2025 INSC 997

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6599 OF 2025
[ARISING OUT OF SLP (CIVIL) NO. 6358 OF 2022]

K. PRABHAKAR HEGDE ... APPELLANT

VS.

BANK OF BARODA ... RESPONDENT

JUDGMENT

DIPANKAR DATTA, J.

PREFACE

1. ***S.L. Kapoor v. Jagmohan***[1] is a landmark decision of this Court, delivered more than half a century back, delineating the contours of the principles of natural justice, more particularly the right to be heard before one is condemned. The supersession of the New Delhi Municipal Committee was challenged on the ground that it was in violation of the principles of natural justice, since no show cause notice was issued before the order of supersession was passed. Linked with that question was the question whether the failure to observe the principles of natural justice matters at all, if such observance would have made no difference, the admitted or indisputable facts speaking for themselves. The golden

[1] (1980) 4 SCC 379

words of Hon'ble O. Chinappa Reddy, J., speaking for the three-Judge Bench, rings in our ears:

> "**24.** … In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. …"
>
> (emphasis ours)

2. The above passage from ***S.L. Kapoor*** (supra) came to be noticed in the Constitution Bench decision of this Court in ***Olga Tellis v. Bombay Municipal Corporation***[2] and met with an unconditional approval. Hon'ble Y.V. Chandrachud, CJI. speaking for the Bench (which incidentally included Hon'ble O. Chinappa Reddy, J.) ruled that the said observations sum up the true legal position regarding the purport and implications of the right of hearing.

3. Close on the heels of ***Olga Tellis*** (supra), another Constitution Bench upon a survey of precedents on the point of fair and impartial hearing observed in ***Union of India v. Tulsiram Patel***[3] as follows:

> "**95.** The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that article. Shortly put, the syllogism runs thus: violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is a violation of Article 14: therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of State in Article 12, is charged with the duty of deciding a

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[2] (1985) 3 SCC 545
[3] (1985) 3 SCC 398

matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially."

(emphasis ours)

4. In another seminal decision, i.e., ***A.R. Antulay v. R. S. Nayak***[4], a seven-Judge Constitution Bench while acknowledging that it had committed an error earlier which needed rectification, went on to assert that:

> "**55.** … No prejudice need be proved for enforcing the fundamental rights. Violation of a fundamental right itself renders the impugned action void. So also the violation of the principles of natural justice renders the act a nullity. …"

5. It has recently been held by us in ***State of Uttar Pradesh v. Ram Prakash Singh***[5] that just as Articles 14, 19 and 21 constitute a triumvirate of rights of citizens conceived as charters on equality, freedom and liberty, the trio of the Constitution Bench decisions in ***Olga Tellis*** (supra), ***Tulsiram Patel*** (supra) and ***A.R. Antulay*** (supra) form the bedrock of natural justice principles being regarded as part of Article 14 and, thereby, obviating the need to demonstrate prejudice if a challenge were thrown on the ground of violation of Article 14.

6. Reference to these decisions has been made at the inception because of the particular view we propose to take on consideration of decisions of a three-Judge Bench in ***Sunil Kumar Banerjee v. State of West Bengal & Ors.***[6] and a coordinate Bench in ***Union of India v. Alok Kumar***[7]. Notably, these decisions were relied on by the Division Bench of the High

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[4] (1988) 2 SCC 602
[5] 2025 SCC OnLine SC 891
[6] (1980) 3 SCC 304
[7] (2010) 5 SCC 349

Court of Karnataka at Bengaluru[8] while insisting on the requirement to demonstrate prejudice in a claim of breach of principles of natural justice notwithstanding that the employer before it had violated a statutory regulation by which it was bound.

THE APPEAL

7. The challenge in this civil appeal, by the appellant K. Prabhakar Hegde, is to the judgment and order dated 14th December, 2021[9] in Writ Appeal No. 975 of 2009 (S-DE). *Vide* the impugned order, the High Court allowed the writ appeal carried by the respondent here, Bank of Baroda. Consequently, the judgment and order of the Single Judge dated 24th February, 2009 in WP No. 27936/2003, which was under challenge, stood set aside with the result that the writ petition of the appellant was dismissed.

BRIEF FACTS

8. The facts relevant for the purpose of deciding this appeal are these:

i. In 1959, the appellant joined Vijaya Bank (which merged with the respondent in the year 2019) as a clerk.

ii. Between 1959 and 1998, the appellant was promoted several times. At the relevant time, the appellant was the 'Zonal Head' of the Delhi Zonal Office of Vijaya Bank.

iii. On 4th of January, 1999, the appellant was served with a notice issued by his disciplinary authority. It was alleged that the appellant was

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[8] High Court
[9] impugned order

responsible for certain irregularities and lapses committed in approving temporary overdrafts (TOD) on the accounts of various parties involving substantial amounts. The notice also alleged that the appellant had instructed the Assistant General Manager at the Barakhamba Branch of Vijaya Bank to grant a TOD of Rs. 15,00,000/- to one M/s Kunal Travels Pvt. Ltd. via telephone. Another notice was sent on 22nd January, 1999 in respect of a separate incident containing more or less similar allegations.

iv. Appellant replied to the said notices through letters dated 1st February, 1999 and 24th February, 1999.

v. On 30th January, 2001, disciplinary proceedings under Regulation 6 of the Vijaya Bank Officer Employees' (Discipline and Appeal) Regulations, 1981[10] were drawn up by issuing a charge sheet. Appellant replied to the said charge sheet vide letter dated 17th February, 2001 denying the charges.

vi. The disciplinary authority of the appellant appointed an officer holding the post of General Manager of Vijaya Bank as the Inquiry Officer.

vii. The report of the inquiry officer dated 28th November, 2001 was submitted to the Disciplinary Authority holding that the charges against the appellant stand proved.

viii. *Vide* an order dated 17th May, 2002, the Disciplinary Authority held that though the appellant was due to retire upon superannuation on 30th June, 2002, disciplinary proceedings initiated against him *vide*

[10] 1981 Regulations

chargesheet dated 30th January, 2001 would continue. It was further ordered that the appellant shall not be entitled to any retirement benefits till final orders are passed in the disciplinary proceedings.

ix. Appellant superannuated from service on 30th January, 2006.

x. *Vide* an order dated 4th July, 2002, the Disciplinary Authority imposed on the appellant the punishment of 'dismissal from service'.

xi. Aggrieved by the punishment imposed on him, the appellant approached the Appellate Authority by presenting an appeal. It was dismissed *vide* an appellate order dated 27th March, 2003.

xii. Appellant then challenged this order of the Appellate Authority before the High Court in its writ jurisdiction. A Single Judge of the High Court allowed the writ petition *vide* judgment and order dated 24th February, 2009. The order of dismissal stood quashed and the appellant held entitled to *"consequential benefits on his having attained the age of superannuation, to which he would have been entitled in the usual course and in law"*.

xiii. Vijaya Bank, aggrieved by the judgment and order of the Single Judge, carried the same in a writ appeal before the Division Bench which, as noted above, succeeded. While the appellant's writ petition stood dismissed, the order of dismissal passed by the Disciplinary Authority against the appellant was, thus, confirmed.

IMPUGNED ORDER

9. The Division Bench of the High Court framed two issues for its determination: (i) whether the denial of the preliminary investigation

report prejudiced the charged officer (appellant before us) and vitiated the proceedings and (ii) whether the stipulation of generally questioning the charged officer regarding the circumstances appearing against him in the evidence was a mandatory requirement under Regulation 6(17) of the 1981 Regulations.

10. While deciding issue (i), reliance was placed by the High Court on the decisions of this Court in ***Vijay Kumar Nigam v. State of MP***[11] and ***Syndicate Bank & Ors. v. Venkatesh Gururao Kurati***[12] to hold that the preliminary report is only to decide and assess whether it would be necessary to take any disciplinary action against the delinquent officer and it does not form any foundation for passing the order. The High Court further held that since all the documents relied upon by the Inquiry Officer had been made available to the appellant and the appellant's representative having cross-examined the sole witness for the management in *extenso*, furnishing of the preliminary investigation report was not necessary; hence, no prejudice to the appellant was caused thereby.

11. Regarding issue (ii), the Division Bench held: first, Regulation 6(17) of the 1981 Regulations is *pari materia* Rule 8(19) of the All India Services (Discipline & Appeal) Rules, 1955; hence, the decision of this Court in ***Sunil Kumar Banerjee*** (supra), which has since been followed by this Court in the decision in ***Alok Kumar*** (supra) is squarely applicable and compliance with such a regulation is merely directory and not

[11] (1996) 11 SCC 599.
[12] (2006) 3 SCC 150.

mandatory. Secondly, the High Court held, on facts, that the Inquiry Officer had asked the appellant if he wished to make any submission and in pursuance thereof, he did utilise the opportunity by making detailed submissions; hence, though the appellant was not generally questioned as required by Regulation 6(17), such provision had been substantially complied with.

