

IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

WRIT PETITION No. 19937 of 2023

RAKESH KUMAR RAI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Mr. Sameer Kumar Shrivastava - Advocate for the petitioner.

Mr. Naval Kishore Gupta – Government Advocate for the State.

Mr. Raj Bahadur Singh Tomar – Advocate for the caveator.

ORDER

Reserved on : 22.09.2025

Delivered on : 29.10.2025

ORDER

Invoking Article 226 of the Constitution of India, the petitioner has filed the instant writ petition challenging the order, dated 26.09.2019, (Annexure P/1) whereby he has been dismissed from service on account of misconduct found proved against him with a further direction to recover amount of loss caused to the Bank from him and to lodge an FIR against him. He has also prayed for a direction to reinstate him in service with all consequential benefits.

2. The facts necessary for decision of this case are that the petitioner was

initially appointed as Branch Manager in respondent- District Central Cooperative Bank Maryadit, Vidisha (in short 'Bank') on 01.10.2003. At the relevant time, he was posted as Branch Manager at Udaipur Branch of the Bank when he was served with a charge sheet, dated 24.09.2014, (Annexure P/4). As many as five charges of financial irregularities were levelled against him. The petitioner denied the charges by giving reply to the charge sheet on 01.10.2014 (Annexure P/5). Since, the matter involved amount more than Rs.10 lakh, an Enquiry Board was constituted by the Bank in terms of Rule 49.3.2.3 vide order, dated 11.11.2014. The petitioner has averred that the Enquiry Board consisted of two Middle Management 1 officer while the third member of the Board was an Accountant. This fact has not been disputed by the Bank in its reply.

3. The Enquiry Board conducted the enquiry wherein the petitioner also participated. The Board submitted its report to the Bank on 27/29.07.2019 wherein all the charges were found proved against the petitioner. The Chief Executive Officer of the Bank then forwarded a copy of enquiry report to the petitioner vide show cause notice, dated 09.08.2019, (Annexure P/10) and asked him to submit his explanation to the findings recorded by Enquiry Board. The petitioner gave his explanation on 20.08.2019 (Annexure P/11).

4. After receiving the explanation of the petitioner, the matter was placed before the Staff Sub-Committee of the Bank in its meeting held on 20.08.2019. The petitioner was given an opportunity of personal hearing by Staff Sub-Committee on 20.08.2019. The Committee concurred with the findings recorded by Enquiry Board and resolved to impose punishment of dismissal from service on the petitioner. It also resolved to recover an amount of Rs.2,04,72,000/- from the retiral dues of the petitioner. The Bank

was also directed to initiate proceedings for recovery of balance amount and the Branch Manager of the Udaipur Branch was directed to lodge an FIR also against the petitioner. The Chief Executive Officer of the Bank accordingly issued the impugned order on 26.09.2019 (Annexure P/1) thereby imposing punishment on the petitioner as per the resolution of Staff Sub-Committee.

5. It be noted here that the Board of Directors of the Bank was superseded and accordingly Joint Registrar, Cooperative Societies, Bhopal Division, was appointed as Administrator of the Bank vide order, dated 28.02.2019. The Administrator took charge of the Board of Directors of the Bank on 16.09.2019.

6. Challenging the order of punishment passed by Chief Executive Officer of the Bank, the learned counsel for petitioner primarily submitted that under Rule 49.3.2.3, the Enquiry Board should have consisted of a Manager and two members of the rank of Senior Management 2 and Middle Management 1 respectively. It is his submission that, all the three members in this case were not competent to constitute the Enquiry Board and, therefore, the enquiry conducted against the petitioner is illegal. In support of his submission, the learned counsel placed reliance upon coordinate bench judgment rendered in the case of ***Smt. Bhavna Kale vs. State of M.P.*** in W.P. No.29501/2022 which was affirmed by Division bench in W.A. No.602/2023. He also placed reliance upon another coordinate bench judgment in the case of ***Surendra Khaiwariya vs. State of M.P. & others*** in W.P. No.1054/2020, ***Gopal Prasad Panthi vs. State of M.P. & others*** in W.P. No.23124/2019, ***Laxman Singh Raghuwanshi vs. State of M.P. & others*** in W.P. No.25241/2019 and ***Shiv Narayan Bhargava vs. State of M.P. & others*** in W.P. No.25240/2019.

7. The learned counsel also submitted that the Staff Sub-Committee was competent to pass punishment order in the case, however, the impugned order has been passed by Chief Executive Officer of the Bank which is without jurisdiction. It is his further submission that the Staff Sub-Committee was not in existence in view of appointment of Administrator and, therefore, approval of the enquiry report by Staff Sub-Committee was also without jurisdiction.

8. On the other hand, refuting the submissions made by petitioner's counsel, the learned counsel for respondent no.2 to 4 submitted that the petitioner has been found guilty of serious financial irregularities while working as Branch Manager at Udaipur Branch of the Bank as a result of which the Bank has suffered loss of more than Rs.2 crore. It is his submission that the Enquiry Board could not be constituted as per Rule 49.3.2.3 for want of officials in the Bank. It is his submission that there is no officer of the rank of Manager and Senior Management 2, available in the Bank. It is his submission that constitution of Enquiry Board is a procedural rule and non-adherence of the same would not vitiate the punishment order inasmuch as it has been passed by the competent authority. In support of his submission, the learned counsel placed reliance upon Division Bench judgment of this Court in the case of ***District Central Cooperative Bank Maryadit Vidisha vs. Laxman Singh & others*** in W.A. No.1026/2021.

