

(3) कर्मचारी द्वारा या उसकी ओर से किसी अन्य व्यक्ति द्वारा आय के ज्ञात साधनों से असंगत धन संबंधी संसाधन या सम्पत्ति या स्वामित्व रखना, जिसका कर्मचारी सन्तोषप्रद रूप से लेखा-जोखा न दे सकता हो।”

**7. The charge-sheet issued in the present case has been referred to under Rule-18 (1) and (2) which for ready reference is also extracted hereunder :-**

“18-(1) कोई भी कर्मचारी बिना अपने सक्षम प्राधिकारी की पूर्व जानकारी के पट्टे, गिरवी, क्रय, विक्रय, उपहार के रूप में किसी भी अचल सम्पत्ति का न तो अपने नाम से और न अपने परिवार के किसी सदस्य के नाम से अधिग्रहण या निस्तारण नहीं करेगा।

(2) बिना अपने सक्षम अधिकारी की पूर्व अनुमति के, कोई भी कर्मचारी किसी ऐसे व्यक्ति या प्रतिष्ठान के कर्मचारी या उसके मातहत से जिसके साथ उसका पदीय कार्यों से सम्बन्ध हो, किसी अचल या चल सम्पत्ति सम्बन्धी लेन-देन नहीं करेगा।”

8. Definite allegations in the charge-sheet have been levelled pointing out the properties which have been acquired by the appellant without any intimation or permission by the competent authority. The immovable properties possessed by an employee working in the Corporation disproportionate to the known source of income certainly amounts to a misconduct in view of the definition clause provided under Rule-5 sub rule 3 extracted above.

9. In the case at hand, the allegations made in the charge-sheet regarding acquisition of the property have not been denied altogether on the basis of any tangible proof showing that no such title whatsoever has been acquired by the appellant in the properties mentioned in the charge-sheet.

10. In any case once the allegations have been levelled against the petitioner of

acquiring immovable property disproportionate to his known source of income, there is no reason as to why such a proceeding may not be allowed to continue and brought to its logical conclusion at the earliest.

11. On a careful consideration of the judgment/order under appeal, we are of the considered opinion that the judgment passed by writ court does not suffer from any illegality calling for an interference in exercise of appellate jurisdiction of this court on the grounds urged before us.

12. The intra-court appeal bereft of any merit is accordingly *rejected*.

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(2025) 5 ILRA 1424

**ORIGINAL JURISDICTION  
CIVIL SIDE**

**DATED: ALLAHABAD 27.05.2025**

**BEFORE**

**THE HON'BLE J.J. MUNIR, J.**

Writ - A No. 11589 of 2023

**Prithvi Raj Singh**

**...Petitioner**

**Versus**

**The Chief General Manager (H.R.), Union  
Bank of India, Central office, Mumbai**

**...Respondent**

**Counsel for the Petitioner:**

Mr. Rajesh Kumar Srivastava

**Counsel for the Respondent:**

Mr. Vivek Ratan Agarwal

**A. Service Law – Constitution of India, 1950 – Article 226 – Disciplinary proceeding – Scope of interference – How far High Court sit in appeal over finding of disciplinary authority – Held, the Court can interfere if the opinion given on the material is perverse, based on irrelevant evidence or ignoring material evidence.**

**We can also interfere if there is a violation of the principles of natural justice, leading to prejudice to the petitioner. It is also open to this Court to see if the procedure, that was adopted, was fair, just and reasonable, and particularly, one conforming to the fundamentals of the standard procedural requirements to hold a disciplinary inquiry. (Para 21)**

**B. Service Law – Disciplinary proceeding – Burden of proof, on whom lie – Held, burden to prove the charge(s) brought against the employee is on the Establishment or the Management, as the Bank choose to call themselves here. If the employee fails to produce any evidence in his defence, that would not lead to proof of the charge, the burden whereof rests on the shoulders of the Establishment. (Para 22)**

**C. Service Law – Disciplinary proceeding – Punishment – Compulsory retirement – Charge of misconduct was leveled – No witness cited as Ist and IInd witness were called in preliminary enquiry – Effect – Officers of the Bank, who had done the preliminary inquiry, and were not present on the spot, were produced – Relevancy – Held, reliance placed on the evidence of these two witnesses to find an affirmation of facts constituting the charge is, truly speaking, reliance placed on irrelevant evidence or material, which should not have been considered during the departmental inquiry – The said evidence is certainly not relevant to prove the charge against the petitioner – Upon this kind of irrelevant material, the Inquiry Officer, the Disciplinary Authority and the Reviewing Authority could never have found the petitioner guilty. (Para 25, 28 and 31)**