12. As a sequitur, the High Court allowed the writ appeal and set aside the order of the Single Judge.

CONTENTIONS OF THE PARTIES

13. The appellant has laid siege to the impugned order on, *inter alia*, the following grounds:

a. The High Court did not consider the decision rendered by this Court in ***ECIL v. B. Karunakar***[13] and ***UCO Bank v. Rajinder Lal Capoor***[14].

b. The High Court erroneously interpreted the principles of law laid down in ***Venkatesh Gururao Kurati*** (supra).

c. The High Court did not consider that non-furnishing of the report of preliminary inquiry has itself caused prejudice to the appellant as the appellant was unable to defend himself in respect of the charges against him.

d. Reliance placed by the High Court on ***Sunil Kumar Banerjee*** (supra) was misplaced. The said decision, rendered by a three-Judge Bench referred to coordinate Bench decisions in ***K.C.***

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[13] (1993) 4 SCC 727.
[14] (2007) 6 SCC 694.

Mathew v. State of Travancore-Cochin[15] and ***Bibhuti Bhusan Das Gupta v. State of W.B.***[16] without, however, noticing an earlier decision of a four-Judge Bench in ***Tara Singh v. State***[17] where it was held to be important to faithfully and fairly observe Section 342 of the 1898 Code, the object whereof was to afford the accused a fair and proper opportunity of explaining the circumstances which appear against him. Though it was held that every error or omission would not vitiate a trial and that the question in each case would depend on the degree of the error and upon whether prejudice had been occasioned or likely to have been occasioned, in the present case, the degree of error was at its peak since the Inquiry Officer did not put a single question to the appellant in respect of the circumstances appearing in the evidence against him and the High Court failed to consider that calling upon the appellant to place his version does not in any manner amount to compliance of Regulation 6(17) of the 1981 Regulations, not to speak of substantial compliance.

e. The authorities could not have considered the appellant to be "deemed to be in service" post superannuation and ordering him to be dismissed from service in the absence of any regulation in the 1981 Regulations permitting such course of action is absolutely illegal.

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[15] AIR 1956 SC 241
[16] AIR 1969 SC 381
[17] 1951 SCC 903

f. The actions of the appellant of giving oral sanctions for the TOD was normal practice and was done in good faith.

14. Based on the aforesaid contentions, Mr. Nuli, learned senior counsel for the appellant ably assisted by Ms. Akhila Wali, learned counsel urged that the entire disciplinary proceedings including the order of dismissal and the appellate order be set aside and the respondent be ordered to release to the appellant full benefits as if he had never been dismissed.

15. *Per contra*, Mr. Patil, learned senior counsel appearing on behalf of the respondent, defended the administrative actions challenged in the writ petition and the impugned order on, *inter alia*, the following grounds:

a. The High Court rightly decided that since the report of preliminary inquiry was only to assess and decide whether disciplinary proceedings should be initiated or not and had not formed the foundation for passing the order of dismissal from service, denial of the same to the appellant did not prejudice him.

b. The author of the preliminary inquiry report was the sole witness for the management in the inquiry and whatever was recorded by such witness in the preliminary inquiry report was spoken to by him in course of the inquiry; whereafter the appellant had cross-examined extensively. There was, thus, no question of the appellant to feel aggrieved by non-furnishing of the report of preliminary inquiry.

c. *Qua* Regulation 6(17) of the 1981 Regulations, the appellant has not demonstrated any prejudice; moreover, the appellant utilised

the opportunity of making submissions when called upon by the Inquiry Officer and, therefore, the High Court was right in holding that the concerned regulation is not mandatory and requires only to be substantially complied with.

d. The appellant did not ever raise any grievance in course of the inquiry and even subsequently, in his representation against the inquiry report or the appeal petition that non-compliance with Regulation 6(17) of the 1981 Regulations had prejudiced him in his defence. For the first time, the appellant raised such a grievance in the writ petition which is nothing but an afterthought.

e. The decision in ***Tara Singh*** (supra) and ***Sunil Kumar Banerjee*** (supra) operate in different legal domains and, therefore, ***Tara Singh*** (supra) being a decision rendered in the criminal appellate jurisdiction is not applicable in the present proceedings; on the contrary, ***Sunil Kumar Banerjee*** (supra) is pat on the point and propriety demands that we follow the same.

f. Continuation of disciplinary proceedings even after the appellant had attained superannuation cannot be faulted because the appellant was continued in service till such time the final order of dismissal from service was passed and this is a permissible course of action, not warranting interdiction.

ISSUES

16. Three broad issues emerge for decision:

(i) Whether denial of the report of preliminary inquiry prepared by the officer entrusted by Vijaya Bank to conduct such inquiry, who happened to be the sole management witness, was sufficient to vitiate the regular inquiry that followed against the appellant?

(ii) Whether the failure/omission of the Inquiry Officer to generally question the appellant on the circumstances appearing against him in the evidence, as per Regulation 6(17) of the 1981 Regulations, vitiated the inquiry?

(iii) Whether continuation of disciplinary proceedings against the appellant beyond superannuation was a permissible course of action under the 1981 Regulations?

17. If indeed the answer to any or all the aforesaid issues is in favour of the appellant, the relief that he could be entitled would then fall for our consideration.

ANALYSIS

18. We begin with issue no.1. Unlike the extensive jurisprudence available on the furnishing of the final enquiry report, our research reveals that there is significantly less jurisprudence on the issue of furnishing a preliminary inquiry report. However, the decisions referred to below provide sufficient light for us to rule on the question before us.

19. At the outset, we refer to the Constitution Bench decision in ***Champaklal Chimanlal Shah v. Union of India***[18]. The said decision succinctly

[18] 1963 SCC OnLine SC 42

delineates the purpose of a preliminary inquiry, albeit in the context of government employees. Hon'ble K.N. Wanchoo, J. (as the Chief Justice then was) speaking for the Bench observed as follows:

> "13. Generally therefore a preliminary enquiry is usually held to determine whether a prima facie case for a formal departmental enquiry is made out, and it is very necessary that the two should not be confused. Even where government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct a preliminary enquiry is usually held to satisfy government that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post, for as we have said already government does not usually take action of this kind without any reason. Therefore when a preliminary enquiry of this nature is held in the case of a temporary employee or a government servant holding a higher rank temporarily it must not be confused with the regular departmental enquiry (which usually follows such a preliminary enquiry) when the government decides to frame charges and get a departmental enquiry made in order that one of the three major punishments already indicated may be inflicted on the government servant. Therefore, so far as the preliminary enquiry is concerned there is no question of its being governed by Article 311(2) for that enquiry is really for the satisfaction of government to decide whether punitive action should be taken or action should be taken under the contract or the rules in the case of a temporary government servant or a servant holding higher rank temporarily to which he has no right. In short a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under Article 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held ex parte, for it is merely for the satisfaction of government, though usually for the sake of fairness, explanation is taken from the servant concerned even as such an enquiry. But at that stage he has no right to be heard for the enquiry is merely for the satisfaction of the government and it is only when the government decides to hold a regular departmental enquiry for the purpose of inflicting one of the three major punishments that the government servant gets the protection of Article 311 and all the rights that that protection implies as already indicated above. 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. That is why this Court emphasised in *Parshotam Lal Dhingra case* [(1958) SCR 828] and in *Shyam Lal* v. *State of Uttar Pradesh* [(1955) 1 SCR 26] that the 'motive or the inducing factor which influences the government to take action under the terms of the contract of employment or the specific service rule is irrelevant'."

20. A coordinate Bench in ***Krishna Chandra Tandon v. Union of India***[19] incontrovertibly held that there is no requirement to furnish a preliminary inquiry report when the enquiry officer has not relied upon the same to reach the conclusions recorded in the inquiry report after a regular inquiry. The relevant passage reads as follows:

> "**16.** … It is very necessary for an authority which orders an enquiry to be satisfied that there are prima facie grounds for holding a disciplinary enquiry and, therefore, before he makes up his mind he will either himself investigate or direct his subordinates to investigate in the matter and it is only after he receives the result of these investigations that he can decide as to whether disciplinary action is called for or not. Therefore, these documents of the nature of inter-departmental communications between officers preliminary to the holding of enquiry have really no importance unless the Enquiry Officer wants to rely on them for his conclusions. In that case it would only be right that copies of the same should be given to the delinquent. It is not the case here that either the Enquiry Officer or the CIT relied on the report of Shri R.N. Srivastava or any other officer for his finding against the appellant. Therefore, there is no substance in this submission."