9. The learned counsel also submitted that mere appointment of Administrator would not defunct the Staff Sub-Committee and, therefore, the Staff Sub-Committee was competent to approve the enquiry conducted against the petitioner. He also submitted that the CEO of the Bank has only passed the consequential order and the actual decision to dismiss the

petitioner from service was taken by Staff Sub-Committee. He, therefore, submitted that no interference is warranted by this Court in the instant case looking to the serious misconduct committed by the petitioner. He thus prayed for dismissal of the writ petition.

10. Considered the arguments and perused the records.

11. For purposes of decision of this case, the scheme of service rules prevalent in the Bank needs to be examined. The service conditions of the petitioner are governed by rules namely “Jila Sahakari Kendriya Bank Maryadit ke Sewayukton ke (Niyojan, Nibandhan तथा Karysthiti) Sewa Niyam” (in short “Rules”) which have been framed by Registrar, Cooperative Societies, Bhopal, in exercise of powers under Section 55(1) of M.P. Cooperative Societies Act, 1960. Rule 3.3 classifies the officers/employees of the Bank in three groups ‘A’, ‘B’ & ‘C’. The officers in Group ‘A’ are further classified into five categories as under:

सेवानियम		
समूह	प्रबंधन स्तर	पदनाम
अ	वरिष्ठ प्रबंधन-1	प्रबंधक (निधियां एवं लेखा, बैंकिंग, ऋण एवं अग्रिम), प्रबंधक (योजना, एवं विकास/प्रशासन, मानव संसाधन/ निरीक्षण एवं अंकेक्षण)
	वरिष्ठ प्रबंधन-2	वित्तीय विश्लेषक, कम्प्यूटर प्रोग्रामर, आंतरिक अंकेक्षक, विपणन अधिकारी ।
	मध्यम प्रबंधन-1	शाखा प्रबंधक शाखा निरीक्षक, आंतरिक निरीक्षक, कार्यालय अधीक्षक ।
	मध्यम प्रबंधन-2	सहायक मुख्यपर्यवेक्षक, सांख्यिकीय अधिकारी, लेखापाल, उप यंत्री ।
	कनिष्ठ प्रबंधन	सहायक लेखापाल, पर्यवेक्षक, सीनियर कैशियर, उच्च श्रेणी लिपिक, स्टैनो ग्राफर ।
ब	बैंकिंग सहायक	लिपिक/ कम्प्यूटर ऑपरेटर, संस्था प्रबंधक।
स	अधीनस्थ श्रेणी (सपोर्ट स्टाफ)	दफ्तरी, जमादार, वाहन चालक, भृत्य, चौकीदार, (डाईंग केडर)

12. The petitioner, being Branch Manager, is an officer in Middle Management-1 category in Group A. Under Rule 15.1, his appointing authority is Chief Executive Officer of the Bank. The appointment, however, is to be made after the approval of selection by Staff Sub-Committee.

13. Rule 6.6.1 defines constitution of Staff Sub-Committee to be consists of five members namely- Chairman of the Bank as its Chairman, two Directors to be nominated by Board of Directors of the Bank, a representative to be nominated by State Govt. and Chief Executive Officer/ Managing Director of the Bank. This rule further provides that in case of supersession of Board of Directors of the Bank, the Staff Sub-Committee shall consist of Administrator as its Chairman, a representative to be nominated by State Govt. and Chief Executive Officer/Managing Director of the Bank.

14. Rule 47.1 & 47.2 describes respectively the major and minor misconducts and Rule 48.1 & 48.2 respectively prescribe the punishment for major and minor misconducts. The center of issue for discussion in the instant case is Rule 49. Rule 49.1 prescribes the authorities who are competent to impose punishment. For petitioner i.e. an officer in Middle Management 1, the Staff Sub-Committee is competent to impose punishment for major/minor misconduct.

15. Further, Rule 49.3 prescribes the procedure to be adopted before imposing major punishment on officer/employee of the Bank. The extract of this rule, which are relevant for the case, are reproduced hereunder:

49.3	किसी रोवायुक्त पर प्रमुख कदाचार हेतु कोई दण्ड तब तक अधिरोपित नहीं किया जाएगा जब तक कि वह, उसके विरुद्ध निम्नलिखित रीति से की गई जांच में प्रमुख कदाचार का दोषी न पाया जावे -
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	49.3.1 सक्षम प्राधिकारी या उसके द्वारा इस निमित्त प्राधिकृत कोई अधिकारी इस संबंध में दोषी सेवायुक्त को कारण बताओ सूचना पत्र जारी करेंगे। दोषी सेवायुक्त द्वारा अपना स्पष्टीकरण उसे विनिश्चित किए गये अवधि में प्रस्तुत किया जायेगा। यदि दोषी सेवायुक्त के द्वारा उसे स्पष्टीकरण प्रस्तुत करने हेतु विनिश्चित की गई अवधि में स्पष्टीकरण नहीं प्रस्तुत किया जाता है तो ऐसी स्थिति में सक्षम अधिकारी के द्वारा विभागीय जांच सन्धि कर दी जावेगी। 49.3.2 दोषी सेवायुक्त से प्राप्त हुए ऐसे स्पष्टीकरण को बैंक अभिलेखों के परिप्रेक्ष्य में जांचा जायेगा, और यदि स्पष्टीकरण समाधानकारक नहीं पाया गया, तो निम्न रीति से विभागीय जांच संचालित की जायेगी- 49.3.2.1 सक्षम अधिकारी ऐसे जांच अधिकारी की नियुक्ति करेगा जो कि दोषी अधिकारी से वरिष्ठ होगा एवं जांच अधिकारी के सम्मुख आरोपों के साक्ष्य प्रस्तुत करने तथा दोषी अधिकारी के गवाहों का कूट परीक्षण करने हेतु प्रस्तुतकर्ता अधिकारी की नियुक्ति करेगा। मुख्य कार्यपालन अधिकारी के विरुद्ध विभागीय जांच हेतु राज्य शासन के सेवारत या सेवानिवृत्त अधिकारी की नियुक्तियों के लिये संचालक मंडल द्वारा निर्णय लिया जाकर पंजीयक से अनुरोध किया जा सकता है। 49.3.2.2 सक्षम प्राधिकारी या उसके द्वारा इस निमित्त प्राधिकृत कोई अधिकारी प्रमुख कदाचार के लिए कर्मचारी को एक आरोप पत्र अभिलेखीय साक्ष्य एवं साक्षी सूची सहित देगा जिसमें आरोपित कदाचार को तथा उसके विरुद्ध पाई जाने वाली परिस्थितियों को स्पष्टतः उपवर्णित किया जाएगा और उस बाबत उसका स्पष्टीकरण मांगेगा। 49.3.2.3 जिला सहकारी केंद्रीय बैंक के समस्त विभागीय जांच प्रकरण रु. 10.00 लाख या उससे अधिक की अनियमितताओं के विभागीय जांच प्रकरणों में जांच अधिकारी के दायित्व निर्वहन हेतु एक विभागीय जांच बोर्ड होगा, जो अपनी प्रक्रिया निर्धारित कर, उस प्रक्रिया से जाँद पूर्ण करेगा। शेष प्रकरणों में विभागीय जांच की प्रक्रिया म.प्र. शासन में इस हेतु निर्धारित प्रक्रिया से जांच का निराकरण किया जावेगा। 49.3.2.4 सेवायुक्त को अपना स्पष्टीकरण प्रस्तुत करने के लिए 15 कार्य दिवस की कालावधि प्रदान की जाएगी। 49.3.2.5 किसी सेवायुक्त को अपना प्रतिरक्षण स्वयं करने या बैंक के किसी अन्य कर्मचारी/सेवानिवृत्त कर्मचारी से कराये जाने के लिए वह ऐसा करने की वांछा करता है अनुमत किया जाएगा किन्तु अपचारी सेवायुक्त की ओर से प्रतिरक्षण करने के लिए किसी बाहरी व्यक्ति को अनुमति नहीं दी जाएगी। 49.3.2.6 सिवाय उन मामलों के जहां वह, उसके विरुद्ध लगाए गए आरोप स्वीकार करता है, अपने प्रतिरक्षण में साक्षी प्रस्तुत करने तथा ऐसे किसी साक्षी का जिसकी साक्ष्य पर आरोप आधारित है या बैंक के साक्षियों से प्रतिपरीक्षण करने के लिए अनुमत किया जाएगा। 49.3.2.7 साक्ष्य का सार अभिलिखित किया जाएगा तथा संबंधित सेवायुक्त को पढ़कर सुनाया जाएगा। 49.3.2.8 दण्ड का अदेश लिखित होगा तथा यह सक्षम प्राधिकारी या उसके प्राधिकृत अन्य अधिकारी के हस्ताक्षर से जारी किया जाएगा। पारित किए गए उस अदेश की, जिससे दण्ड दिया गया है, एक प्रति सेवायुक्त को व्यक्तिगत तामिली / पंजीकृत डाक के माध्यम से प्रदान की जाएगी।
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16. A reading of Rule 49.3.1 & 49.3.2 makes it evident that taking action, including conducting an enquiry, is the primary responsibility of competent authority. However, it can delegate its power to conduct enquiry to any other authority. Further, Rule 49.3.2.3 provides for constitution of a “Departmental

Enquiry Board” (hereinafter referred as “Enquiry Board”) to discharge the duties of an enquiry officer in cases involving amount more than Rs.10 lakh.