**Writ petition allowed. (E-1)**

**List of Cases cited:**

1. St. of Uttar Pradesh Vs Saroj Kumar Sinha; (2010) 2 SCC 772

2. Ranveer Singh Vs U.O.I.; 2021 (5) ALJ 457 : AIROnline 2021 All 2121

3. St. of U.P. Vs Aditya Prasad Srivastava & anr.; 2017 (2) ADJ 554 (DB)(LB)

4. Praveen Kumar Vs U.O.I. & ors.

5. S.B.I.Vs Ram Bhaskar & anr.; (2011) 10 SCC 249

6. The St. of Raj. & ors. Vs Bhupendra Singh; 2024 SCC OnLine SC 1908

7. U.O.I. Vs Braham Pal Singh; 2005 SCC OnLine All 1815

8. St. of Uttarakhand & ors. Vs Smt. Sureshwati; (2021) 3 SCC 108

9. Uttar Pradesh St. Transport Corporation Vs Gajadhar Nath; (2022) 3 SCC 190

10. Yogendra Kumar Vs U.O.I. & ors.; 2018 (6) ADJ 645 (DB)

11. C.E.O., Krishna District Cooperative Central Bank Ltd. & anr. Vs K. Hanumantha Rao & anr.; (2017) 2 SCC 528

12. Nirmala J. Jhala Vs St. of Guj. & anr.; (2013) 4 SCC 301

(Delivered by Hon'ble J.J. Munir, J.)

This writ petition is directed against the order dated 22.11.2022 passed by the Chief Manager, Union Bank of India, Varanasi (the Disciplinary Authority), the order of the Deputy General Manager (ERD), Union Bank of India, Mumbai (the Appellate Authority) dated 21.03.2023 and the order of the General Manager (Human Resource), Union Bank of India, Mumbai (the Reviewing Authority) dated 12.05.2023. By the first of these orders, the petitioner has been held guilty of service misconduct after disciplinary proceedings and punished *inter alia* with compulsory retirement, with superannuation benefits and without disqualification from future employment. By the second of these orders, the petitioner's appeal from the order of the Disciplinary Authority has been rejected,

and by the last of these orders made by the Reviewing Authority, the petitioner's review too has been rejected.

2. The petitioner is an ex-serviceman, who served the Indian Navy. On the 10th of June, 2019, he was appointed to the clerical cadre of the Union Bank of India as a Single Window Operator-A. He was posted at the Chowki Bardah Branch, Azamgarh. He remained posted there until 26.04.2020. Subsequently, he was promoted to the post of Head Cashier-II-cum-Clerk at the Audha Dularganj Branch, Azamgarh. He was then transferred to the Sikraur Branch, Azamgarh. The petitioner had hardly put in two years of service with the Bank in the clerical cadre, as he asserts, when he was served with a show-cause notice on 21.03.2020, asking him to submit his reply against the charge mentioned in the notice. He showed cause by his reply dated 30.03.2020. The reply did not find favour with the Bank and the Disciplinary Authority, the Chief Manager, Human Resource Department, Field General Manager's Office, Varanasi, who issued a charge-sheet dated 05.11.2020, charging the petitioner in the following terms :

This has reference to explanation dated 30.03.2020 submitted by Shri Prithvi Raj Singh, Head Cashier II cum Clerk, Sikraur Branch (Erstwhile Single Window Operator-A Chowki Verdah Branch). Azamgarh Region in response to Show Cause memorandum no. RO:HRM:3557:2020 dated 21.03.2020 issued to him by RO Azamgarh. The explanation submitted by Shri Prithvi Raj Singh has since been perused vis-à-vis allegations levelled against him in terms of aforesaid show cause memorandum as also

the facts of the case and the same has not been found convincing.

The fact remains that on 16.03.2020, Shri Singh's wife Mrs. Pratima Singh, came to Chowki Verdah branch for getting disbursement of dairy loan account (Account No. 712106050000009 Rajput Cairy) sanctioned to her by our Bank. The loan was disbursed at around 11.30 AM and thereafter she left the branch. However, she again came to the branch at around 01:00 PM, went straightaway near the cashier's cabin, had certain discussions with Shri Singh and after wandering here and there in the staff area, she sat on the chair near the cash safe room / strong room (A very sensitive and prohibited area in the branch), however no objection or concern was raised by Shri Singh regarding her unauthorized presence or movement. After some time she moved towards Branch Manager who was working on some files, out of the BM's cabin, in a remote place in the branch and was sitting there for quite a long duration. After some time Shri Prithvi Raj Singh also moved to the Branch Manager and Shri Singh along with his wife manhandled the BM. It is reported that Shri Singh in connivance with his wife has beaten the Branch Manager brutally, as a result the BM was injured and his personal belongings like mobile phone and spectacles etc were broken. The BM's shirt also got torn during the incident. Even after the Customer's Intervention, when the fight came to an end, Mrs. Pratima Singh was trying again and again to hit the BM by using her sandal and the customers were preventive/ stopping her but Shri Singh did not try to stop her from doing so.

It seems that the incident of manhandling the BM that took place on 16.03.2020 in the branch was pre-planned

5 All. Prithvi Raj Singh Vs. The Chief General Manager (H.R.), Union Bank of India, Central office, Mumbai 1427

and instead of acting in a manner befitting of a responsible bank employee and preventing further escalation of the situation Shri Singh joined his wife in physically assaulting Shri Niraj Raja Kumar (DM). No staff/customers of the branch had ever complained regarding misbehavior on the part of Shri Niraj Raja Kumar (BM) as alleged by Shri Prithvi Raj Singh. It is also surprising that, Mrs. Pratima Singh did not lodge a complaint to the appropriate authorities/offices against the BM regarding any unusual/illegal demand made by BM prior to date of the incidence. Also his act of physically assaulting the BM in the branch premises during business hours in presence of other staff members and customers jeopardized their safety and tarnished the image of the Bank and in no way be termed as an act of self defence. Further his conduct and behaviour on 16.03.2020 during the aforementioned incident do not coincide with the qualities expected from a responsible bank employee.