21. The concept of a preliminary inquiry and its ramifications have been neatly summed up in ***Chandrama Tewari v. Union of India***[20]*.* There, a coordinate Bench of this Court held that:

> "**4.** We have given our anxious consideration to the submissions made on behalf of the appellant and we have further considered the aforesaid authorities referred to by the learned counsel for the appellant but we do not find any merit in the appellant's submissions to justify interference with the High Court's judgment. Article 311 of the Constitution requires that reasonable opportunity of defence must be afforded to a government servant before he is awarded major punishment of dismissal. It further contemplates that disciplinary enquiry must be held in accordance with the rules in a just and fair manner. The procedure at the enquiry must be consistent with the principles of natural justice. Principles of natural justice require that the copy of the document if any relied upon against the party charged should be given to him and he should be afforded opportunity to cross-examine the witnesses and to produce his own witnesses in his defence. If findings are recorded against the government servant placing reliance on a document which may not have been disclosed to him or the copy whereof

[19] (1974) 4 SCC 374
[20] 1987 Supp SCC 518

may not have been supplied to him during the enquiry when demanded, that would contravene principles of natural justice rendering the enquiry, and the consequential order of punishment illegal and void. These principles are well settled by a catena of decisions of this Court. We need not refer to them. However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges, instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied upon by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charged the ground of violation of principles of natural justice cannot successfully be raised. The violation of principles of natural justice arises only when a document, copy of which may not have been supplied to the party charged when demanded is used in recording finding of guilt against him. On a careful consideration of the authorities cited on behalf of the appellant we find that the obligation to supply copies of a document is confined only to material and relevant documents and the enquiry would be vitiated only if the non-supply of material and relevant documents when demanded may have caused prejudice to the delinquent officer.

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9. It is now well settled that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges framed against the officer, the enquiry would be vitiated for the violation of principles of natural justice. Similarly, if the statement of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry is not supplied to the delinquent officer that would amount to denial of opportunity of effective cross-examination. It is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied on in support of the charges. If a document has no bearing on the charges or if it is not relied on by the enquiry officer to support the charges, or if such document or material was not necessary for the cross-examination of witnesses during the enquiry, the officer cannot insist upon the supply of copies of such documents, as the absence of copy of such document will not prejudice the delinquent officer. The decision of the question whether a document is material or not will depend upon the facts and circumstances of each case."

22. A three-Judge Bench of this Court in ***Narayan Dattatraya Ramteerthakhar* v. *State of Maharashtra***[21] observed that:

> "**3.** … It is then contended that the preliminary enquiry was not properly conducted and, therefore, the enquiry is vitiated by principles of natural justice. The preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The former action would be to find whether disciplinary enquiry should be initiated against the delinquent. After full-fledged enquiry was held, the preliminary enquiry had lost its importance."

23. Considering the aforesaid decisions as well as other decisions, a coordinate Bench in ***Nirmala J. Jhala v. State of Gujarat***[22] held that:

> "**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."

24. We may also profitably refer to the decision in ***Manoj Kumar v. State of U.P.***[23] wherein it was held:

> "**6.** …The order also states that a preliminary inquiry was held to determine if a full-fledged departmental enquiry was required after which the charge memo was served with full opportunity of defence. The non-furnishing of the preliminary inquiry report has therefore not prejudiced the appellant in any manner or vitiated the departmental proceedings."

25. The upshot of the aforesaid decisions is that:

i. A preliminary inquiry is conducted for the purposes of determining whether regular disciplinary proceedings are called for or not;

ii. A preliminary inquiry report is an internal document;

iii. A preliminary inquiry report or the findings therein cannot be used to come to conclusions recorded in the report of inquiry if such

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[21] (1997) 1 SCC 299
[22] (2013) 4 SCC 301
[23] (2018) 13 SCC 161

preliminary inquiry report/findings are based on oral and/or documentary evidence which are obtained behind the back of the charged employee and such oral/documentary evidence are not presented in the inquiry in the presence of such employee;

iv. If a preliminary inquiry report or the findings therein are sought to be relied on, the witnesses whose evidence was relied on in preparing the same ought to be brought before the inquiry officer and the charged officer afforded an opportunity to cross-examine them;

v. If a preliminary inquiry report is sought to be relied upon in the inquiry report, then such preliminary inquiry report must be provided to the delinquent employee;

vi. Once a chargesheet is drawn up and has been provided to the charged officer detailing the charges, the preliminary inquiry report is of no consequence and need not be provided to him.

26. Having noted the purpose and reason for conducting a preliminary inquiry, we now proceed to answer the question as to whether non-furnishing of the report to the appellant led to the disciplinary proceedings being vitiated.

27. In the instant case, a perusal of the inquiry report reveals that no reliance upon the preliminary inquiry report has been placed by the inquiry officer. Therefore, non-furnishing of the inquiry report to the appellant is inconsequential.

28. However, an interesting argument that has been made is that the non-furnishing of the preliminary inquiry report has caused prejudice to the appellant because such non-furnishing of the report disabled him to effectively cross-examine the witness. This argument, while novel, is not impressive. We come to this ineluctable conclusion since the appellant was duly provided with the deposition of the witness as per the rules, was allowed to cross-examine the witness on the basis of the statements made by him and the inquiry officer placed no reliance upon the preliminary inquiry report, but only upon the statements of such witness recorded during chief examination and cross-examination.

29. We, therefore, find no violation of the principles of natural justice; also, no prejudice has been caused to the charged officer for non-furnishing of the preliminary inquiry report.

30. This conclusion, is however, premised on the caveat that no rule, statutory or otherwise, mandates the furnishing of the preliminary inquiry report in this particular case.

31. We now proceed to answer the next question which is central to the dispute, i.e., what is the nature of duty that Regulation 6(17) of the 1981 Regulations casts on an Inquiry Officer? Is the provision directory or mandatory, or is it both directory and mandatory depending on the fact situation in each case?

32. In ***Sunil Kumar Banerjee*** (supra), a three-Judge Bench of this Court had the occasion to consider Rule 8(19) of the All India Services

(Discipline and Appeal) Rules, 1969[24], which is *pari materia* Rule 6(17) of the 1981 Regulations. A point having been taken before the Bench by the delinquent officer that Rule 8(19) was observed in the breach by the Inquiry Officer, it was ruled by Hon'ble O. Chinappa Reddy, J. as follows:

> "**3.** … It may be noticed straightway that this provision is akin to Section 342 of the Criminal Procedure Code of 1898 and Section 313 of the Criminal Procedure Code of 1973. It is now well established that mere non-examination or defective examination under Section 342 of the 1898 Code is not a ground for interference unless prejudice is established, vide, *K.C. Mathew* v. *State of Travancore-Cochin (AIR 1956 SC 241)*; *Bibhuti Bhusan Das Gupta* v. *State of W.B*. *(AIR 1969 SC 381).* We are similarly of the view that failure to comply with the requirements of Rule 8(19) of the 1969 Rules does not vitiate the enquiry unless the delinquent officer is able to establish prejudice. In this case the learned Single Judge of the High Court as well as the learned Judges of the Division Bench found that the appellant was in no way prejudiced by the failure to observe the requirement of Rule 8(19). The appellant cross-examined the witnesses himself, submitted his defence in writing in great detail and argued the case himself at all stages. The appellant was fully alive to the allegations against him and dealt with all aspects of the allegations in his written defence. We do not think that he was in the least prejudiced by the failure of the Enquiry Officer to question him in accordance with Rule 8(19)."

33. It follows from the above passage that the Bench in ***Sunil Kumar Banerjee*** (supra), while overruling the contention of the delinquent officer, held that (i) Rule 8(19) of the 1969 Rules was akin to Section 342 of the Code of Criminal Procedure, 1898[25] and Section 313 of the Code of Criminal Procedure, 1973[26]; and (ii) in terms of the law laid down in ***K.C. Mathew*** (supra) and ***Bibhuti Bhusan Das Gupta*** (supra), mere non-examination or defective examination under Section 342 of the 1898 Code is not a ground for interference unless prejudice is

[24] 1969 Rules
[25] 1898 Code
[26] 1973 Code

established. On facts, the Bench was of the opinion that though the Inquiry Officer had not examined the delinquent officer, he was not prejudiced at all thereby since he was alive to the allegations against him, had cross-examined the witnesses himself, submitted his defence in writing in great detail and argued the case himself at all stages.

34. Sections 342 and 313 of the 1898 and 1973 Codes, respectively, though bear close resemblance, are not exactly the same. We may, for ease of understanding, quote the same below:

> 342. (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the court may, at any stage of any inquiring or trial without previously warning the accused, put such questions to him as the court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.
> (2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.
> (3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into or trial for, any other offence which such answers may tend to show he has committed.
> (4) No oath shall be administered to the accused when he is examined under sub-section (1).
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> 313. Power to examine the accused.—
> (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court—
>
> > (a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;
> > (b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case: Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).
>
> (2) No oath shall be administered to the accused when he is examined under sub-section (1).
> (3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.
(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.

