Rule 19 (3) was invoked. In such a situation, the departmental proceeding and also the decision of the Disciplinary Authority/Appointing Authority to impose the penalty on Shri Shrivastava cannot be vitiated.

iii. It is a fact that the Appellant was given ample opportunities to attend the enquiry, by allowing adjournment on number of dates to defend his case but all the times, he avoided attending the enquiry without assigning any reason to the Bank. As he was entitled for payment of Traveling Expense and, usual Halting allowance, he could have asked for advance from the Bank for the purpose, which he did not do. Lastly, the Inquiring Authority had to conclude the enquiry "ex-parte" on 29th June, 2009, holding all the allegations as "proved".

6. In view of the above observations, I found that no new fact of merit has been brought forth by Shri Shrivastava in his appeal which would warrant any revision in the penalty imposed by the Appointing Authority. After careful consideration of the facts, I feel that there is no ground for my intervention in the decision of the Disciplinary/Appointing Authority. I, therefore, after applying my mind independently to the facts brought forth, reject the appeal as without merit. I order accordingly.

9 The original writ Petitioner being aggrieved by the aforesaid order of punishment as affirmed by the appellate authority had sought to assail them in the connected writ application, CWJC No. 12561 of 2002 which has been dismissed by the learned Single Judge holding that there was no procedural infirmity while conducting the ex parte enquiry against the original writ Petitioner and his plea of non-supply of the relevant documents, as called for by him, had caused no prejudice because he had never participated in the departmental proceeding. The learned Single Judge, in fact, has also meticulously examined the aspect relating to the issue of supply of document by taking note of the stand of the Bank in the earlier writ petition that the original writ Petitioner could still be supplied each and every relevant document if he would appear in the departmental proceeding but as he never appeared in the departmental proceeding, there was no question of supply of document beyond what had already been supplied to him alongwith the memo of charge.

10. This Court also would not be in a position to take any different view in the matter of supply of document to the original writ Petitioner inasmuch as Mr. Dayal, learned Counsel had failed to show any prejudice to the original writ Petitioner on that count. The issue with regard to supply of document or procedural infirmity in a departmental proceeding has to be necessarily gone into from the view point of prejudice to the delinquent and this Court is satisfied that once the original writ Petitioner had not even chosen to deny the allegations by filing a compact written statement of defence, there was no question of supply of further documents beyond those which were already supplied to him alongwith memo of charges and also with the police papers after filing of charge-sheet by C.B.I., in the pending trial against him specially when he had himself avoided and in fact deliberately boycotted to appear in the departmental enquiry. Thus, original writ Petitioner, in fact, was never prejudiced on account of non-supply of documents and, as such, the ratio of the judgment of the Apex Court in the case of [State Bank of Patiala and others Vs. S.K. Sharma](#), would be squarely applicable specially when the learned Counsel could also not pinpoint his finger on any specific document which is said to have been taken into consideration by the enquiry officer in his enquiry report without its being supplied to the original writ Petitioner. Thus, once when it becomes clear that no extraneous materials were taken into consideration by the enquiry officer and disciplinary authority and the charges against the original writ Petitioner were found to have been proved on the basis of 28 listed documents served on the original writ petition alongwith the memo of charge, it has to be held that the plea of non-supply of document is merely an ornamental ground, usually raised in almost every challenge to an order of punishment in a departmental proceeding but rarely found to have vitiated the same.

11. That would bring us to the submission of learned Counsel for the Appellants with regard to the procedural infirmity in an ex parte departmental proceeding. The main attack in this regard is that the documents were not formally proved by examining any witness in course of ex-parte departmental enquiry. Such submission

again has to be noted only for its being rejected, inasmuch as, there is no requirement of proving the documents adhering to the principles of Evidence Act which is not ipso facto to be made applicable in a departmental proceedings, unless there is a serious challenge to authenticity of a document. In the present case, as has been noted above, the documents referred to and relied by the Enquiry Officer were part of the listed documents referred to in the two memo of charges served on the original writ Petitioner who had not even filed his written statement of defence denying the charges much less questioning the authenticity of any documents referred to and relied in the "listed documents" with copies thereof supplied to him with memo of charge. This Court has also carefully perused the enquiry report and has found that the Presenting Officer had got the listed documents proved before the Enquiry Officer and the Enquiry Officer on the basis of such documents had found the charges to have been established. In an ex-parte departmental proceeding it is true that the onus to prove the charges would still remain on the department but then if the exhibited uncontroverted documents are by themselves sufficient to establish the charges, the conclusion arrived by the enquiry officer can (sic not ?) be assailed as if it was a case of no evidence. At the cost of repetition it has to be noted by this Court that the original writ Petitioner had deliberately neither denied the charges by filing his written statement of defence nor had participated in the departmental proceeding. Thus, the plea of the documents of not being proved by adducing oral evidence in an ex-parte departmental proceeding literally pales into insignificance and in this respect one may usefully refer to the Division Bench judgment to this Court in the case of *Girija Nandan Singh v. State of Bihar* reported in 1987 PLJR 95, wherein it has been held that:

14. On behalf of the Petitioner it was pointed out that no witness was examined on behalf of the State to prove any of the charges leveled against the Petitioner and the finding of the inquiring officer is based only on the vigilance report and the report of the legislative committee. Reference in this connection was made to the case of [Central Bank of India Ltd. Vs. Prakash Chand Jain](#), where it was pointed out that in a departmental proceeding witnesses on behalf of the department should be examined in presence of proceedee who should be given an opportunity to cross-examine. Reliance was also placed on the case of [Amalendu Ghosh Vs. District Traffic Superintendent North Eastern Railway, Katihar](#), in support of the contention that the finding that the charges have been proved cannot be based only on the report of earlier enquiry by some other authority or committee. In my view, in the present " case, it cannot be held that the departmental enquiry has been vitiated because of non-examination of the witnesses. The finding, as mentioned above, is based on acts and omissions which are not in dispute. The controversy is only in respect of drawing inferences on the admitted facts. Can it be said that on the facts mentioned above, the inquiring officer was not justified in coming to" the conclusion that there has been a gross dereliction of duty on the part of the Petitioner?

15. In the case of [State of Andhra Pradesh and Others Vs. Chitra Venkata Rao](#), it has been pointed out that while considering the question whether a public officer is guilty of misconduct, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court need not be applied. As such where there is some evidence which may include admission of officer concerned, which the authority entrusted with the duty of holding the enquiry, has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charges leveled against him, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. Again in the case of [State of Haryana and Another Vs. Rattan Singh](#), it was pointed out that in a domestic enquiry the strict and sophisticated rules of evidence under the Evidence Act may not apply. "All materials which are logical probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility." In the case of [K.L. Tripathi Vs. State Bank of India and Others](#), it was pointed out as follows:

32. The basic concept is fair play in section administrative, judicial or quas-judicial. The concept of fair play in action must depend upon the particular lis, if there be any between the parties. If the credibility of person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version of the credibility of the statement.

33. The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was so opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute, as to the facts, or the weight to be attached and disputed facts but only on exploration of the facts, because of opportunity to cross-examination does not create any prejudice in such cases." (Emphasis added) In the instant case, on the admitted facts mentioned above, the inquiring officer could have come to the conclusion that there has been a gross dereliction of duty on the part of the Petitioner while placing orders for an amount exceeding rupees one crore, against the norms and rules not only prescribed by the State Government but even by Courts.

12. This Court, however, would fail in its duty if it would not take into consideration the judgment relied by the learned Counsel for the Appellant in the case of Roop Singh Negi (supra) . In that case as would appear from the factual portion of the judgment, the charges against the delinquent Roop Singh Negi were sought to be proved on the basis of the First Informant Report or the alleged confessional statement made by him before the police. In that context, in paragraph Nos. 14 & 15 of the judgment it was recorded that there was no direct evidence to prove the charge and the Appellant being an employee of the Bank, there ought to have been some evidence brought on record to show that he had indulged in stealing the bank draft book. Literally, the Supreme Court in that case had held that it was a case of no evidence. The ratio of Roop Singh Negi (supra), however, does not lay down that even when the charges are admitted by the delinquent and they are capable of being proved by admitted documents, there would still be necessity for leading oral evidence. Moreover, it would be clear from the reading of the judgment of Roop Singh Negi (supra) that the order of the disciplinary authority as also the appellate authority were supported by any reason and therefore, in that view of the matter; it was held that the report of the enquiry officer and the consequential order of punishment was based on mere ipse dixit as also surmises and conjectures.

13. In the present case, on the contrary, the charge against the delinquent bank officer, the original writ Petitioner, was with regard to his committing grave irregularities in sanction and conduct of the advances in connivance with the borrowers and transport agency and the other parties with an intention to defraud the bank. The disciplinary authority had considered this aspect in the light of the findings recorded in the enquiry report in the following manner:

?It is proved that Shri A.K. Srivastava while posted as Branch Manager at AMY Mohania Branch committed gross irregularities in sanction and conduct of the advances thereat and connived with the borrowers and transport agency and other parties with an intention to defraud the Bank. It is proved that he sanctioned Bill limits to various parties without obtaining any application and without making any appraisal. He also did not compile opinion reports either on the borrowers or on the guarantors while sanctioning Bill limits. It is also proved that he purchased accommodation bills from M/s Shree Bishnujee Bhandar who were enjoying Documentary Bills limit of Rs. 50,000/-at the branch. These bills were drawn on M/s Mahabir Bhandar of Chas and were accompanied by the transport receipts with overwritings and cuttings, issued by M/s Rohtas carrier who were not on the Bank's approved list of transport operators. The bills remained unpaid and were returned to branch. He did not advise the controllers regarding non-payment of bills and continued to purchase of fresh bills on the same parties in order to adjust the irregularities. It is proved that he also sanctioned a D.O., Purchase limit of Rs. 1.5 lac to M/s Bansal Stores without obtaining application and making appraisal and purchased bills accompanied by Transport Receipts of M/s Rohtas Carrier. 31 such bills aggregating Rs. 12,57,810/- purchased from M/s Bansal Stores drawn on

various parties remain unpaid. He deliberately did not account for these returned bills in Bank's book. These returned bills were subsequently recovered from the Branch Manager's safe by his successor and the amount was debited to branch D.D.R.R. A/c on 10.2.83. It is proved that he used to accommodate the party by not only retaining the returned bills without making entries in the book but also used to purchase fresh bills from M/s Bansal Stores to adjust the old outstandings. It is also proved that he continued to purchase bills even after receipt of a letter from Posta Branch (letter No. RM/GEN/80 dated 23.11.1982) cautioning not to purchase the bills unless covered by Railway Receipt. He also failed to complete the formalities for creation of equitable mort-gage. It is also proved that he purchased bills from M/s Laxmi Bhandar which had no place of work/activity at Mohania and went out of way to accommodate the party who was established elsewhere outside the State of Bihar and was not having regular D.D. purchase limit at the branch. All these acts indicates lack of integrity of Shri Srivastava. It is thus proved that Shri Srivastava failed to serve the Bank with utmost integrity. Honesty, devotion and diligence in violation of Rule 50 (4) of State Bank of India Officers' Service Rules. It is also proved that as a result of abovementioned acts of misconduct of Shri Srivastava the Bank has been exposed to a loss of Rs. 20.65 lacs.

14. The aforementioned well considered order of the disciplinary authority which not only shows application of mind based on the appreciation documents of the bank in the form of rules of the bank and dealings of the original writ Petitioner with the parties while committing such irregularities being nowhere in dispute and his acts of omission and commission by not observing the rules and circulars of the Bank in the matter sanctioning and disbursing loan and in process causing loss to the Bank to the tune of Rs. 20.65 lacs approximately, therefore actually did not require leading of any oral evidence. It is also well settled that in the event, if a Manager of the Bank is found to have embezzled or misappropriated any amount or exceeded his jurisdiction in the matter of grant of loans; the Courts have to view such misconduct seriously as has also been repeatedly held by the Apex Court in the cases relating to order of punishment arising out of disciplinary proceeding against the bank officials including in the case of [Tara Chand Vyas Vs. Chairman and Disciplinary Authority and Others](#),

15. This Court also need not diLate on the other judgment relied by the learned Counsel for the Appellant in the case of Kumar Upendra Singh Parimar (supra), inasmuch as, the learned Single Judge while discussing the said issue in the impugned order has rightly held the same to be not applicable by recording the following findings:

In the case of Kumar Upendra Singh Parimar V.B.S. Co-op. Land Dev v. Bank Ltd. and Ors. relied upon by the Petitioner, the facts of the case were entirely" different as can be noticed from para-4 of the judgment. No presenting officer was appointed on behalf of the bank, no witness was examined to prove the charges, nor

documents exhibited. The enquiry officer on his own looked and verified the documents from the charges. The enquiry officer was none other than the cousin of the complainant. It was in this background that this Court interfered with the order of punishment. That is completely distinguishable on facts.

16. Yet another submission of the learned Counsel for the Appellant as with regard to non-payment of the subsistence allowance to have caused prejudice to the delinquent original writ Petitioner, in fact, cannot be now allowed to be raised for the simple reason that the same stands concluded by inter-parte order dated 1.8.2000 in Civil Review No. 74 of 1999 wherein this Court had held as follows:

?According to the learned Counsel for the parties, the order under review whereby this Court directed for payment of subsistence allowance needs modification as the writ Petitioner is entitled for provisional pension as per the provisions contained in the Regulation. Accordingly the order dated 21.12.1998 passed in the connected writ case (C.W.J.C. No. 6364 of 1998) is modified to the above extent and the authorities are directed to pay provisional pension instead of subsistence allowance as was directed earlier.

The court has been informed that . payments of provisional pension for the month of April, May and June, 2000 have been received by the writ Petitioner and with respect to the earlier period from 1.12.1977 to 31st March, 2000, learned Counsel for the Bank has produced three cheques issued in favour of the writ Petitioner which have been handed over to the learned Counsel for the writ Petitioner.....

17. Apparently, there is no denial to this aspect that the original writ Petitioner was paid his amount of provisional pension during pendency of the departmental proceeding and in fact no grievance in this respect has been sought to be made by him either before the appellate authority or before the learned Single Judge. Thus, we find no merit on the aforementioned issue of payment of subsistence allowance.