Shri Prithvi Raj Singh is required to note that his aforesaid acts of omission and commission enumerated in aforesaid show-cause memorandum no.RO:HRM:3557:2020 dated 21.03.2020 issued to him by Regional Office, Azamgarh constitutes the following misconducts and he is hereby charged for the same.

Gross Misconducts:

1. Disorderly or Indecent behavior on the premises of the Bank.

2. Gross negligence or negligence likely to involve the Bank In serious loss.

Minor Misconducts:

1. Neglect of work and negligence in performing duties.

2. Breach of any rule of business of the Bank or instruction for running of any department.

3. Committing nuisance on the premises of the bank

4. Failing to show proper consideration, courtesy or attention towards officers.

3. The charges were sought to be proved by the following documents and witnesses supplied to the petitioner along with a list of witnesses :

Sl. No.	Particular of documents	No. of page
1	Letter of Sri Niraj Raja, Branch Manager, Chowki Bardah Branch dated 16/03/2020	01
2	Letter of Sri Virendra Prasad, DBM, Chowki Bardah dated 16/03/2020	01
3	Inspection report dated 18/03/2020 submitted by Sri Arun Kumar Gupta and Sri Dinkar Mishra	02
4	New paper cutting	02
5	Letter of Incharge, Bardaha Police Station	01
6	CCTV Footage (in Pen drive)	01

List of Witness :

1. Branch Manager, Chowki Bardah branch
2. Dy. Branch Manager, Chowki Bardah branch
3. Sri Arun Gupta, Sr. Manager, RO, Azamgarh.
4. Sri Dinkar Mishra, Asst. Manager (Security), RO, Azamgarh.

The list of witnesses carried a note that the Management reserved their right to add or delete any document/witness(es).

4. The petitioner filed his written statement of defence to the charge-sheet dated 05.11.2020. He made an application before the Inquiry Officer, Camp Office of the Bank at Azamgarh, seeking certain documents, which he regarded necessary for his proper defence in the proceedings. The petitioner's request was denied by the Management representative, saying that the documents were either not related to the charge-sheet or privileged.

5. It appears that disciplinary proceedings against the petitioner were initiated by the Bank on the basis of a preliminary inquiry done by two officers - one, Arun Kumar Gupta, then a Senior Manager at the Regional Office of the Bank, and another, Dinkar Mishra, then a Manager (Security) at the Regional Office of the Bank at Azamgarh. These two Managers of the Bank, conducting the preliminary inquiry into the incident, that had happened on 16.07.2020 at Chowki Bardah Branch of the Bank, giving rise to the charge, had submitted an investigation report of the preliminary inquiry dated 18.03.2020, that was relied upon by the Management at the disciplinary inquiry as a

document marked MEX-3. The only witnesses, by whose testimony, the charge against the petitioner, that was about assaulting the Branch Manager, a superior of his, where, he was a Cashier, was sought to be established, were these two managers, who conducted the preliminary inquiry and submitted the investigation report dated 18.03.2020. Admittedly, they were not witnesses of the incident of altercation between the petitioner and the Branch Manager and also the petitioner's wife, that had happened on 16.03.2020 at the Branch.

6. In the list of documents and witnesses in support of the charge, the first two witnesses were the Branch Manager, the man said to be assaulted by the petitioner and his wife as well as the Deputy Branch Manager, both of whom were eye-witnesses. Since the incident is said to have happened during banking hours, there were a number of customers also present, who had intervened, but their names do not figure in the Management's list of witnesses, or so to speak, the witnesses whom the Management examined in support of the charge. The Inquiry Officer held the charge proved by the testimony of the two witnesses and watching the Closed Circuit Television2 Camera recordings of the day, that were secured during the preliminary inquiry carried out by the two management witnesses, who had submitted the preliminary investigation report.

7. The Inquiry Officer submitted his report dated 17.09.2021 to the Disciplinary Authority, holding the charge against the petitioner proved. Upon considering the report of the Inquiry Officer, the Disciplinary Authority passed an order dated 02.11.2021, prima facie accepting it, proposing a punishment and

giving further opportunity to the petitioner for a personal hearing. He fixed 12.11.2021 as the date for hearing the petitioner.

8. At this stage, the petitioner moved the Regional Labour Commissioner, Kanpur Nagar, seeking to raise an industrial dispute against the proposed punishment. The Labour Court Commissioner took note of the matter and called for the Bank's response, but it appears that ultimately, he permitted the disciplinary proceedings to go on and reach their logical conclusion. The petitioner was granted personal hearing on 05.09.2022 by the Disciplinary Authority, whereafter the said authority sought permission of the Regional Labour Commissioner (Central) to pass final orders in the disciplinary proceedings. The Labour Commissioner having granted permission to the Disciplinary Authority to pass final orders, he passed the first of the orders impugned dated 22.11.2022, punishing the petitioner with compulsory retirement from service of the Bank with superannuation benefits and no disqualification from further employment on double count. For the minor misconducts, alleged on the four counts, the petitioner was censured.