35. In ***K.C. Mathew*** (supra), a three-Judge Bench while considering the impact of breach of Section 342 of the 1898 Code observed as follows:

"7. The next argument was that the examination of each accused under Section 342 of the Criminal Procedure Code was defective and that that caused prejudice. We agree that the examination was not as full or as clear as it should have been but we are not satisfied that there was any prejudice.
8. It is to be noted that the question of prejudice was not raised in either of the courts below nor was it raised in the grounds of appeal to this Court. The point was taken for the first time in the arguments before us and even there counsel was unable to say that his clients had in fact been prejudiced; all he could urge was that there was a possibility of prejudice.
9. We agree that the omission to take the objection in the grounds of appeal is not necessarily fatal; everything must depend on the facts of the case; but the fact that the objection was not taken at an earlier stage, if it could and should have been taken, is a material circumstance that will necessarily weigh heavily against the accused particularly when he has been represented by counsel throughout. The Explanation to Section 537 of the Criminal Procedure Code expressly requires the Court to

> 'have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings'.

10. Another strong circumstance is this : the petition for appeal does not set out the questions that, according to the appellants, they should have been asked nor does it indicate the answers that they would have given if they had been asked. Again, though that is not necessarily fatal ordinarily it will be very difficult to sustain a plea of prejudice unless the Court is told just where the shoe pinches. It is true that in certain exceptional cases prejudice, or a reasonable likelihood of prejudice, may be so patent on the face of the facts that nothing more is needed; but that class of case must be exceptional. After all, the only person who can really tell us whether he was in fact prejudiced is the accused; and if there is real prejudice he can at once state the facts and leave the Court to judge their worth. But if the attitude of the accused, whether in person or through the mouth of his counsel, is: 'I don't know what I would have said. I still have to think that up. But I *might* have said this, that or the other', then there will ordinarily be little difficulty in concluding that there neither was, nor could have been, prejudice. Here, as elsewhere, the Court is entitled to conclude that a person who deliberately withholds facts within his special knowledge and refuses to give the Court that

assistance which is its right and due, has nothing of value which he can disclose and that if he did disclose anything that would at once expose the hollowness of his cause."

(emphasis ours)

36. ***Bibhuti Bhusan Das Gupta*** (supra) is also a decision of a three-Judge Bench. The question arising for decision is neatly summed up in paragraph 4, reading as follows:

> "4. … The point in issue is whether the pleader can represent the accused for purposes of Section 342 and whether the examination of the pleader in place of the accused is sufficient compliance with the section in a case where the Magistrate has dispensed with the personal attendance of the accused and permitted him to appear by a pleader. On this question there is a sharp conflict of judicial opinion. Most of the decisions up to 1962 are referred to in *Prova Debi* v. *Mrs Fernandes (AIR 1962 Cal 203).* In that case a Full Bench of the Calcutta High Court by a majority decision held that the Magistrate may in his discretion examine the pleader on behalf of the accused under Section 342. This view is supported by numerous decisions of other High Courts, but from time to time many judges expressed vigorous dissents and came to the opposite conclusion. The two sides of the question are ably discussed in the majority and minority judgments of the Calcutta case. After a full examination of all the decided cases on the subject, we are inclined to agree with the minority opinion."

(emphasis ours)

37. Section 342 of the 1898 Code was considered and it was explained in the following words:

> "5. Sub-section (1) of Section 342 consists of two parts. The first part gives a discretion to the court to question the accused at any stage of an inquiry or trial without previously warning him. Under the second part the court is required to question him generally on the case after the witnesses for the prosecution have been examined and before he is called for his defence. The second part is mandatory and imposes upon the court a duty to examine the accused at the close of the prosecution case in order to give him an opportunity to explain any circumstances appearing against him in the evidence and to say in his defence what he wants to say in his own words. He is not bound to answer the questions but if he refuses to answer or gives false answers, the consequences may be serious, for under sub-section (2) the court may draw such inference from the refusal or the false answer as it thinks fit. Under sub-section (3) the answers given by the accused may be taken into consideration in the inquiry or trial. His statement is material upon which the court may act, and which may prove his innocence, (see *State of Maharashtra* v. *Laxman Jairam (1962 Supp 3 SCR 230)*. Under sub-section (4) no oath is administered to him. The reason is that when he is examined under Section 342, he is not a witness. … "

(emphasis ours)

38. Having read the extracted passages of the larger Bench decisions in between the lines, it appears to us imperative to highlight certain points. In ***K.C. Mathew*** (supra), the plea of defective examination was raised for the first time in course of arguments before this Court and not at any previous stage, though fully available to be raised since the accused were being represented by a counsel. The Bench, having expressly referred to the provision in Section 537 of the 1898 Code, which was akin to Section 465(1) of the 1973 Code, considered the inability of the accused to demonstrate the prejudice suffered by him in the process of conviction and sentence as one of the grounds for declining relief. Obviously, on the face of Section 537 of the 1898 Code, a failure of justice had to occasion by any error or irregularity for being interdicted which was not the case in ***K.C. Mathew*** (supra). Similarly in ***Bibhuti Bhusan Das Gupta*** (supra), this Court observed that mere non-examination or defective examination under Section 342 is not a ground for interference unless prejudice is established and, therefore, even in that case, since such plea of prejudice was not raised in previous rounds of litigation and the non-examination under Section 342 did not cause any prejudice, the conviction and sentence was not interfered with looking to the facts in that case. What is important and stands out for the present case is that the second limb of Section 342 of the 1898 Code was interpreted by the three-Judge Bench to be mandatory.

39. This interpretation of Section 342 of the 1898 Code in ***Bibhuti Bhusan Das Gupta*** (supra) also appears to align with the previous larger Bench

decision of four Judges in ***Tara Singh*** (supra) wherein, Hon'ble Vivian Bose, J. (as His Lordship then was) speaking for the Bench, had the occasion to explain in detail the requirements of examination of an accused under Section 342. The relevant passage is extracted below:

> "18. It is important therefore that an accused should be properly examined under Section 342 and, as their Lordships of the Privy Council indicated in *Dwarkanath Varma* v. *Emperor (AIR 1933 PC 124)*, if a point in the evidence is considered important against the accused and the conviction is intended to be based upon it, then it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it if he so desires. This is an important and salutary provision and I cannot permit it to be slurred over. I regret to find that in many cases scant attention is paid to it, particularly in the Sessions Courts. But whether the matter arises in the Sessions Court or in that of the Committing Magistrate, it is important that the provisions of Section 342 should be fairly and faithfully observed.
>
> 23. Section 342 requires the accused to be examined for the purpose of enabling him "to explain any circumstances appearing in the evidence against him". Now it is evident that when the Sessions Court is required to make the examination under this section, the evidence referred to is the evidence in the Sessions Court and the circumstances which appear against the accused in that court. It is not therefore enough to read over the questions and answers put in the Committing Magistrate's Court and ask the accused whether he has anything to say about them. In the present case, there was not even that. The appellant was not asked to explain the circumstances appearing in the evidence against him but was asked whether the statements made before the Committing Magistrate and his answers given there were correctly recorded. That does not comply with the requirements of the section.
>
> 38. The whole object of Section 342 is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned.

39. In my opinion, the disregard of the provisions of Section 342, Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice. But this is not the only error. … ”

40. Further reference can profitably be made to the decision of another three-Judge Bench in ***Rama Shankar Singh v. State of West Bengal***[27] where the scope of Section 342 of the 1898 Code was examined in the light of the relevant Sessions Judge rolling up several distinct matters of evidence in a single question. It was held thus:

> "15. In our view, the learned Sessions Judge in rolling up several distinct matters of evidence in a single question acted irregularly. Section 342 of the Code of Criminal Procedure by the first sub-section provides, insofar as it is material: "For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court … shall … question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence". Duty is thereby imposed upon the Court to question the accused generally in a case after the witnesses for the prosecution have been examined to enable the accused to explain any circumstance appearing against him. This is a necessary corollary of the presumption of innocence on which our criminal jurisprudence is founded. The object of the section is to afford to the accused an opportunity of showing that the circumstance relied upon by the prosecution which may be prima facie against him, is not true or is consistent with his innocence. The opportunity must be real and adequate. Questions must be so framed as to give to the accused clear notice of the circumstances relied upon by the prosecution, and must give him an opportunity to render such explanation as he can of that circumstance. Each question must be so framed that the accused may be able to understand it and to appreciate what use the prosecution desires to make of the evidence against him. Examination of the accused under Section 342 is not intended to be an idle formality, it has to be carried out in the interest of justice and fairplay to the accused : by a slipshod examination which is the result of imperfect appreciation of the evidence, idleness or negligence the position of the accused cannot be permitted to be made more difficult than what it is in a trial for an offence."
>
> (emphasis ours)

41. At this juncture, it would be worthwhile to notice the decision of another three-Judge Bench of this Court in ***Sharad Birdhichand Sarda v. State***

[27] AIR 1962 SC 1239

of Maharashtra[28], where Section 313 of the 1973 Code was considered and it was held by Hon'ble S. Murtaza Fazal Ali, J. (as His Lordship then was) that it is vital that any circumstance adverse to the accused must be put to him under Section 313; otherwise it must be completely excluded from consideration because the accused did not have any chance to explain them. Much the same view was expressed by Hon'ble A. Varadarajan, J. (as His Lordship then was) in his concurring opinion to the effect that the circumstances not put to the appellant in his examination under S. 313 of the 1973 Code have to be completely excluded from consideration.