The term “Departmental Enquiry Board” is defined in Rule 2.21 as under:

“2.21 "विभागीय जांच बोर्ड" से तात्पर्य जिला सहकारी केन्द्रीय बैंक मर्यादित के सेवायुक्तों के विरुद्ध आरोपित गंभीर दुराचरण (Major Misconduct) की रू. 10.00 लाख से अधिक की वित्तीय अनियमितताओं से संबंधित विभागीय जांच पूर्ण करने हेतु गठित विभागीय जांच बोर्ड से है, जिसे बैंकों के सक्षम अधिकारी, जांच अधिकारी के रूप में नियुक्त करेंगे।”

17. The National Bank for Agriculture and Rural Development (NABARD) issued guidelines for purposes of framing Human Resources Policy for District Central Cooperative Banks vide its memo, dated 31.12.2009. Accordingly, the Registrar, Cooperative Societies, has framed Human Resources Policy providing for necessary guidelines for appointment, posting, training, transfer, promotion, leave and personal file/Service Book of Bank's employees. Clause 3 of this Policy gives the purpose of constituting Enquiry Board as under:

“3. **विभागीय जांच मंडल** – वर्तमान में जिला सहकारी केन्द्रीय बैंकों के स्तर पर अनेक विभागीय जांच सुनवाई हेतु लंबित है। विभागीय जांचों के लंबित होने का परिणाम जहां एक ओर पीड़ित पक्षकार को अनावश्यक प्रताड़ना के रूप में भुगतना पड़ता है, वहीं बैंक प्रबंधन के लिये भी दोषी कर्मचारी को दंडित करने में अनावश्यक विलंब होता है, जिससे वांछित न्याय एवं अनुशासन सस्था में स्थापित नहीं हो पाता है। विभागीय जांचों में विलंब इसलिये होता है कि सामान्य रूप से यह जांचें जिन अधिकारियों को सौंपी जाती हैं, उनके पास दैनिक कार्यों की पूर्ण से ही भरमार होती है, एवं उनमें व्यस्तता के कारण वे इन जांचों के लिये पर्याप्त समय नहीं दे पाते हैं।

अतः विभागीय जांच समयावधि में संपन्न हो एवं संबंधितों को न्याय समय पर प्राप्त हो इस उद्देश्य की पूर्ति के लिये स्वतंत्र रूप से विभागीय जांच बोर्ड की परिकल्पना की गई, तदनुसार भविष्य में बैंक स्तर पर विभागीय जांच बोर्ड के गठन का निर्णय लिया गया।

बैंक में कार्यरत कर्मचारी / अधिकारियों के द्वारा सेवा नियमों में उल्लेखित व्यवस्थाओं के विपरीत आचरण एवं कार्य व्यवहार करने पर उनके विरुद्ध विभागीय जांच संस्थित की जावेगी एवं संस्थित की गई विभागीय जांचें, विभागीय जांच मंडल द्वारा पूर्ण की जाकर जा तदनुसार जांच प्रतिवेदन बैंक प्रबंधन को प्रस्तुत किया जावेगा। विभागीय जांच मंडल 3 सदस्यीय रहेगा, जिसमें चेक प्रबंधन द्वारा बैंक में कार्यरत कर्मचारी/अधिकारियों की विभागीय जांच करने के लिये अधिकृत अधिकारियों को नामांकित किया जावेगा विभागीय जांच मंडल में नामांकित अधिकारियों को बैंक का अन्य कोई कार्य उनकी सौंपी गई विभागीय जांच के पूर्ण होने तक नहीं सौंपा जावेगा। विभागीय जांच मंडल अपनी समस्त कार्यवाहियाँ बैंक सेवा नियम में उल्लेखित प्रावधानों के अंतर्गत सम्पन्न करेगा। इन जांचों को विभागीय जांच मंडल 3 माह की समयावधि में पूर्ण करायेगा।

जो भी प्रकरण इस बोर्ड को सुनवाई हेतु सौंपे जायेंगे उनका निराकरण दिन प्रतिदिन सुनवाई के

आधार पर किया जावेगा। बोर्ड द्वारा सामान्यतः तारीख बढ़ाने का अनुरोध स्वीकार नहीं किया जावेगा, किन्तु अस्वस्थता अथवा अन्य यथोचित आधार पर तारीख बढ़ाने का अनुरोध किया जाता है, तो अधिकतम एक सप्ताह तक तारीख बढ़ाई जावेगी और यह अनुरोध संपूर्ण सुनवाई काल के कुल 02 अवसरों तक ही स्वीकार किया जा सकेगा।।

विभागीय जांच बोर्ड जिला बैंक से सम्बंधित ऐसे प्रकरणों जिनमें रुपये 10 00 लाख या उससे अधिक की आर्थिक अनियमितताओं/ गबन/ वित्तीय गड़बड़ी की गई हो, की सुनवाई करेगा।

विभागीय जांच बोर्ड विभागीय जांच की समाप्ति पर अपना प्रतिवेदन अपने स्पष्ट अनुशंसा सहित जिला बैंक प्रबंधन को सौंपेगा। विभागीय जांच बोर्ड अपने संचालन के नियम स्वयं बनायेगा।

विभागीय जांच मंडल में निम्न सदस्य होंगे -

क	पदनाम	हैसियत
1	प्रबंधक	अध्यक्ष
2	बैंक सेवायुक्त जो कि वरिष्ठ प्रबंधन-2 की सदस्य श्रेणी से निम्न श्रेणी का न हो	सदस्य
3	बैंक सेवायुक्त जो कि मध्यम प्रबंधन-1 की श्रेणी से निम्न श्रेणी का न हो	सदस्य

18. It is thus evident from the aforesaid passage of HR Policy that the purpose of constituting an Enquiry Board is to expedite the conclusion of enquiry in the matters involving financial irregularities of more than Rs.10 lakh. Accordingly, Rule 49.3.2.3 has provided for constitution of Enquiry Board. **Pertinently, the officers who will constitute Enquiry Board is provided in HR Policy and not the Rules.**

19. The main thrust of argument of learned counsel for petitioner in this case is that the constitution of Enquiry Board was not in accordance with Rule 49.3.2.3 inasmuch as there was no officer of the rank of Manager and Senior Management 2. As per his submission, the two officers constituted Enquiry Board in this case were officer in Middle Management 1 and an Accountant. He thus submitted that the entire enquiry conducted is bad in law and liable to be quashed.