9. The petitioner carried an appeal against the said order to the Appellate Authority, the Deputy General Manager of the Bank at Mumbai. The Appellate Authority, by the second order impugned dated 21.03.2023, rejected the petitioner's appeal and affirmed the order of the Disciplinary Authority.

10. At this stage, the petitioner challenged both these orders before the Court by means of Writ - A No. 6611 of 2023. The learned Counsel for the Bank, raised a preliminary objection that there

was a further remedy of review available in terms of the bipartite settlement in the Bank's Establishment. This Court declined to entertain the writ petition on ground of availability of a statutory alternative remedy to the petitioner. The petition was disposed of, requiring the petitioner to prefer a review against the appellate order dated 21.03.2023 within a period of two weeks from the date of that order. The writ petition last mentioned was decided as aforesaid vide order dated 02.05.2023. The petitioner then preferred a review under Clause 45(i) of the 11th Bipartite Settlement dated 11.11.2022 to the Managing Director and the Chief Executive Officer of the Bank/the Reviewing Authority on 12.05.2023. By the last of the orders impugned, the review or the review petition dated 12.05.2023, as the Bank have chosen to call it, was rejected by the General Manager, Human Resource, acting as the Reviewing Authority.

11. Aggrieved by the orders impugned, this petition under Article 226 of the Constitution has been instituted.

12. A notice of motion was issued on 20.07.2023, and, in course of time, parties exchanged affidavits. The petition was admitted to hearing on 28.03.2023 and on 06.12.2024, judgment was reserved.

13. Heard Mr. Rajesh Kumar Srivastava, learned Counsel for the petitioner in support of this petition and Mr. Vivek Ratan Agrawal, learned Counsel appearing on behalf of respondent Nos. 1 to 4.

14. Very elaborate and persuasive submissions have been advanced by the learned Counsel appearing for both parties, buttressing their contentions with authority.

15. Mr. Rajesh Kumar Srivastava, learned Counsel for the petitioner has emphasized that Neeraj Raja Kumar, the Branch Manager, who was involved in the incident, leading to the altercation, though cited as first witness by the Management, was never examined before the Inquiry Officer. The Deputy Branch Manager was also not examined. Mr. Srivastava argued that it was these two witnesses who were eye-witnesses and in fact, relevant witnesses of fact, who could prove the charges, but were never examined. The two witnesses, who were examined, were officers of the Bank, who never witnessed the incident. They held preliminary inquiry and submitted a preliminary investigation report. They heard it all from the mouth of others and viewed the CCTV Camera recordings, which they enclosed with the preliminary investigation report. It is also argued by Mr. Srivastava that the preliminary inquiry report was produced as documentary evidence in the inquiry, when it is no kind of document to prove the charge against the petitioner. It is only an opinion and some material that was given to the Bank by the two bank officials for the purpose of enabling the Bank to reach a decision if there was some worth to the charge, where disciplinary proceedings were warranted.

16. It is also emphasized by the learned Counsel for the petitioner that in the investigation report based on the preliminary inquiry, action had been suggested against the petitioner and the Branch Manager both, but no proceedings were taken against the Branch Manager. Learned Counsel says that this shows unfairness and bias on the respondents' part in proceeding against the petitioner alone, where their own officers opined that both the Branch Manager and the petitioner

were liable to be proceeded with against. Learned Counsel for the petitioner has placed reliance upon the authority of the Supreme Court in **State of Uttar Pradesh v. Saroj Kumar Sinha**<sup>3</sup> and this Court in **Ranveer Singh v. Union of India**<sup>4</sup> as also **State of Uttar Pradesh v. Aditya Prasad Srivastava and another**<sup>5</sup>.

17. On the other hand, Mr. Vivek Ratan Agrawal, learned Counsel appearing for the respondents has emphasized that the testimony of the management witnesses was recorded in the petitioner's presence and he was given opportunity to cross-examine. The two witnesses proved the charges against the petitioner. He was further given opportunity of a personal hearing before the Disciplinary Authority, where he had his say. His appeal and review too were fully considered and decided by reasoned orders. There is no procedural error that the petitioner can point out, vitiating the disciplinary proceedings. The petitioner cannot also complain of denial of opportunity. It is submitted that the petitioner does not aver that the evidence cited against him, to wit, the documents and the CCTV footage relied upon by the Inquiry Officer were not relevant. There is also no challenge to the genuineness of the documents or the CCTV footage, upon which, the findings of the Authorities are based.

18. It is argued by Mr. Vivek Ratan Agrawal that it is settled law that if the inquiry is procedurally fair and not vitiated by consideration of irrelevant evidence or non-consideration of material evidence or perverse findings, this Court cannot sit in judgment over the decision of the respondents in their disciplinary jurisdiction as an Appellate Court. He has referred to the authorities of the Supreme

Court in **Praveen Kumar v. Union of India and others, State Bank of India v. Ram Bhaskar and another**<sup>6</sup> and **The State of Rajasthan and others v. Bhupendra Singh**<sup>7</sup>. In addition, the learned Counsel for the respondents has placed reliance upon a Bench decision of our Court in **Union Bank of India v. Braham Pal Singh**<sup>8</sup>. It is also argued that what the petitioner wants to canvass essentially is a dispute on facts and the validity of the quantum of punishment, for which, the ideal and appropriate remedy to invoke is the jurisdiction of the Labour Court or the Industrial Tribunal, where, the respondents, if required, can also lead evidence. In this connection, reliance has been placed upon **State of Uttarakhand and others v. Smt. Sureshwati**<sup>9</sup> and **Uttar Pradesh State Transport Corporation v. Gajadhar Nath**<sup>10</sup>.