42. Quite recently, another three-Judge Bench in ***Maheshwar Tigga v. State of Jharkhand***[29] had the occasion to rule that:

> "**8.** It stands well settled that circumstances not put to an accused under Section 313 CrPC cannot be used against him, and must be excluded from consideration. In a criminal trial, the importance of the questions put to an accused are basic to the principles of natural justice as it provides him the opportunity not only to furnish his defence, but also to explain the incriminating circumstances against him. A probable defence raised by an accused is sufficient to rebut the accusation without the requirement of proof beyond reasonable doubt."

43. Mr. Patil is correct that ***Sunil Kumar Banerjee*** (supra) is a precedent that provides adequate guidance for deciding the point under consideration, since it dealt with a *pari materia* provision applicable in course of a departmental inquiry. Obviously, he hinted that we are bound by such precedent and there is no way a different view could be taken.

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[28] (1984) 4 SCC 116
[29] (2020) 10 SCC 108

44. In normal circumstances, there could be little reason not to accept such a contention being bound by the precedent of a larger bench. However, the vast and expansive development of law in the field of administrative law in our country since the time ***Sunil Kumar Banerjee*** (supra) was decided (almost four and half decades back), especially on the rule of fairness in administrative action which is now acknowledged in the Indian context as the third limb of natural justice, cannot be overlooked. Coupled with that is the decision in ***S.L. Kapoor*** (supra), authored by none other than Hon'ble O. Chinappa Reddy, J. himself and the subsequent trio of Constitution Bench decisions in ***Olga Tellis*** (supra), ***Tulsiram Patel*** (supra) and ***A. R. Antulay*** (supra) upholding that violation of a mandatory provision of law relating to fair hearing is in itself prejudice to the person proceeded against and no need to demonstrate prejudice would arise. It is of particular importance when His Lordship frowned that "*it ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced.*" (emphasis ours). It is indeed paradoxical for someone who has denied justice to a person to claim that that person, who was denied justice, is not prejudiced.

45. With the utmost respect and reverence at our command for the three-Judge Bench that had the occasion to decide ***Sunil Kumar Banerjee*** (supra), our analysis of the legal position reveals that the precedential value of the said decision stands significantly diminished for reasons

more than one and that such decision must be treated to be an authority for what it decided based on the reasons assigned therein.

46. First, there was no independent consideration of Rule 8(19) of the 1969 Rules in the context of the procedural safeguards that delinquent officers under such relevant rules are entitled to claim and enforce. Consequently, and most significantly, the impact of the words "may" and "shall" appearing in the same provision do not appear to have been considered. We propose to interpret Regulation 6(17) of the 1981 Regulations a little later.

47. Secondly, the approach of the larger Bench in interpreting Rule 8(19) of the 1969 Rules was completely based on consideration of Section 342 of the 1898 Code and the decisions in ***K.C. Mathew*** (supra) and ***Bibhuti Bhusan Das Gupta*** (supra). The law on Section 313 of the 1973 Code, which replaced Section 342 of the 1898 Code, and the rights of an accused have been explained in detail in several subsequent decisions of this Court, some of which are noticed above. Since examination under Section 313 of the 1973 Code has been recognised as a part of natural justice, failure of the court to place the circumstances appearing in the evidence to the accused by putting appropriate questions resulting in his improper examination in a given case could result in the trial being held to be vitiated. To make the examination under Section 313 of the 1973 Code more effective, the Parliament has even amended such provision on the last day of the year 2009. In view thereof and by passage of time, the prejudice theory in criminal trials *qua* Section 313, Cr. PC

examination seems to have suffered some dilution; however, since we are not dealing with an appeal arising out of a criminal trial, we may not be understood to have laid down any law in this judgment that could be cited as a precedent before courts trying criminal offences. Nonetheless, we hold that ***K.C. Mathew*** (supra) was not the only decision providing guidance. There were other decisions of high authority which might not have been cited before the Bench in ***Sunil Kumar Banerjee*** (supra).

48. Thirdly, assuming that the prejudice theory does have relevance, it is reasonable to assume that the principle on the basis of which ***Rama Shankar Singh*** (supra) and ***K.C. Mathew*** (supra) were decided by Their Lordships must have been predicated on a consideration of Section 537 of the 1898 Code in terms whereof, it has to be demonstrated by the accused, to secure a declaration that the trial or inquiry stood vitiated, that a failure of justice had occasioned arising out of the procedure adopted by the court. Insofar as the 1969 Rules or the 1981 Regulations are concerned, there is no such provision therein like Section 537 of the 1898 Code or Section 465 of the 1973 Code. This marks a significant distinction in trials under the 1898 Code/1973 Code and inquiries under the 1969 Rules/1981 Regulations. In our considered opinion, this vital aspect cannot be excluded from our consideration.

49. Fourthly, ***Bibhuti Bhusan Das Gupta*** (supra) is a decision which appears to have been referred only in passing in ***Sunil Kumar Banerjee*** (supra) without noting the law declared therein. The trial was held to be vitiated for breach of Section 342 of the 1898 Code since the court had

examined the counsel for the accused instead of the accused. Additionally, the decision in ***Bibhuti Bhusan Das Gupta*** (supra) spelt out in clear terms which parts of Section 342 were directory and which parts were mandatory. Section 342, as explained by the Bench in such decision, would have a bearing on our thought process as would be evident from the discussions that follow.

50. Fifthly, the still larger Bench decision in ***Tara Singh*** (supra) went unnoticed in ***Sunil Kumar Banerjee*** (supra).

51. Fifthly, it cannot escape notice that in a criminal trial, fate of the accused is decided by a judicial officer who is an impartial and neutral arbiter whereas, more often than not, fate of a delinquent officer/employee hangs on the decisions of inquiry officers who are members of the same organisation and function under the same employer. Not that we are sceptical of members of the same organisation functioning as inquiry officers, which could be dictated by necessity, but the level of impartiality and neutrality can, in certain cases, be questionable. This is a vital circumstance which does not appear to have been considered.

52. Finally, and most importantly, there is a significant difference between the stages where Section 342, 1898 Code/Section 313, 1973 Code on the one hand and Rule 8(19) of the 1969 Rules/Regulation 6(17) of the 1981 Regulations on the other, apply. In a criminal trial, putting questions to the accused by the court to enable him to explain any circumstance appearing in the evidence against him under the relevant provision (Sections 342/313) is contemplated at two stages – (a) before

the prosecution concludes its evidence and (b) after evidence is concluded by the prosecution but before the accused leads evidence in defence. While in respect of (a) above it is discretionary for the court to question the accused, *qua* (b) above, it is mandatory for the court – as explained in ***Bibhuti Bhusan Das Gupta*** (supra). However, the procedure is not exactly the same in a domestic inquiry of the nature under consideration. In terms of the procedure for holding inquiry, the examination of the nature contemplated by Regulation 6(17) is not to be resorted to in the midst of evidence being led by the management. After the management closes its evidence, the charged officer has to be given opportunity to lead evidence in defence. The charged officer is under no obligation to lead evidence but if he opts therefor, he does so at his own risk and peril and has to bear the consequences, viz. he cannot then claim that the Inquiry Officer is bound to question him generally on the circumstances available in the evidence against him. If the charged officer elects to lead defence evidence, it could include witnesses other than the charged officer; or, it could include him as well along with the other witnesses. The charged officer may even opt not to examine any other witness but only himself. After the evidence of the defence witnesses is recorded and evidence of the defence stands closed, the stage for Regulation 6(17) of the 1981 Regulations, or for that matter Rule 8(19) of the 1969 Rules, is reached. The difference is significant, as we presently propose to explain in the light of the aforesaid options available to the charged officer.

53. Interestingly, Regulation 6(17) as well as Rule 8(19) refers to both 'may' and 'shall'. While the first part of Regulation 6(17) refers to 'may', the second part refers to 'shall'. To enable the charged officer to explain circumstances in the evidence appearing against him, the provision confers a discretion on the Inquiry Officer as well as imposes a mandatory duty on him. It is discretionary for the Inquiry Officer, to put questions to the charged officer if he is himself a witness for the defence, whereas, if the charged officer has not examined himself as a witness for the defence, the mandate of the law is that the Inquiry Officer shall generally question the charged officer on the circumstances appearing in the evidence against him.