20. In response, it has been stated by the Bank in its reply that the post of officer in Senior Management 1 & 2 are lying vacant in the Bank for a long period of time and, therefore, the Enquiry Board was constituted by the

available officers in the Bank. It has been stated in para 11 of reply that the three members of Enquiry Board were senior to the petitioner and, therefore, no prejudice is caused to the petitioner.

21. Thus, it is not in dispute that the Enquiry Board was not constituted as per the requirement of HR Policy. The reason for this is non-availability of competent officers in the Bank for constituting Enquiry Board. The issues for consideration before this Court are:

i. Whether, in view of supersession of Board of Directors of the Bank, the Staff Sub-Committee was competent to pass resolution for imposing punishment on the petitioner?

ii. Whether the impugned order passed by Chief Executive Officer of the Bank, based upon resolution of Staff Sub-Committee is legal and valid?

iii. Whether the provisions of HR Policy providing for the officers who will constitute Enquiry Board, are mandatory or directory particularly when the Rules do not provide for the same?

iv. Whether non-constitution of Enquiry Board as per HR Policy would vitiate the entire action or the Bank can authorize any other officer or enquiry board to conduct enquiry in view of provisions of Rule 49.3.2.2 invoking doctrine of necessity?

Issue No.(i) & (ii):

22. The learned counsel for petitioner submitted that the Staff Sub-Committee was not in existence when the impugned order was passed against the petitioner and, therefore, the resolution, dated 20.08.2019, allegedly passed by Staff Sub-Committee is without jurisdiction. He also submitted that the Staff Sub-Committee was competent to pass the impugned order but the same has been passed by the Chief Executive Officer of the Bank. He therefore, submitted that the impugned order of punishment is

without jurisdiction and liable to be set aside.

23. The objection raised by the petitioner's counsel is required to be examined in view of the Rules. Firstly, it be noted that the Board of Directors of the Bank was superseded and the Joint Registrar, Cooperative Societies was appointed as Administrator. The constitution of Staff Sub-Committee is provided under Rule 6.6.1 as detailed hereinabove. This Rule further provide that in case of supersession of Board of Directors, the Staff Sub-Committee shall consist of Administrator being its Chairman, one member to be nominated by Govt. and the Chief Executive Officer/Managing Director of the Bank. Thus, merely because the Board of Directors of the Bank was superseded, it cannot be said that the Staff Sub-Committee also ceased to exist. The Staff Sub-Committee was thus very well in existence and was competent to consider and pass resolution in question against the petitioner.

24. Further, Rule 49.3.2.8 provides that the punishment order shall be passed either with signature of Competent Authority i.e. Staff Sub-Committee in this case, or any other officer authorized by it. Thus, in the case in hand, the decision to inflict punishment was taken by Staff Sub-Committee and the punishment order was passed by CEO who is also the appointing authority of petitioner. Thus, the punishment order cannot be set aside only because it is not signed by Staff Sub-Committee.

25. In view of discussion made above, it is held that the Staff Sub-Committee does not cease to exist merely because of supersession of Board of Directors of the Bank and further that the impugned order passed by Chief Executive Officer of the Bank based upon resolution of Staff Sub-Committee is legal and valid.

Issue No.(iii) & (iv):

26. The power to take disciplinary action, including conducting enquiry, is primarily with the Disciplinary/Competent Authority. However, it may delegate its aforesaid power to any other authority which is commonly known as ‘enquiry officer’. In the case in hand also, this is evident from reading provisions of Rule 49.3.1 & Rule 49.3.2.2. Thus, the enquiry could have been conducted either by competent authority himself or by any other authority who is authorized by competent authority in this behalf. Interpreting somewhat similar rule regarding the authority to issue charge sheet, the Apex Court in the case of ***State of Jharkhand & Others vs. Rukma Kesh Mishra*** reported in **2025 SCC Online SC 676** held as under:

“36. Since invocation of the provisions in Discipline and Appeal Rules similar to Rule 14(3) of the 1965 Rules or Rule 17(3) of the 2016 Rules and citing failure to adhere to the same to invalidate orders terminating services of officers/employees is not too infrequent, we consider it proper to briefly touch upon the requirement thereof. The Disciplinary Authority is mandated by the law to ‘draw up’ or ‘cause to be drawn up’ the substance of the imputations of misconduct or misbehavior as a definite and distinct article of charge together with the statement of such imputations. The phrases ‘draw up’ and ‘cause to be drawn up’ do have different meanings in the context of disciplinary proceedings, though both relate to drawing up of a charge-sheet. By ‘draw up’, what is express is that the Disciplinary Authority itself is responsible for preparing the substance of imputation and the statement of allegations in support thereof, whereas ‘cause to be drawn up’ would enable the Disciplinary Authority to instruct or direct someone else to prepare the substance and statement. The effect of it is that the Disciplinary Authority itself may not prepare the document but rather delegate the task to someone else. If the delegation is proved to have been

made in favour of an authority holding an office superior to that of the officer/employee proposed to be proceeded against, nothing much is required to be done and the courts ought to exercise restraint”.