19. Learned Counsel for the Bank has particularly argued that the charges against the petitioner involve disorderly conduct and indecent behaviour on the Bank premises in the presence of their customers. The petitioner's total lack of discipline, unruly and riotous conduct and misbehaviour in physically assaulting and manhandling his senior and a superior officer constitutes gross misconduct. The Bank's reputation and image have been severely tarnished. He submits that the banking industry is extreme sensitive in nature and the banks have to ensure that their operations are done in the best interest of the public, where employees have to maintain good conduct and discipline. They have to show courtesy at the Branch. No organisation, more particularly, a bank can function properly and effectively if its employees do not observe the norms of discipline and good conduct.

20. In the last, it is submitted that the adequacy or sufficiency of punishment is for the employers to judge, and not this Court. He submits that this Court cannot sit in appeal over the discretion regarding the quantum of punishment. The limited scope of judicial review in matters of quantum is confined to cases where the punishment imposed is found to be shockingly disproportionate to judicial conscience, which is not the case here at all. In regard to the last limb of his submissions, Mr. Agrawal has called in aid the Bench decisions of this Court in **Yogendra Kumar v. Union of India and others**<sup>11</sup> and the Supreme Court's guidance in **Chief Executive Officer, Krishna District Cooperative Central Bank Limited and another v. K. Hanumantha Rao and another**<sup>12</sup>.

21. We have carefully considered the submissions advanced by learned Counsel for both parties and perused the record. It is true that this Court cannot sit in appeal over the findings of the Disciplinary Authority, and here, there is a Reviewing Authority also. We cannot arrogate to ourselves the powers of appreciating evidence in order to find out whether on the material on record, the opinion formed by the primary decision makers was correct. We can interfere if the opinion given on the material is perverse, based on irrelevant evidence or ignoring material evidence. We can also interfere if there is a violation of the principles of natural justice, leading to prejudice to the petitioner. It is also open to this Court to see if the procedure, that was adopted, was fair, just and reasonable, and particularly, one conforming to the fundamentals of the standard procedural requirements to hold a disciplinary inquiry.

22. For a first, it has to be remembered that in any disciplinary proceedings, the burden to prove the charge(s) brought against the employee is on the Establishment or the Management, as the Bank choose to call themselves here. If the employee fails to produce any evidence in his defence, that would not lead to proof of the charge, the burden whereof rests on the shoulders of the Establishment. It is quite another matter that once the Establishment have discharged their burden, it is for the employee to produce evidence in his defence, so that the Inquiry Officer can ultimately assess if the charge is proved or not, by the standard of preponderance of probability. That is the standard by which the charge(s) in a departmental proceedings have to be proved by the Establishment. It is a salutary principle well settled in the law governing disciplinary proceedings that in the holding of a departmental inquiry, which may lead to the imposition of a major penalty, if the charge(s) subject matter of inquiry are to be proved, it is imperative that the Establishment should not only produce documentary evidence in support of the charge(s), but also oral evidence or witness(es),

23. There is one very odd feature in this case, which requires consideration. The entire charge against the petitioner is based on a case of misbehaviour with the Branch Manager done along with his wife during banking hours, while the customers were around. The petitioner's defence, in substance, to the charge is that his wife had applied for a loan to the Bank, which had been sanctioned earlier in the day. She was, later on, called in the afternoon hours by the Branch Manager, and she came over to the Bank, where the petitioner was working. She looked for the Branch

Manager, who was not in his cabin. She was directed to another place, in some remote corner of the Bank, where the Manager was sitting and doing his work. The petitioner was in his own cabin or desk, doing his duties. The Branch Manager, according to the petitioner, misbehaved with the petitioner's wife, who protested and shouted at the Manager, leading the petitioner to move to the site of the incident. There, he alleges that the Manager was assaulting his wife, and he rushed to his wife's rescue, whom he says, was molested by the Branch Manager. The incident happened in the presence of the staff, the petitioner, the Branch Manager himself and the Deputy Branch Manager of the Bank. Some customers too came forward to dissipate the situation. The charge, therefore, rests essentially on the ocular testimony of those present, when the altercation took place.