54. The use of 'may' and 'shall' in the same provision does imply that Regulation 6(17) means what it says. The words 'may' and 'shall' have been used to mean 'may' and 'shall', respectively, and we cannot possibly conceive of any rule of construction which would lead us to assume that the framers intended that 'shall' in the second part of Regulation 6(17) should also be read and understood as 'may'. Use of the word 'shall', in our opinion, is deliberate to denote that it is not interchangeable with 'may'; if it were so, the framers would have straightaway used 'may' instead of 'shall' having known that 'may' has been used in the first part. Couching of the provision in such language with 'may' and 'shall' having distinct connotations and consequences and bringing about different outcomes in the course of one and the same

inquiry unhesitatingly signals that while the first part of Regulation 6(17) is directory, the second part thereof is mandatory.

55. We, therefore, unhesitatingly hold that the Inquiry Officer by not generally questioning the appellant on the circumstances available in the evidence, which were unfavourable or adverse to such officer, failed to perform a mandatory duty. Any such circumstance, which was unfavourable or adverse to the appellant, should have been excluded from the Inquiry Officer's consideration. It would not commend acceptance that though the Inquiry Officer acted in derogation of the 1981 Regulations, nevertheless, his action must to be upheld on the specious ground that the appellant has failed to demonstrate prejudice. Neither ***Sunil Kumar Banerjee*** (supra) nor ***Alok Kumar*** (supra) examined the issue from our standpoint and in view of the trio – the Constitution Bench decisions in ***Tulsiram Patel*** (supra), ***Olga Tellis*** (supra) and ***A.R. Antulay*** (supra) - which were rendered after ***Sunil Kumar Banerjee*** (supra) and were not noticed in ***Alok Kumar*** (supra), the ratio of the latter decisions may not bind us. ***Alok Kumar*** (supra) relied on ***Haryana Financial Corporation v. Kailash Chandra Ahuja***[30]. In ***Ram Prakash Singh*** (supra), we have considered the entire issue of the prejudice theory threadbare and articulated, as per our understanding, how incomplete reading of the Constitution Bench decision in ***B. Karunakar*** (supra) has resulted in dilution of its ratio. True it is, the High Court was bound by ***Sunil Kumar Banerjee*** (supra)

[30] (2008) 9 SCC 31

and ***Alok Kumar*** (supra) but, in our opinion, the said decisions cannot come to the aid of the respondent.

56. We have considered the reasoning of the High Court that the appellant was extended an opportunity by the Inquiry Officer to make his submissions before the evidence was closed. However, such an opportunity does not really match the nature of duty cast on the Inquiry Officer under Regulation 6(17). Such regulation requires the Inquiry Officer to question the charged officer, if he has not examined himself in defence, on the circumstances appearing in the evidence that are unfavourable or adverse to him. The purpose thereof is to extend an opportunity to the charged officer to explain away such unfavourable or adverse circumstances. This is one of the several procedural safeguards that the 1981 Regulations envisages. The duty cast and the opportunity extended are not equivalent. The inquiry under Regulation 6 being quasi-judicial in nature, Regulation 6(17) places an onerous duty on the Inquiry Officer (who is generally untrained in law) to seriously apply his mind to the evidence on record and to indicate to the charged officer, as part of the process of his decision making, that circumstances exist which could weigh in his mind while arriving at the final findings in the report of inquiry. Once indicated, the charged officer may or may not explain away the circumstances but to offer an opportunity to have his say recorded without indication of the circumstances existing does not and would not amount to substantial compliance of Regulation 6(17).

57. Having said that, we cannot be oblivious of the fact that the appellant did not raise any effective objection as to the failure of the Inquiry Officer to strictly adhere to Regulation 6(17) at any stage prior to invoking the writ jurisdiction of the High Court. There being a failure of the Inquiry Officer to question the charged officer, the appellant ought to have raised the same before the disciplinary authority at the first instance; and, even if he did not so raise, he ought to have raised such objection before the appellate authority while he presented his appeal. If such an objection is not raised at any of the two tiers and the omission to do so is not explained in the writ petition, the court may infer that the charged officer was not seriously affected by non-adherence to Regulation 6(17) and it would be open to it to pass an appropriate order based on the inference drawn.

58. In the present case, the appellant did not raise any objection in this behalf before the disciplinary authority but raised the point, generally, of non-adherence to Regulation 6 before the appellate authority. Unfortunately, the issue was missed and not addressed because, as we propose to elaborately refer in the following paragraphs, the appellate authority devoted its attention more to deal with another significant objection raised by the appellant and negatived it by assigning lengthy reasons which, however, do not appeal to us to be convincing. Be that as it may, the appellant is justified in voicing a grievance before us that he had not been extended fair, reasonable and adequate opportunity to

defend himself in terms of Regulation 6 which, in turn, infringed his right protected by Article 14 of the Constitution.

59. The other important aspect, which merits our consideration and touched upon by us in the earlier paragraph in very brief, admittedly, was not argued before us by Mr. Nuli. We have noted that such point was raised before the Single Judge, but, without success. However, we had the appeal listed once again after reserving judgment to ascertain Mr. Patil's view on such point bearing in mind the power of an appellate court under Order XLI Rule 33, Code of Civil Procedure, 1908. The appellant had vehemently contended before the appellate authority that initially, the disciplinary authority had proposed to impose upon the appellant the penalty of compulsory retirement from service. The Chief Vigilance Officer[31] concurred with such proposal of the disciplinary authority. The file was then placed before the Central Vigilance Commission[32]. However, the CVC rejected the proposal of both the disciplinary authority and the CVO and instead recommended that the charged officer be not shown any leniency since he has been found guilty of financial irregularities and, therefore, be 'dismissed' from service. According to the appellant, the disciplinary authority acting on the dictates of the CVC proceeded to dismiss him from service. Appellant's gravamen was that the recommendation of the CVC was never made available to him, affecting his right to a fair opportunity of defence. When challenged before the appellate authority, such challenge was rejected on the

[31] CVO
[32] CVC

ground that the CVC recommendation is a privileged document and that the appellant has violated the expected code of conduct by referring to such internal documents which he could not have accessed in normal due course.

60. In ***SBI v. D.C. Aggarwal***[33], the question arising for decision was noted in paragraph 1. The same reads:

> "Can disciplinary authority while imposing punishment, major or minor, act on material which is neither supplied nor shown to the delinquent is the only issue of substance, which arises for consideration in this appeal, filed by …?

61. In a case almost identical to the present one, this Court while answering the aforesaid question held that when the disciplinary authority accepts the recommendation of the CVC which is at variance with the original proposal of the disciplinary authority, it is incumbent upon the authority to furnish a copy of the CVC recommendation to the charged employee before acting on such recommendation. It was held thus:

> "**5.** Reliance was placed on sub-rule (5) of Rule 50 which reads as under:
>
> > '(5) Orders made by the Disciplinary Authority or the Appointing Authority as the case may be under sub-rules (3) and (4) shall be communicated to the employee concerned, who shall also be supplied with a copy of the report of inquiry, if any.'
>
> It was urged that copy of the inquiry report having been supplied to the respondent the rule was complied with and the High Court committed an error in coming to conclusion that principle of natural justice was violated. Learned Additional Solicitor General urged that the principle of natural justice having been incorporated and the same having been observed the Court was not justified in misinterpreting the rule. The learned counsel urged that the Bank was very fair to the respondent and the disciplinary authority after application of mind and careful analysis of the material on record on its own evaluation, uninfluenced by the CVC recommendation passed the order. It was emphasised that if the exercise would have been mechanical the disciplinary authority would not have disagreed with CVC recommendations on punishment. Learned counsel submitted that, in any case, the disciplinary authority having passed detailed order discussing every material on record and the respondent having filed appeal there was no prejudice caused to him.

[33] (1993) 1 SCC 13

None of these submissions are of any help. The order is vitiated not because of mechanical exercise of powers or for non-supply of the inquiry report but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into nor it is necessary to consider validity of sub-rule (5). But non-supply of CVC recommendation which was prepared behind the back of respondent without his participation, and one does not know on what material which was not only sent to the disciplinary authority but was examined and relied on, was certainly violative of procedural safeguard and contrary to fair and just inquiry. From the letter produced by the respondent, the authenticity of which has been verified by the learned Additional Solicitor General, it appears the Bank turned down the request of the respondent for a copy of CVC recommendation as 'The correspondence with the Central Vigilance Commission is a privileged communication and cannot be forwarded as the order passed by the appointing authority deals with the recommendation of the CVC which is considered sufficient'. Taking action against an employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be followed by the disciplinary authority. May be that the disciplinary authority has recorded its own findings and it may be coincidental that reasoning and basis of returning the finding of guilt are same as in the CVC report but it being a material obtained behind back of the respondent without his knowledge or supplying of any copy to him the High Court in our opinion did not commit any error in quashing the order. Non-supply of the Vigilance report was one of the grounds taken in appeal. But that was so because the respondent prior to service of the order passed by the disciplinary authority did not have any occasion to know that CVC had submitted some report against him. The submission of the learned Additional Solicitor General that CVC recommendations are confidential, copy of which, could not be supplied cannot be accepted. Recommendations of Vigilance prior to initiation of proceedings are different than CVC recommendation which was the basis of the order passed by the disciplinary authority."

