

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

WP(C).No. 4438 of 2011 (D)

PETITIONER:

M.R.SIVARAJAN KUNJU,
(EMPLOYEE NO.377346 (DISMISSED), KATTAPPANA BRANCH
UNION BANK OF INDIA, MAVANAL, KAMAKSHY P.O.
IDUKKI DISTRICT, KERALA-685 515.

BY ADVS.SRI.V.B.PREMACHANDRAN
SRI.S.MOHANDAS
SRI.K.N.GOVINDANKUTTY MENON
SRI.S.MADHAVAN NAIR
SRI.GNR.UNNITHAN

RESPONDENT(S):

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1. THE GENERAL MANAGER,
DISCIPLINARY AND APPEAL AUTHORITY
UNION BANK OF INDIA, MUMBAI CENTRAL.
 2. CHIEF MANAGER,
HUMAN RESOURCES MANAGEMENT, REGIONAL OFFICE
THIRUVANANTHAPURAM-695 001.
 3. MANAGER, UNION BANK OF INDIA,
KATTAPPANA, IDUKKI-685 508.

R1-R3 BY ADV. SRI.A.S.P.KURUP, SC, UBI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC.4438/11

PETITIONER'S EXTS:

- EXT.P1: COPY OF MEMORANDUM NO.ROT/HRMD/2134/09 DT.25.2.09 ISSUED BY THE 2ND RESPONDENT.
- EXT.P2: COPY OF MEMORANDUM NO.FOT/HRMD/2362/09 DT.3.4.09 ISSUED BY THE 2ND RESPONDENT.
- EXT.P3: COPY OF MEMORANDUM OF CHARGE NO.GHO/DP/2138/09:09 DT.23.9.2009 ISSUED BY THE DISCIPLINARY AUTHORITY/CHIEF MANAGER (HRM), DEPT. OF PERSONNEL, FGMO, CHENNAI.
- EXT.P4: COPY OF REPLY DT.9.10.09 SUBMITTED BY THE PETITIONER TO THE CHIEF MANAGER (HRM)DEPARTMENT OF PERSONNE, FGMO,, CHENNAI.
- EXT.P5: COPY OF FINDINGS OF THE ENQUIRY OFFICER DT.29.12.09.
- EXT.P6: COPY OF SHOW CAUSE MEMORANDUM NO.FGMO:DP:296:02-10 ISSUED BY THE DISCIPLINARY AUTHORITY/CHIEF MANAGER DT.5.2.2010.
- EXT.P7: COPY OF REPLY DT.25.2.2010 SUBMITTED BY THE PETITIONER TO THE CHIEF MANAGER.
- EXT.P8: COPY OF MEMORANDUM NO.FMGP:DP:451:02-10 ISSUED BY THE DISCIPLINARY AUTHORITY/CHIEF MANAGER DT.26.2.10.
- EXT.P9: COPY OF ORDER DT.11.12.2010 ISSUED BY THE 1ST RESPONDENT.

RESPONDENTS' EXTS: NIL

TRUE COPY

P.S.TO JUDGE

dsn

ANIL K. NARENDRA, J.

W.P.(C)No.4438 of 2011

Dated this the 30th day of July, 2015

JUDGMENT

The petitioner, who was working as Daftary (Peon) at Kattappana Branch of Union Bank of India, was issued with Ext.P3 charge-sheet dated 23.09.2009 alleging certain misconducts. Ext.P3, Exts.P1 and P2 memorandums dated 25.02.2009 and 03.04.2009 form part of Ext.P3 charge sheet. On receipt of Ext.P3, the petitioner submitted Ext.P4 reply. The respondent Bank appointed an Enquiry Officer who conducted enquiry and submitted Ext.P5 findings dated 29.12.2009 concluding that the misconducts alleged against the petitioner stand proved. It is based on the findings of the Enquiry Officer in Ext.P5 that, the petitioner was issued with Ext.P6 show-cause notice proposing a major punishment of dismissal from service.

2. To Ext.P6 show-cause notice, the petitioner submitted Ext.P7 reply, contending that he is totally innocent of the charges levelled against him. He has also raised specific contentions

against the findings in Ext.P5 report of the Enquiry Officer and contended that the findings contained therein are neither legal nor proper. After considering the reply submitted by the petitioner in Ext.P7, the 2nd respondent issued Ext.P8 order. The reasoning in Ext.P8 order passed by the Disciplinary Authority reads thus:

"I have carefully examined various submission made by Shri Sivarajan Kunju during the personal hearing held on 25.02.2010. At the enquiry it is proved beyond doubt that the cash was within the control of CSE and he is only responsible for the same. He has not therefore submitted any extenuating and mitigating factors, which warrants change in proposed punishment. The charges proved against Shri Sivarajan Kunju is very serious and grave in nature calling for deterrent punishment. He has grossly breached trust reposed on him by the Bank and committed acts prejudicial to the interest of the Bank. Shri Sivarajan Kunju violated the trust and confidence reposed on him by the Bank."