24. The law and fair procedure would expect the charge to be proved by the Establishment, producing as their witness the Branch Manager, who was the victim of the incident, according to the respondents' case. In addition, the Deputy Branch Manager, who had witnessed the incident, would also be a very natural witness. Apart from it, there could be other members of the staff, and, may be, customers, whom the Management could produce to prove the charge, that is to say, those men and women who had witnessed the altercation. In the charge-sheet, the Bank cited the Branch Manager and the Deputy Branch Manager as their first and second witnesses, but never called them during inquiry. Instead, the officers of the Bank, who had done the preliminary inquiry, and were not present on the spot, were produced not only to prove the preliminary inquiry report, that was used as

a document in the evidence, but also to testify to the facts that they found out during the preliminary inquiry. Admittedly, these two witnesses, Arun Kumar Gupta, then the Senior Manager and Dinkar Mishra, then the Manager (Security), MW-1 and MW-2, respectively, who were posted in the Regional Office of the Bank, never witnessed the incident. No doubt, they had held the preliminary inquiry and submitted the preliminary investigation report. The purpose of the preliminary inquiry is always to ascertain whether a case worth proceedings in the disciplinary jurisdiction against an employee is made out. While this kind of an inquiry is done, no one has a right to participate or cross-examine witness(es) whose statements are taken down during the preliminary inquiry. It is an exercise done not to test the charge against the petitioner, but to decide whether a case worth proceeding is made out. Therefore, a preliminary inquiry report, even if put in evidence as a document and got proved by those who conducted it, is not relevant material, on the basis of which, charge(s) can be proved. This is particularly so in a case like the present one, which involves allegations of misbehaviour and altercation in public view.

25. Likewise, the testimony of the two officers, who conducted the preliminary inquiry, is quite irrelevant. They never witnessed the incident. They only heard about it from others and saw the CCTV Camera recordings. Therefore, reliance placed on the evidence of these two witnesses to find an affirmation of facts constituting the charge is, truly speaking, reliance placed on irrelevant evidence or material, which should not have been considered during the departmental inquiry. An incident of this kind had to be proved, may be, by the solitary testimony of

one witness who had seen it all. Even the Branch Manager, who was, according to the Bank, the victim of the incident, might have been good enough to establish the charge, of course, subject to the petitioner's right to cross-examine him. If there were one or more witness produced, as proposed in the charge-sheet, say the Deputy Branch Manager of the Bank or any other person, there would be dependable material, and the inquiry, in that case, fair, subject, of course, to the right of the petitioner to cross-examine the said witness(es), who had seen the incident of altercation etc. happen. There is no earthly reason why, after citing the Branch Manager as a witness as also the Deputy Branch Manager, not only these two men, but none other who had actually witnessed the incident, were produced on behalf of the Bank, who bore burden of proving the charge of misbehaviour against the petitioner with his superior, insulting and assaulting him, along with his wife. Rather, withholding these witnesses and not producing any eye-witness, makes the inquiry against the petitioner essentially unfair and suspect to its face. Reliance placed on the CCTV footage, produced along with the preliminary investigation report, that was proved by the two management witnesses doing the preliminary inquiry may be relevant evidence, but it could never fully prove the charge. The dead eye of a camera often reveals important things, but does not tell the whole story. If there was no other evidence and no one had seen the incident, the CCTV footage might have been evidence good enough to place reliance on, or, at least, to shift the burden upon the petitioner to explain the happenings in the CCTV footage. Here, that is not the case.

26. There are eye-witnesses, in good numbers, who saw the incident and could explain whatever was seen in the

CCTV footage happened for what reason. It is possible that when the petitioner's wife beat up the Branch Manager inside the premises with her sandal and the petitioner rushed to her side, assaulting the Manager, as remarked in the Reviewing Authority's order, something offensive was said a minute before by the Branch Manager to the petitioner's wife. The CCTV Camera did not capture any sound and had no intelligence to answer what had happened immediately before. The Inquiry Officer has relied lavishly on the CCTV footage to remark as follows :

But in CCTV footage, it is observed that facial expression of Shri Prithvi Raj Singh was appearing very relaxed or normal while his wife was involve in fighting or hold by the Shri Niraj Raja Kumar. No hurry or anxiety was appeared on his face. Despite all these odds and even Shri Prithvi Raj Singh first close the door of cash cabin then he watched here and there in very relaxed way & confirmed that no one watching him, thereafter he entered inside the back space and subsequently fighting was started between them (Mr. Prithvi Raj Singh, Ms. Pratima Singh and Mr. Niraj Kumar Raja).

27. It is also remarked by the Inquiry Officer in the inquiry report :

In her Witten statement submitted to investigation officer Ms. Pratima Singh also informed that Shri Niraj Kumar Raja hold her hand & demand some Javour/gift but in CCTV footage same is not observed Same is also evident from MEX.03 On scrutiny of CCTV footage it is clearly evident that Ms. Pratima Singh approach toward the Shri Dhrej Raja Kumar.

28. The Inquiry Officer has all along attempted to find the truth of the charge and

has, in fact, returned a finding of guilt against the petitioner by looking into the CCTV footage and statements recorded during the preliminary inquiry by the two officers of the Bank, who conducted it. The CCTV footage, by itself, could not tell the complete story and the statements recorded during the preliminary inquiry were quite irrelevant for the purpose of recording findings during the departmental inquiry, even if these were proved by the two officers penning the preliminary inquiry report or the investigation report. The reason for the latter conclusion is that the statements during the preliminary inquiry are never meant to be material used in the departmental inquiry, and are never tested or verified by cross-examination by the other side. If a solitary witness, who had seen the incident, as already said, were produced, duly cross-examined, and then the CCTV footage analysed to understand the truth or otherwise of the testimony, the burden on the Establishment could well be discharged. Here, in this case, the entire conclusions of the Inquiry Officer are based on the information of the two witnesses gathered during the preliminary inquiry, that is quite irrelevant in the departmental inquiry, besides the CCTV footage. The said evidence is certainly not relevant to prove the charge against the petitioner, given its nature and the evidence about it being available.