27. Thus, by virtue of provisions of Rule 49.3.2.2, the Competent Authority could have conducted the enquiry himself or could have authorized any other authority to make enquiry. However, the controversy arose because of Rule 49.3.2.3 which provides for constitution of an Enquiry Board to conduct enquiry in the matters involving amount more than Rs.10 lakh. However, what if such an Enquiry Board is not available, the rule is silent. Therefore, in the considered opinion of this Court, when it is not possible to constitute the Enquiry Board, the Competent Authority shall still be competent to either conduct the enquiry himself or to appoint some other authority to enquire into the matter by virtue of power conferred on him under Rule 49.3.2.2.

28. This issue can be examined from another angle. The term ‘Departmental Enquiry Board’ is defined under Rule 2.21 while Rule 49.3.2.3 provides for conducting enquiry by Enquiry Board in cases involving amount more than Rs.10 lakh. Both these provisions or for that matter any other provision of the Rules, do not provide as to who would be the members of Enquiry Board. Only HR Policy provides that the Enquiry Board shall consist of officers of the rank of Manager, Senior Management 2 & Middle Management 1. Apparently, the provisions of HR Policy are only guidelines and would not bind the Competent Authority to depart from the same in case of necessity. Thus, when the rules are silent, the Enquiry Board may consist of officers other than the one provided in HR Policy and/or it may consist of even less than three members in view of the power vested in

Competent Authority under Rule 49.3.2.2.

29. The next issue to be considered is as to whether the provision of Rule 49.3.2.3 is mandatory or directory? The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. It is profitable to refer to Apex Court judgment rendered on this issue in the case of ***Lalit Kumar Modi vs. Board of Control for Cricket in India*** reported in **(2011)10 SCC 106**. The Court held thus:

“34. In this connection, we must note that the word “shall” has been interpreted as “may” in a number of judgments while interpreting such provisions on different occasions. In State of U.P. v. Manbodhan Lal Srivastava [AIR 1957 SC 912] a Constitution Bench of this Court was concerned with the order of compulsory retirement of the respondent who had challenged it on the ground that the Union Public Service Commission had not been consulted. This was in the context of Article 320(3)(c) of the Constitution which reads as follows:

“320. (3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—

*(a)-(b)****

(c) on all disciplinary matters affecting a person serving under the Government of India, or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;”

The Constitution Bench held that the consultation was not mandatory. The Court observed in para 11 of the judgment as follows: (Manbodhan Lal case [AIR 1957 SC 912], AIR pp. 917-18)

“11. ... the use of the word ‘shall’ in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute

are punctiliously followed, the proceeding or the outcome of the proceeding, would be invalid.

On the other hand, it is not always correct to say that where the word 'may' has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid. In that connection, the following quotation from Crawford on Statutory Construction, Article 261 at p. 516, is pertinent:

'The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other.'

35. We may as well profitably refer to a judgment of this Court in State of A.P. v. Rahimuddin Kamal [(1997) 3 SCC 505 : 1997 SCC (L & S) 827 : AIR 1997 SC 947] . In that matter this Court was concerned with Rule 4(2) of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1961, where the expression "shall" had been used in the Rules, making it obligatory upon the part of the Government, to examine the records, consult the Head of the Department and Vigilance Commission and then pass an appropriate order. In that case the order of removal from service was passed in accordance with law and after conducting appropriate inquiry but without consulting the Commission. The Court took the view that the expression "shall" had to be construed as "may" and non-consultation with the Commission would not render the order illegal or ineffective."

30. Keeping in view the aforesaid legal position, Rule 49.3.2.3 is required to be examined. From Clause 3 of HR Policy framed by the Bank, it becomes evident that the purpose of providing for constitution of Enquiry Board is to expedite the disciplinary proceedings in matters involving heavy amount.

However, it is experienced that for want of officers in most of the Cooperative Banks in the State, the constitution of Enquiry Board is not possible. Thus, the very purpose of providing for constitution of Enquiry Board is frustrated. Rule 49.3.2.3 does not provide for the officers who should man the Enquiry Board. It also does not provide for the course of action when the officers to constitute Enquiry Board are not available. Looking to the purpose of constituting Enquiry Board as also in view of the fact that the Competent Authority is authorized to conduct the enquiry himself or through any other officer, it has to be held that the provisions of Rule 49.3.2.3, being procedural, are not mandatory but are only directory. Meaning thereby, in absence of officers to constitute Enquiry Board, the Competent Authority could have conducted the enquiry himself or got the enquiry done through any other officer also. Moreso, appointing an enquiry officer or Enquiry Board is only to facilitate the Disciplinary/Competent Authority to take a decision in the matter. The ultimate decision rests with the Disciplinary/Competent Authority. Therefore, merely because the enquiry is not conducted by the Enquiry Board, as provided in HR Policy, should not vitiate the decision taken by the Disciplinary/Competent Authority, which is otherwise competent to impose punishment on the petitioner.