(emphasis ours)

62. A similar principle was reiterated in ***Mohd. Quaramuddin v. State of A.P.***[34] as follows:

"**3.** On merits the tribunal came to the conclusion that the principle of natural justice had been violated in that the delinquent was not supplied a copy of the Vigilance Commission Report although it formed part of the record of the enquiry and material which the disciplinary authority had taken into consideration. The tribunal observed that where such a material which the disciplinary authority relies on is not disclosed to the delinquent it must be held that he was denied the opportunity of being

[34] (1994) 5 SCC 118

> heard, meaning thereby that the *audi alteram partem* rule had been violated. In the present case the tribunal found that the directions to this effect found in the Government Memorandum No. 821/Services-C/69-8 dated 30-3-1971 had not been adhered to. Had the tribunal not come to the conclusion that the suit was barred by limitation, it would have allowed the appeal preferred by the delinquent."

63. In an even earlier decision, i.e., ***Brij Nandan Kansal v. State of U.P.***[35]*,* this Court was seized of a similar question. The brief facts therein were that the appellant, Brij Nandan Kansal, was in the service of the State of Uttar Pradesh as a member of the U.P. Civil Service (Executive Branch). He was posted as Regional Transport Magistrate at Bareilly between June 1962 to October 1964. A number of charges were framed against the appellant and the State Government referred the matter to the U.P. Administrative Tribunal constituted under the U.P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947 for enquiry into those charges. Out of six charges framed against the appellant therein, the Tribunal recorded the finding that the first charge was not proved but it recorded findings against the appellant therein in respect of the remaining five charges. The Governor issued a show-cause notice to the appellant therein calling upon him to show cause as to why he should not be dismissed from service. A detailed reply was submitted by the appellant commenting on the findings recorded by the Tribunal on each and every charge. The Tribunal considered the reply to the show-cause notice and the comments on the findings recorded by it earlier on the charges and thereupon it submitted detailed findings to the Governor.

[35] 1988 Supp SCC 761

In that report, on a detailed analysis of the evidence recorded, the Tribunal the finding that there was no convincing evidence to uphold the charges framed against the appellant. On receipt of the report of the Tribunal, the State Government appears to have referred the matter to the Legal Remembrancer for his opinion. The Legal Remembrancer disagreed with the findings recorded by the Tribunal in its report, and opined that there was in fact sufficient evidence on record to hold Charges 2 to 5 against the appellant to have been established. In view of the opinion submitted by the Legal Remembrancer, the Governor disregarded the findings recorded by the Tribunal and issued the impugned order dismissing the appellant from service. This Court, allowing the appeal, held that:

> "**7.** …The Tribunal was entrusted with the primary duty of making inquiry and record its findings on the charges. In that process it could enter into adequacy, insufficiency or credibility of evidence on record. The Legal Remembrancer was of the opinion that the Tribunal could not enter into the realm of adequacy or sufficiency of evidence and for that purpose he relied upon the well established principles of judicial review of administrative actions. The Tribunal was not discharging the functions of a court but on the other hand it was acting as the inquiring authority and it had full power to reappraise the evidence and record its findings and in that process it was open to it to hold that the evidence on record was not sufficient to sustain the charges against the appellant. The whole approach of the Legal Remembrancer was misconceived as a result of which he opined that the findings recorded by the Tribunal in appellant's favour could be ignored. We are of opinion that the State Government could not ignore the findings of the Tribunal applying the principles of judicial review of administrative actions by a court of law. <u>The State Government committed serious error of law in ignoring the findings of the Tribunal without giving an opportunity to the appellant to showcause against the proposed view of the government and passing the impugned order on the basis of the report of the Legal Remembrancer.</u> The Tribunal's findings dated 7-7-1970 clearly indicated that there was no evidence to sustain the charges against the appellant and in that view the impugned order of dismissal could not legally be passed against the appellant.
>
> (emphasis ours)

64. We are certain that the CVC recommendation weighed heavily enough upon the disciplinary authority so as to convince him to alter the proposed punishment of compulsory retirement to dismissal of the appellant. Receipt of the CVC recommendation behind the back of the appellant and no opportunity having been provided to him to plead for a lesser punishment, the inquiry stood vitiated. The CVC recommendation constituted material which was considered by the disciplinary authority at least for the purpose of deciding on the punishment that needed to be imposed on the appellant. Once such recommendation fell for consideration of the disciplinary authority, a copy of the same could not have been denied to the appellant. That being said, we do not propose to inculcate a standing requirement upon all disciplinary authorities that a hearing, before punishment is imposed, should be provided if such requirement is not present in the relevant rules. What we are insisting upon is compliance with the principles of natural justice which, in view of the Constitution Bench decision in ***B. Karunakar*** (supra), acknowledges and asserts that a charged officer cannot be denied any material that the disciplinary authority looks into for imposing punishment. Such officer is entitled to access any document that was either used to determine his blameworthy conduct amounting to misconduct or considered while imposing punishment.

65. We now turn to deal with another important aspect, i.e., the claim of privilege made by the appellate authority in defending non-disclosure of the CVC recommendation to the appellant. While the Indian Evidence

Act, 1872[36] is not applicable to disciplinary proceedings, the principles enshrined therein can provide sufficient guidance on the validity of the claim. In ***State of Punjab v. Sodhi Sukhdev Singh***[37], this Court had the opportunity to trace the colonial law on the point and its development in Indian law. The relevant passages read as follows:

> "**13.** The principle on which this departure can be and is justified is the principle of the overriding and paramount character of public interest. A valid claim for privilege made under Section 123 proceeds on the basis of the theory that the production of the document in question would cause injury to public interest, and that, where a conflict arises between public interest and private interest, the latter must yield to the former. No doubt the litigant whose claim may not succeed as a result of the non-production of the relevant and material document may feel aggrieved by the result, and the court, in reaching the said decision, may feel dissatisfied; but that will not affect the validity of the basic principle that public good and interest must override considerations of private good and private interest. Care has, however, to be taken to see that interests other than that of the public do not masquerade in the garb of public interest and take undue advantage of the provisions of Section 123. Subject to this reservation the maxim *silus populi est supreme les* which means that regard for public welfare is the highest law is the basis of the provisions contained in Section 123. Though Section 123 does not expressly refer to injury to public interest that principle is obviously implicit in it and indeed is its sole foundation.
> **14.** Whilst we are discussing the basic principle underlying the provisions of Section 123, it may be pertinent to enquire whether fair and fearless administration of justice itself is not a matter of high public importance. Fair administration of justice between a citizen and a citizen or between a citizen and the State is itself a matter of great public importance; much more so would the administration of justice as a whole be a matter of very high public importance; even so, on principle, if there is a real, not imaginary or fictitious, conflict between public interest and the interest of an individual in a pending case, it may reluctantly have to be conceded that the interest of the individual cannot prevail over the public interest. If social security and progress which are necessarily included in the concept of public good are the ideal then injury to the said ideal must on principle be avoided even at the cost of the interest of an individual involved in a particular case. That is why courts are and ought to be vigilant in dealing with a claim of privilege made under Section 123.
> **15.** If under Section 123 a dispute arises as to whether the evidence in question is derived from unpublished official records that can be easily resolved; but what presents considerable difficulty is a dispute as to whether the evidence in question relates to any affairs of State. What are the affairs of State under Section 123? In the latter half of the

[36] Evidence Act
[37] 1960 SCC OnLine SC 38

nineteenth century affairs of State may have had a comparatively narrow content. Having regard to the notion about governmental functions and duties which then obtained, affairs of State would have meant matters of political or administrative character relating, for instance, to national defence, public peace and security and good neighbourly relations. Thus, if the contents of the documents were such that their disclosure would affect either the national defence or public security or good neighbourly relations they could claim the character of a document relating to affairs of State. There may be another class of documents which could claim the said privilege not by reason of their contents as such but by reason of the fact that, if the said documents were disclosed, they would materially affect the freedom and candour of expression of opinion in the determination and execution of public policies. In this class may legitimately be included notes and minutes made by the respective officers on the relevant files, opinions expressed, or reports made, and gist of official decisions reached in the course of the determination of the said questions of policy. In the efficient administration of public affairs Government may reasonably treat such a class of documents as confidential and urge that its disclosure should be prevented on the ground of possible injury to public interest. In other words, if the proper functioning of the public service would be impaired by the disclosure of any document or class of documents such document or such class of documents may also claim the status of documents relating to public affairs.

16. It may be that when the Act was passed the concept of governmental functions and their extent was limited, and so was the concept of the words 'affairs of State' correspondingly limited; but, as is often said, words are not static vehicles of ideas or concepts. As the content of the ideas or concepts conveyed by respective words expands, so does the content of the words keep pace with the said expanding content of the ideas or concepts, and that naturally tends to widen the field of public interest which the section wants to protect. The inevitable consequence of the change in the concept of the functions of the State is that the State in pursuit of its welfare activities undertakes to an increasing extent activities which were formerly treated as purely commercial, and documents in relation to such commercial activities undertaken by the State in the pursuit of public policies of social welfare are also apt to claim the privilege of documents relating to the affairs of State. It is in respect of such documents that we reach the marginal line in the application of Section 123; and it is precisely in determining the claim for privilege for such border-line cases that difficulty arises.