18. That would bring us to the last issue raised by the Petitioner as with regard to the continuation of the departmental proceeding even after the retirement of the original writ Petitioner. In our considered opinion, that issue also now cannot be allowed to be raised because in the earlier writ application filed by him while questioning the very initiation of the departmental proceeding, the learned Single Judge in the order dated 21.12.1998 in C.W.J.C. No. 6364 of 1998 had summarily rejected the same in view of the Rule 19 (B) read with 20B of the State Bank of India (Supervising Staff) Service Rules wherein it was held that:

?Thus, from the said decision of the Apex Court, it is clear that in view of the impugned order dated 3.11.1997, the pensioner will be deemed to have been placed under suspension and his services shall stand extended till the conclusion of the disciplinary proceedings. Rule 19 (3) of the Rules reads as follows:

In case disciplinary proceedings under the relevant rules of service have" been initiated against an officer before he ceases to be in the Bank's Service by the operation of, or by virtue of, any of the said rules or the provisions of these rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in the said rules as if the officer continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings.

From bare perusal of the said Rule also, it is evident that under such circumstances the officer continues to be in service, however, in view of the last sentence that he shall be deemed to be in service only for the purpose of continuance and conclusion of such proceedings.

The applicability of such Rule in fact has also been gone into by the learned Single Judge in the impugned order wherein he having placed his reliance on the judgment of the Apex Court in the case of State Bank of India and Anr. v. Bela Bagchi and Ors. reported in 2005 (6) Supreme 87 had held as follows:

In the case of State Bank of India and Anr. v. Bela "Bagchi and Ors. relied upon by the Respondent Bank the Supreme Court was considering the issue of departmental proceeding and punishment against an employee of the State Bank of India. The Court noted the provisions of Rules-20A and 20B of the State Bank of India (Supervising Staff) Service Rules, 1975 which postulates conducting of a departmental proceeding even after the employee ceases to be in the Bank's service. The Rules were introduced with effect from 1.4.1977 and read as follows:

20A. Notwithstanding anything to the contrary in these rules, no employee who has ceased to be in the Bank's service by the operation of, or by virtue of, any rule, shall be deemed to have retired from the Bank's service for the purpose for the Imperial Bank of India Employees' Pension and Guarantee Fund Rules or the State Bank of India Employees' Pension Fund Rules unless such cessation of service has been sanctioned as retirement for the purpose of either of the said pension fund rules as may be applicable to him.

20B. In case disciplinary proceedings under these rules have been initiated against an employee before he ceases to be in the Bank's service by the operation of, or by virtue of, any of these rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in these rules as if the employee continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings.

It was noticed at paragraph-13 of the judgment that in the aforesaid Rules the Bank had the discretion to continue the service of an employee for the purposes of continuance and conclusion of the departmental proceedings. It was next noticed at

paragraph-15 that a bank officer was required to exercise higher standards of honesty and integrity because he deals with the money of the customers. Good conduct and discipline are inseparable. "Acting beyond one's authority is by itself a breach of discipline and a misconduct. Considering the loss caused to the bank the Supreme Court declined to interfere with the order of dismissal passed on 2.7.1988 when the departmental proceeding had been initiated during the service term and extended lastly by an order dated 1.5.1988 to 31.7.1988 to facilitate completion of departmental proceedings.

In the facts and circumstances of the present case, as discussed above, when the Petitioner himself questioned the initiation of the departmental proceedings, and after having failed to persuade this Court to interfere, instead of participating in the departmental proceeding chose to maintain a back seat and refused to participate, this Court has no option but to hold that he did so fully conscious of the nature of his own action and the attendant consequences that may follow upon the same. If he chose to run a risk he cannot now complain that those who caused him injury because of this voluntary risk taken by him are answerable for the injury."

19. The aforementioned consideration by the learned Single Judge as also the aforesaid earlier inter-parte order dated 21.12.1998 in C.W.J.C. No. 6364 of 1998 would now bind the Appellants as also the original writ Petitioner in view of the settled principles of res judicata as also constructive res judicata and as such, they cannot be permitted to raise this issue before this Court.

20. Thus, we find the learned Single Judge has gone into each and every aspect and his findings recorded in respect of them do not suffer from any infirmity. The original writ Petitioner died on 28.4.2004 during the pendency of the writ application and his heirs can only claim a limited judicial review against the order of punishment. There is, however, no such infirmity which would go to the root of the matter and vitiate the departmental proceeding and the resultant order of punishment passed against the original writ Petitioner.

21. Thus, in our considered opinion, there is no merit in this appeal and the same is, accordingly, dismissed. There would, however, be no order as to costs.

Dipak Misra, C.J.-

I agree.