31. The matter can be looked into from another angle. The matters of departmental enquiry are mostly based upon principles of natural justice. The purpose of conducting enquiry is to ensure that the delinquent is given adequate opportunity to defend himself in the enquiry. However, there are cases of necessity where the principles of natural justice are given a go-by by invoking '*doctrine of necessity*'. The *doctrine of necessity* is a common law doctrine, and is applied to tide over the situations where there are difficulties. **Law does not contemplate a vacuum, and a solution has to be found out**

rather than allowing the problem to boil over. The issue has been dealt with by the Apex Court in the case of *Lalit Kumar Modi (supra)*. It was also a case where an objection was raised to the constitution of committee which was to enquire into the matter. Dealing with the situation, the Apex Court held as under:

*“33. We have noted the submissions of the rival parties. The objection of Shri Jethmalani to the forming of the Disciplinary Committee was on the basis of Rule 1(q). When we read this Rule we find that the Rule states that the Board shall at every Annual General Meeting appoint a committee consisting of three persons. The President shall be one of them and the function of the committee is to inquire into and deal with the matters relating to any acts of misconduct, etc. In view of the wording of this Rule, there is no difficulty in accepting that normally the President has to be one of the members of this Committee. **The question is with respect to the necessity arising on account of the President being unavailable in a situation like the present one.***

36. In the instant case the petitioner himself had objected to the President being the member of the Committee. That being the position, the President recused himself from the Committee. When a situation thus arises, in view of the objection of the petitioner, the society cannot be left without a remedy. The submission of Shri Jethmalani is that the alternate Disciplinary Committee has to be one which is not objected by the petitioner.

*37. The Rules lay down the terms of the contract amongst the members of the society, and the terms can be altered only with the consent of the members concerned. **As far as this submission is concerned, we must note that firstly, the Rule does not say that if the President cannot be a member of the Committee no substitution shall take place,** nor does it say that the substituting member should be one not objected by the delinquent against whom the enquiry is proposed. This rule is being canvassed as a term of the contract of membership. A member of the society having accepted the rules, agrees to the disciplinary authority of the three-*

member Committee which is to be constituted under these Rules. He cannot claim a right to dictate as to who should be the members of the Committee. Any such interpretation will lead to a situation that the delinquent will decide as to who should be the members of the Disciplinary Committee. Such a submission cannot be accepted. In our understanding the rule is elastic enough, and in an appropriate situation the word “shall” can be read as “may”. It is very clear that, normally the President shall be a member of three-member Committee, but if for any reason his presence on the Committee is objected to on grounds of unfairness, and he recuses himself therefrom, Respondent 1 certainly has the power to substitute him by some other person. The action of the respondents is sought to be defended on the basis of necessity.

38. The doctrine of necessity is a common law doctrine, and is applied to tide over the situations where there are difficulties. Law does not contemplate a vacuum, and a solution has to be found out rather than allowing the problem to boil over. Otherwise, as proposed by Shri Jethmalani one will have to wait for one more year for a new President to be elected, which submission cannot be accepted.”

32. Thus, by virtue of *doctrine of necessity* also, the Bank cannot be left remediless and the persons who are allegedly involved in financial defalcation of huge amount, cannot be left scot-free for want of Enquiry Board.

33. In view of the discussion made above, this Court is of the view that the provisions of Rule 49.3.2.3 are procedural and are thus directory and not mandatory. Further, mere non-adherence of this rule shall not vitiate the disciplinary action taken against the delinquent.

34. Now the decisions relied upon by the petitioner’s counsel need to be considered. He has placed reliance upon judgment rendered by coordinate bench of this Court in the case of **Gopal Prasad Panthi, Surendra**

Khairwariya & Laxman Singh Raghuwanshi (supra). All these cases were decided by the same bench on the same day placing reliance upon another coordinate bench judgment in the case of ***Ram Avtar Sharma vs. State of M.P. & ors.*** in W.P. No.1970/2019. In the case of ***Ram Avtar Sharma*** (supra), the Court held as under:

7. A bare perusal of the counter affidavit filed by respondent no.3 reveals that the total amount in dispute is Rs.17,49,958.74/-, which is certainly above Rs. 10 lacs. In this regard, Rule 2.21 of the Seva Niyam reads thus:-

“2.21 “विभागीय जांच बोर्ड” से तात्पर्य जिला सहकारी केन्द्रीय बैंक मर्यादित के सेवायुक्तों के विरुद्ध आरोपित गंभीर दुराचरण (Major Misconduct) की रू. 10.00 लाख से अधिक की वित्तीय अनियमितताओं से संबंधित विभागीय जांच पूर्ण करने हेतु गठित विभागीय जांच बोर्ड से है, जिसे बैंकों के सक्षम अधिकारी, जांच अधिकारी के रूप में नियुक्त करेंगे।”