17. It is, however, necessary to remember that where the legislature has advisedly refrained from defining the expression 'affairs of State' it would be inexpedient for judicial decisions to attempt to put the said expression into a straight jacket of a definition judicially evolved. The question as to whether any particular document or a class of documents answers the description must be determined in each case on the relevant facts and circumstances adduced before the court. 'Affairs of State', according to Mr Seervai, are synonymous with public business and he contends that Section 123 provides for a general prohibition against the production of any document relating to public business unless permission for its production is given by the head of the department concerned. Mr Seervai has argued that documents in regard to affairs of State

constitute a genus under which there are two species of documents, one the disclosure of which will cause no injury to public interest, and the other the disclosure of which may cause injury to public interest. In the light of the consequence which may flow from their disclosure the two species of documents can be described as innocuous and noxious respectively. According to Mr Seervai the effect of Section 123 is that there is a general prohibition against the production of all documents relating to public business subject to the exception that the head of the department can give permission for the production of such documents as are innocuous and not noxious. He contends that it is not possible to imagine that the section contemplates that the head of the department would give permission to produce a noxious document. It is on this interpretation of Section 123 that Mr Seervai seeks to build up similarity between Section 123 and the English law as it was understood in 1872. In other words, according to Mr Seervai the jurisdiction of the court in dealing with a claim of privilege under Section 123 is very limited and in most of the cases, if not all, the court would have to accept the claim without effective scrutiny.
18. On the other hand it has been urged by Mr Sastri that the expression 'documents relating to any affairs of State' should receive a narrow construction; and it should be confined only to the class of noxious documents. Even in regard to this class the argument is that the court should decide the character of the document and should not hesitate to enquire, incidentally if necessary, whether its disclosure would lead to injury to public interest. This contention seeks to make the jurisdiction of the court wider and the field of discretion entrusted to the department correspondingly narrower.
19. It would thus be seen that on the point in controversy between the parties three views are possible. The first view is that it is the head of the department who decides to which class the document belongs; if he comes to the conclusion that the document is innocuous he will give permission to its production; if, however, he comes to the conclusion that the document is noxious he will withhold such permission; in any case the court does not materially come into the picture. The other view is that it is for the court to determine the character of the document, and if necessary enquire into the possible consequences of its disclosure; on this view the jurisdiction of the court is very much wider. A third view which does not accept either of the two extreme positions would be that the court can determine the character of the document, and if it comes to the conclusion that the document belongs to the noxious class it may leave it to the head of the department to decide whether its production should be permitted or not; for it is not the policy of Section 123 that in the case of every noxious document the head of the department must always withhold permission. In deciding the question as to which of these three views correctly represents the true legal position under the Act it would be necessary to examine Section 162. Let us therefore, turn to that section.

66. A summary of the decision leads us to one irresistible conclusion – that the overriding interest must be of a public nature and only in such cases

can the claim of privilege be sustained. The claim of privilege cannot be invoked as a matter of reflexive recourse but must be limited to instances wherein an actual concern to public interest is envisaged. Each instance must be evaluated on a case-by-case basis and the State must be wholly convinced that the disclosure of the documents would cause grave harm and injury to public interest.

67. We further refer to ***Amar Chand Butail v. Union of India***[38] where Hon'ble P.B. Gajendragadkar, CJI. speaking for this Court held that a claim for privilege cannot be made merely because it would go against the defence of the State. A claim for privilege can therefore only be made if it strictly meets the requirements present in the Evidence Act, failing which, if the Court after a preliminary enquiry is convinced that the claim of privilege cannot be sustained, the State may be directed to disclose the said document.

68. In ***State of U.P. v. Raj Narain***[39], this Court held that public interest which demands that evidence be withheld is to be weighed against the public interest in the administration of justice that courts should have the fullest possible access to all relevant materials. When public interest outweighs the latter, the evidence cannot be admitted. The Court also held that it must *proprio motu* exclude evidence the production of which is contrary to public interest.

[38] AIR 1964 SC 1658
[39] (1975) 4 SCC 428

69. Moving closer to this century, this Court in ***People's Union for Civil Liberties v. Union of India***[40] while dealing with the disclosure of certain sensitive information under the Atomic Energy Act, 1962 laid down the indicative criteria required to be fulfilled for the claim of privilege. The instructive passage on the issue reads as under:

> "**70.** For determining a question when a claim of privilege is made, the Court is required to pose the following questions:
>
> > (*1*) whether the document in respect of which privilege is claimed, is really a document (unpublished) relating to any affairs of State; and
> >
> > (*2*) whether disclosure of the contents of the document would be against public interest?
>
> **71.** When any claim of privilege is made by the State in respect of any document, the question whether the document belongs to the privileged class has first to be decided by the court. The court cannot hold an enquiry into the possible injury to public interest which may result from the disclosure of the document in question. The claim of immunity and privilege has to be based on public interest.
>
> **72.** The section does not say who is to decide the preliminary question viz. whether the document is one that relates to any affairs of State, or how it is to be decided, but the clue in respect thereof can be found in Section 162. Under Section 162 a person summoned to produce a document is bound to
>
> > 'bring it to the court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the court'.
>
> It further says that:
>
> > 'The court, if it seems fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.'
>
> **73.** In order to claim immunity from disclosure of unpublished State documents, the documents must relate to affairs of the State and disclosure thereof must be against interest of the State or public interest."

70. In the present case, the appellate authority did not deny that there was indeed a recommendation of the CVC. However, the recommendation was denied by claiming privilege. We are inclined to the view that the claim of privilege was utterly misconceived. The recommendation of the

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[40] (2004) 2 SCC 476

CVC did not have anything to do with the "affairs of the State" or, if one were not to be guided by Section 123 of the Evidence Act, anything to do with national security; at least, no such attempt was made by Mr. Patil. We appreciate his predicament that at this distance of time (the appellate order having been made on 27th March, 2003) and Vijaya Bank having merged in the respondent in 2019, it is well-nigh difficult for him and the respondents to lay their hands on such recommendation. Yet, it cannot be ignored that the appellate order apart from claiming that the recommendation is a privileged document does not go further to assign any reason, far less cogent reason, as to how the same could at all be withheld from the appellant. Reasons that have been assigned are neither here nor there. Whether or not such a recommendation did exist was the question, not whether the appellant could have premised his challenge on such recommendation being an internal document.

71. We are *ad idem* with the view expressed in ***D.C. Aggarwal*** (supra) that the proposed punishment of compulsory retirement could not have been altered to dismissal from service based on the CVC recommendation without furnishing the same to the appellant. To this extent, the appellate order is legally flawed and cannot be sustained.

CONCLUSION

72. In normal circumstances, the obvious direction that could follow the foregoing discussions is a remand to the disciplinary authority to re-start the inquiry from the stage the same stood vitiated, i.e., requiring the Inquiry Officer to scrupulously follow Regulation 6(17) of the 1981

Regulations. However, there are circumstances that impede an order for remand. The foremost being the lack of accessibility to the records because of the merger of Vijaya Bank with the respondent and the distance of time since the disciplinary proceedings came to a close. It is also to be noted that the disciplinary proceedings were continued beyond the date on which the appellant attained the age of superannuation. Because of the ultimate order we propose to make, we have not dealt with the third question noted in paragraph 16 (supra) and such question is kept open. No useful purpose, therefore, would be served in ordering a remand.

73. Considering the age of the appellant (he is now an octogenarian) as well as the fact that there were other disciplinary proceedings pending against him which were not taken to its logical conclusion because he stood dismissed from service, in our considered view, interest of justice would be sufficiently served if we make the following directions:

(i) the appellant shall not be entitled to any terminal benefits except to the extent indicated hereafter;

(ii) he shall only be entitled to a lump-sum amount equal to the quantum of gratuity which would have been payable to him had he not been fastened with the order of dismissal;

(iii) such lump-sum amount may be released in favour of the appellant within a period of eight weeks from date;

(iv) no amount on account of interest shall be payable to the appellant on the said amount;

(v) however, interest @ 9% p.a. shall be payable on such amount if not released within the period stipulated above; and

(vi) the order of dismissal, in the circumstances, shall stand quashed.

74. It is ordered accordingly.

75. In the above result, the impugned order of the High Court is also set aside.

76. The appeal is disposed of on the above terms, without any order as to costs.

77. Criminal proceedings, if any, pending against the appellant may be taken to its logical conclusion in accordance with law.

..J.
(DIPANKAR DATTA)

..J.
(PRASHANT KUMAR MISHRA)

NEW DELHI;
AUGUST 19, 2025.