29. The principle, that no reliance can be placed during disciplinary proceedings on the preliminary inquiry, fell for consideration of the Supreme Court in **Nirmala J. Jhala v. State of Gujarat and another**<sup>13</sup> The facts, in the background of which the issue arose in **Nirmala J. Jhala** (*supra*) find eloquent mention in the report of their Lordships' decision, which can be best recapitulated by quoting it verbatim :

2. Facts and circumstances giving rise to this appeal are : that the appellant

had joined the Gujarat State Judicial Service in 1978, and was promoted subsequently as Civil Judge (Senior Division) in 1992. She was posted as Chief Judicial Magistrate (Rural) in Ahmedabad. In December 1991, she was trying one Gautam Ghanshyam Jani in CBI Case No. 5 of 1991 for the offence of misappropriation and embezzlement of public money. The accused filed a complaint with CBI on 19-8-1993, against the appellant alleging that she had demanded a sum of Rs 20,000 on 17-8-1993 as illegal gratification, to pass order in his favour, through one C.B. Gajjar, Advocate. As it was not possible for the complainant to pay the said amount, the appellant had agreed to accept the same in instalments, and in order to facilitate the said complainant's efforts to arrange the said amount in part, she had even granted adjournment.

3. The said complaint filed with CBI was referred to the High Court and in pursuance thereof, a preliminary enquiry was conducted against the appellant in which statements of various persons including C.B. Gajjar and G.G. Jani were recorded. The Court then suspended the appellant vide order dated 21-1-1994, and directed a regular enquiry appointing Shri M.C. Patel, Additional Civil Judge, City Civil Court, Ahmedabad as the enquiry officer.

4. A charge-sheet dated 6-8-1994, containing 12 charges was served upon the appellant. One of the main charges was, the demand of illegal gratification to the tune of Rs 20,000 from G.G. Jani through C.B. Gajjar, Advocate in lieu of favouring the complainant-accused. Another relevant charge was that a person known as "Mama" amongst the litigants, would come to her

residence, accompany her to court, and collect money from litigants on her behalf and thus, she had indulged in corrupt practices.

5. During the course of the enquiry, G.G. Jani, C.B. Gajjar, P.K. Pancholi and certain other witnesses were examined by the department and in her defence, the appellant examined herself denying all the allegations made against her. The enquiry officer submitted his report on 24-10-1997, holding the appellant guilty of the first charge and partially guilty of the second charge i.e. to the extent that one person named "Mama" used to visit her quite frequently. However, it could not be proved that he had ever misused his association with the appellant in any respect. All other charges were found unsubstantiated.

6. In pursuance of the report submitted by the enquiry officer, the matter was examined on the administrative side by the High Court, and after meeting various legal requirements i.e. issuing show-cause notice to the appellant and considering her reply, the Court vide resolution dated 12-10-1998, made a recommendation to the State that the appellant was guilty of the first charge, and thus, punishment of compulsory retirement be imposed on her. The Government accepted the same and issued a notification giving compulsory retirement to the appellant on 11-12-1998.

7. Aggrieved, the appellant challenged the said order of punishment, by filing a Special Civil Application No. 5759 of 1999 before the High Court on the ground that the findings of the enquiry officer were perverse and based on no evidence. However, the said civil application was dismissed by the High

Court, vide impugned judgment and order dated 25-8-2004 [(2004) 3 Guj LR 2142] . Hence, this appeal.

30. It was in the context of these facts and on the issue in hand about the reliance placed on the statements and material recorded during the preliminary inquiry that it was observed in **Nirmala J. Jhala** :

41. In the aforesaid backdrop, we have to consider the most relevant issue involved in this case. Admittedly, the enquiry officer, the High Court on administrative side as well on judicial side, had placed a very heavy reliance on the statement made by Shri C.B. Gajjar, Advocate, Mr G.G. Jani, complainant and that of Shri P.K. Pancholi, Advocate, in the preliminary inquiry before the Vigilance Officer. Therefore, the question does arise as to whether it was permissible for either of them to take into consideration their statements recorded in the preliminary inquiry, which had been held behind the back of the appellant, and for which she had no opportunity to cross-examine either of them.

42. A Constitution Bench of this Court in *Amalendu Ghosh v. North Eastern Railway* [AIR 1960 SC 992] , held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

43. Similarly in *Champaklal Chimanlal Shah v. Union of India* [AIR

1964 SC 1854] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under : (AIR p. 1862, para 12)

“12.... There must therefore be *no confusion between the two enquiries* and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that article [, nor prior to that].”

(emphasis added)

(See also *Govt. of India v. Tarak Nath Ghosh* [(1971) 1 SCC 734 : AIR 1971 SC 823. Ed. : See paras 10 to 14 thereof in SCC where the distinction between a preliminary and regular enquiry has been discussed. *Tarak Nath Ghosh* has however been overruled on other points in *P.R. Nayak v. Union of India*, (1972) 1 SCC 332 and *T.V. Nataraj v. State of Karnataka*, (1994) 2 SCC 32.] )

44. In *Narayan Dattatraya Ramteerthakhar v. State of Maharashtra* [(1997) 1 SCC 299 : 1997 SCC (L&S) 152 : AIR 1997 SC 2148] this Court dealt with the issue and held as under:

“... a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor, remains of no consequence.”