From the above, it is clear that Rule 2.21 defines Departmental Enquiry Board, which needs to be constituted for major misconducts of employees with regard to financial irregularities of more than Rs. 10 lacs. Admittedly, no such Board has been constituted in the instant case and no enquiry as contemplated under Rule 49.3.2.3 has been conducted. For ready reference, the same is quoted thus:-

49.3.2.3 जिला सहकारी केन्द्रीय बैंक के समस्त विभागीय जांच प्रकरण रू. 10.00 लाख या उससे अधिक की अनियमितताओं के विभागीय जांच प्रकरणों में जांच अधिकारी के दायित्व निर्वहन हेतु एक विभागीय जांच बोर्ड होगा, जो अपनी प्रक्रिया निर्धारित कर, उस प्रक्रिया से जाँद पूर्ण करेगा। शेष प्रकरणों में विभागीय जांच की प्रक्रिया म.प्र. शासन में इस हेतु निर्धारित प्रक्रिया से जांच का निराकरण किया जावेगा।

As such, the impugned order is completely without jurisdiction and, therefore, availability of alternative remedy would not be a bar in the light of dictum of the Apex Court in the case of Whirlpool (Supra).”

35. Further, the case of ***Shiv Narayan Bhargava (supra)*** was also disposed off relying upon the order passed in ***Ram Avtar Sharma & Gopal Prasad***

Panthi (supra).

36. It is thus seen that in the aforesaid cases, no argument was made before the Bench regarding mandatory or directory nature of provisions of Rule in question. Further, the Bench proceeded with the presumption that imposing punishment is the job of Enquiry Board. The Bench has also not considered the fact that the Rule do not provide for the officers who are to constitute the Enquiry Board. Further, the effect of *doctrine of necessity* was also not argued. The powers vested in Competent Authority under Rule 49.3.2.2 were also not appreciated. From the order, it appears that the only objection raised by respondents was regarding availability of alternate remedy.

37. The learned counsel for petitioner also placed reliance upon another coordinate bench judgment of this Court rendered in the case of ***Smt. Bhavna Kale (supra)***. In this case, the argument invoking *doctrine of necessity* was raised from respondents' side. However, even though learned bench took note of the same, however, did not appreciate the same in view of the fact that the issue has already been decided in the case of **Gopal Prasad Panthi (supra)**. Meaning thereby, this case also did not take note of various issues which were germane for decision of the case. The order passed in the case of ***Smt. Bhavna Kale (supra)*** was later affirmed by Division Bench in W.A. No.602 of 2023 filed by the Bank however the issues pointed out above are not raised and considered.

38. The case of ***Laxman Singh (supra)*** was also challenged in W.A. No.1026/2021. Even though the order of writ court was not interfered, the Division Bench relaxed the provisions of Rule 49.3.2.3 by permitting respondents to constitute the Enquiry Board by officers above the rank of respondents/writ petitioners. The Division Bench thus also impliedly treated the provisions of Rule 49.3.2.3 as directory and not mandatory otherwise

directions to constitute Enquiry Board by other officers could not have been issued.

39. In view of the discussion made above, this Court is in respectful disagreement with the judgment rendered by coordinate benches in the cases of *Surendra Khaiwariya, Gopal Prasad Panthi, Laxman Singh Raghuwanshi, Shiv Narayan Bhargava, Ram Avtar Sharma & Smt. Bhavna Kale* and the same needs reconsideration. Since, the cases of *Smt. Bhavna Kale and Laxman Singh (supra)* have been dealt with by Division Bench, this case needs to be placed before Hon. the Chief Justice for constitution of a Larger Bench.

40. The provisions of Rule 8(3) of Chapter 4 of M.P. High Court Rules, 2008 may be referred at this stage which enables a Single Bench to refer matter to a larger Bench for reconsideration of an issue already dealt with by a Division Bench. As discussed above, following issues needs to be reconsidered by a larger bench:

i. Whether the provisions of Rule 49.3.2.3 of Jila Sahakari Kendriya Bank Maryadit ke Sewayukton ke (Niyojan, Nibandhan tatha Karysthi) Sewa Niyam, are directory or mandatory?

ii. Whether the entire action of the Bank would be vitiated merely because the Enquiry Board was not constituted as per HR Policy particularly when Rules do not provide for the officers who would consist the Enquiry Board?

*iii. Whether, in view of the provisions of Rule 49.3.2.2, the Competent Authority is within its power to either conduct the enquiry himself or get it done through any other officer or Enquiry Board as has been held by Division Bench in the case of **Laxman Singh (supra)**?*

iv. Whether invoking doctrine of necessity, the Competent

Authority could have constituted Enquiry Board consisting of officers other than the one provided in HR Policy?

*v. Whether the judgment rendered by coordinate bench of this Court in cases of **Surendra Khaiwariya, Gopal Prasad Panthi, Laxman Singh Raghuwanshi, Shiv Narayan Bhargava, Ram Avtar Sharma & Smt. Bhavna Kale (supra)** and by Division Bench of this Court in case of **Smt. Bhavna Kale and Laxman Singh (supra)** correctly decided the issue or the same need reconsideration?*

41. The office is, therefore, directed to place the matter before Hon. the Chief Justice for constitution of a larger bench for consideration of aforesaid issues.

(ASHISH SHROTI)
JUDGE

bj/-