3. Against Ext.P8 order passed by the Disciplinary Authority, the petitioner filed an appeal before the Appellate Authority namely the 1st respondent herein. The reasoning of the Appellate Authority in Ext.P9 order is that the counterfeit notes would not come in the currency bundles of the branch without the knowledge and involvement of the petitioner since he was the

only person responsible for bundling and affixing slips. Therefore, looking to the records of the case, the Appellate Authority held that it do not find any justifiable reason to interfere with Ext.P8 order passed by the Disciplinary Authority imposing the punishment of dismissal from service. It is aggrieved by Exts.P8 and P9, the petitioner is before this Court in this writ petition.

4. A counter affidavit has been filed on behalf of the respondents, contending that the punishment imposed on the petitioner vide Ext.P8 order, which was confirmed in appeal by the Appellate Authority in Ext.P9 is perfectly legal and no interference of this Court is called for. They would also contend that the enquiry in question was conducted strictly in accordance with law and there is absolutely no violation of the principles of natural justice. Further, the punishment imposed on the petitioner is also not disproportionate and in such circumstances, no interference of this Court is warranted.

5. I heard the arguments of learned counsel for the petitioner and also the learned Standing Counsel appearing for

the respondents.

6. The sole issue that arises for consideration in this writ petition is as to the legality or otherwise of Exts.P8 and P9 orders passed by the Disciplinary Authority and the Appellate Authority.

7. Based on the findings of the Enquiry Officer in Ext.P5, the petitioner was issued with Ext.P6 show-cause notice. To the aforesaid show-cause notice, the petitioner has submitted Ext.P7 reply in which he has categorically stated that it was absolutely without any valid materials, the Enquiry Officer in Ext.P5 came to the conclusion that the charges levelled against the petitioner stand proved. In Ext.P5, the petitioner has also pointed out various circumstances, which normally lead to a conclusion that he is totally innocent of the charges levelled against him. Another grievance of the petitioner is that though the petitioner has submitted Ext.P7 reply, the Disciplinary Authority issued Ext.P8 order in total non-application of mind, even without adverting to any of the contentions raised by the petitioner in Ext.P7.

8. As I have already noticed, Ext.P8 order passed by the Disciplinary Authority only says that the Disciplinary Authority

has carefully examined various submissions made by the petitioner during the personal hearing held on 25.02.2010 and that in the enquiry it was proved beyond doubt that the cash was with the control of the petitioner and he is only responsible for the same. Though it has been stated in Ext.P8 that the Disciplinary Authority has carefully examined various submissions made by the petitioner during personal hearing, nothing is discernible from Ext.P8 to infer that the aforesaid order is one passed after considering all the aspects involved in the issue and after taking note of the specific contentions raised by the petitioner in Ext.P7 reply.

9. In **Commissioner of Police, Bombay v. Gordhandas Bhanji (AIR 1952 SC 16)** the Apex court has held that, public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those

to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Following the principle laid down in Gordhandas Bhanji's case (*supra*), the Apex Court has reiterated in **Mohinder Singh Gill v. Chief Election Commissioner (1978 (1) SCC 405)** that, when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds later brought out.

10. In **Breen v. Amalgamated Engineering Union (1971 (1) All. E.R. 1148)** Lord Denning, M.R. observed that, the giving of reasons is one of the fundamentals of good administration. In **Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 ICR 120)** it was observed that, failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.

11. Following the principle laid down in the decisions referred to above, the Apex Court in **Chairman and Managing Director, United Commercial Bank and others Vs. P.C.Kakkar (2003) 4 SCC 364** held that, reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The 'inscrutable face of a sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance.

12. The object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The recording of reasons by an administrative or quasi-judicial authority serves a salutary purpose, namely, it excludes chances

of arbitrariness and ensures a degree of fairness in the process of decisions making. It would apply equally to all decisions made by such authority and its application cannot be confined to decisions which are subject to appeal, revision or judicial review. At the same time, it is not the requirement that, the reasons should be as elaborate as in the decision of a court of law. What is necessary is that, the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. Hence, it is an essential requirement of the rule of law that, some reasons, at least in brief, must be disclosed in the order passed by an administrative or quasi-judicial authority.

13. If Ext.P8 order passed by the Disciplinary Authority is read in the light of the principle laid down in the aforesaid judgments, the conclusion is irresistible that it is one passed by the Disciplinary Authority in total non-application of mind. In such circumstances, the Appellate Authority ought to have declined to give its seal of approval to the punishment in Ext.P8 order and should have remanded the matter to the Disciplinary

Authority for reconsideration. When Ext.P8 order is one passed in total non-application of mind and in clear violation of the principles of natural justice, the same cannot be sustained for the reasons stated in Ext.P9 by the Appellate Authority, which finds no place in Ext.P8 order passed by the Disciplinary Authority.

14. In the result, Exts.P8 and P9 orders are set aside and the 2nd respondent, the Disciplinary Authority is directed to pass a reasoned order after taking into consideration Ext.P7 reply submitted by the petitioner and after giving the petitioner an opportunity of being heard, within a period of two months from the date of receipt of a copy of this judgment.

Writ Petition is disposed of as above.

No order as to costs.

Sd/-
ANIL K.NARENDRA,
JUDGE

JV/dsn