(emphasis added)

45. In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.

46. In *Ayaubkhan Noorkhan Pathan v. State of Maharashtra* [(2013) 4 SCC 465 : AIR 2013 SC 58] this Court while placing reliance upon a large number of earlier judgments held that cross-examination is an integral part of the principles of natural justice, and a statement recorded behind back of a person wherein the delinquent had no opportunity to cross-examine such persons, the same cannot be relied upon.

47. The preliminary enquiry may be useful only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry.

31. We are, therefore, of opinion that upon this kind of irrelevant material,

the Inquiry Officer, the Disciplinary Authority and the Reviewing Authority could never have found the petitioner guilty. In order to find the petitioner guilty, as already said, there had to be some relevant evidence about the incident subject matter of the charge, that was otherwise available in abundance, and, in fact, cited in the charge-sheet, to begin with, by mentioning the Branch Manager and the Deputy Branch Manager as witnesses, but never produced by the Management. The burden to prove the charge, of course, was always there upon the Establishment, which, they did not at all discharge, by producing relevant material or evidence in this case. The fact particularly gains importance here, because, the nature of the allegations against the petitioner ex facie show that the charge had to be convincingly proved by the Establishment. The reason is that the imputations against the petitioner could not have naturally happened the way the respondents have believed them. Admittedly, the petitioner's wife was already sanctioned a dairy loan earlier in the day, and there was no reason for her or the petitioner to harbour a grouse against the Branch Manager or the Bank. Apparently, she was called back to the Bank by the Branch Manager, according to her case, and it is then that the Branch Manager allegedly misbehaved with her in a remote corner of the Bank, away from his cabin. Logically, in these circumstances, it is not an apparent case of motivation, either for the petitioner or his wife, to insult, humiliate, assault or misbehave with the Branch Manager, but for some good cause or provocation. These facts had to be borne in mind and then the charge proved by the Bank, by examining the Branch Manager or some other eye-witness, who saw it all happen. Unfortunately, it was never done and the charge held proved on the basis of

irrelevant, truncated and flimsy material, that could never be taken into consideration to sustain the charge. Reliance placed on the preliminary investigation report and the statements recorded therein is also a course of action manifestly illegal for the Inquiry Officer to have adopted, given the nature of the charge and the material otherwise available about it.

32. The last submission advanced on behalf of the Bank is that if the Branch Manager and the Deputy Branch Manager were not called by the Establishment, the petitioner could have called them in his defence. The said contention is stated to be rejected. The reason is that, that stage would arrive after the Establishment satisfactorily discharged their burden to prove the charge, necessitating the petitioner to produce evidence in his defence. That stage never arrived in this case, in the considered opinion of this Court.

33. In the circumstances, though the impugned order cannot be sustained, we think that an opportunity ought to be given to the Bank, if they so elect, to proceed afresh against the petitioner by proving the case against him in an inquiry to be held, bearing in mind the remarks in this judgment. The charge-sheet and the petitioner's reply would, of course, stand and the inquiry, if pursued afresh, would proceed from that stage onwards.

34. In the result, this petition **succeeds** and stands **allowed**. The impugned orders dated 22.11.2022, 21.03.2023 and 12.05.2023 passed by the Chief Manager, Union Bank of India, Varanasi, the Deputy General Manager (ERD), Union Bank of India, Mumbai and the General Manager (Human Resource), Union Bank of India, Mumbai, respectively, are hereby quashed. The petitioner shall be reinstated in service forthwith and paid his current salary regularly. It will be open to the respondents to

proceed against the petitioner afresh on the basis of the charge-sheet already issued to him and his reply thereto, of course, considering relevant evidence, bearing in mind the guidance in this judgment. The question of arrears of salary would depend upon the event in the disciplinary proceedings. If, however, the respondents do not elect to pursue fresh proceedings against the petitioner, the petitioner would be entitled to 50% of his emoluments for the period that he has remained out of service.

35. There shall be no order as to costs.

36. Let this order be communicated to the Deputy General Manager (ERD), Union Bank of India, Mumbai and the General Manager (Human Resource), Union Bank of India, Mumbai by the learned Registrar General of this Court through the learned Registrar General of the High Court of Bombay. Let this order be also communicated to the Chief Manager, Union Bank of India, Varanasi through the learned Chief Judicial Magistrate, Varanasi by the Registrar (Compliance).

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**(2025) 5 ILRA 1438**

**ORIGINAL JURISDICTION**

**CIVIL SIDE**

**DATED: ALLAHABAD 17.05.2025**

**BEFORE**

**THE HON'BLE ASHWANI KUMAR MISHRA, J.  
THE HON'BLE DONADI RAMESH, J.**

Writ - A No. 19427 of 2023

Connected With

Writ - A No. 16348 of 2024

And

Writ - A No. 21023 of 2023

**Prof. (Dr.) Mujahid Beg           ...Petitioners  
Versus**

**U.O.I. & Ors.                           ...Respondents**

**Counsel for the Petitioners:**

Kunal Shah, Sankalp Narain, Sr. Adv.