

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 30.06.2017	Date of pronouncing Judgment 03.08.2017
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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.15895 of 2002
and
W.P.M.P.No.16989 of 2006

M.Mahalingam

.. Petitioner

Versus

1. Syndicate Bank
represented by its
Personnel Manager
Manipal - 576 119.

2. Deputy General Manager (Personnel)
Syndicate Bank
Head Office
Manipal - 576 119.

3. General Manager (Personnel)
(Appellate Authority)
Syndicate Bank
Head Office
Manipal - 576 119.

.. Respondents

Writ petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the second respondent herein bearing No. 138/PD : IRD : DA : 6 and 137/PD : IRD : DA : 6 dated 14.09.2001 and confirmed by the order bearing No.186/PD/IRD/DA/7 and 187/PD/IRD/DA/7 dated 13.11.2001 issued by the third respondent herein and quash the same.

(Prayer amended as per order of this Court dated 04.09.2007 made in WPMP.No.40477 of 2005)

For Petitioner : Mr.R.Ramesh
For Respondents : Mr.K.S.V.Prasad

ORDER

This Writ petition is filed praying for issuance of a Writ of Certiorari calling for the records of the second respondent herein bearing No.138/PD: IRD: DA : 6 and 137/PD : IRD : DA : 6 dated 14.09.2001 and confirmed by the order bearing No.186/PD/IRD/DA/7 and 187/PD/IRD/DA/7 dated 13.11.2001 issued by the third respondent herein and quash the same.

2. The brief facts of the case of the petitioner, as averred in the Writ Petition, is as follows:-

(i) The petitioner joined the bank service on 01.07.1974 as a clerk and promoted as Branch Manager, Syndicate Bank, South Moppur, from 1981 to 1986 and then transferred to Chennai Office.

(ii) On 23.07.1987 and 18.08.1988, the respondents issued him charge sheets levelling various charges against him, which are as follows:-

- a. Misappropriation of Rs.5,000/- by making false entry in the Pass Book.
- b. Wrongful credit of Rs.5,000/- to another person's account.
- c. Sanction of Eleven loans to the tune of Rs.47,000/- for fictitious or false purposes.
- d. Withdrawal of Rs.28,350/- by the petitioner under Sundry Advance, between the period January 1984 to June 1985, which is disproportionate to the actual expenditure.
- e. Petitioner drew the salary in advance on 23.02.1985.
- f. The petitioner discounted to a customer a DD for Rs.4,000/- and allowed him to withdraw, when his earlier dues were pending.

(iii) The petitioner was suspended on 12.06.1989 and he submitted his explanation in detail as follows:-

- (a) All the money withdrawn as advance were spent for the branch and cleared then and there.
- (b) Salary advance drawn on proceeding sick leave extraordinary circumstances to which approval sought from higher ups.
- (c) Earlier due was adjusted on ascertaining loss of instrument.

(iv) The Enquiry Officer conducted an enquiry and submitted his report on 27.11.1990 and he was found guilty of the charges 1 and 3. The Enquiry Officer did not furnish him a copy of the report, but recommended his dismissal from service by an order dated 05.01.1991. The appeal filed by the petitioner before the Appellate Authority was also dismissed on 24.10.1991.

(v) The petitioner preferred a Writ Petition in W.P.No.3886 of 1993 before this Court and by an order dated 15.03.2001, this Court partly allowed the Writ Petition and set aside the punishment imposed on the petitioner and ordered reinstatement of the petitioner into service and further given liberty to the respondents to proceed with the enquiry after furnishing the petitioner with the copy of the enquiry report and also given liberty to the petitioner to apply for VRS.

(vi) As per the order of this Court, the petitioner was reinstated into service on 30.06.2001. The enquiry was reopened once again on 02.07.2001 and copy of the enquiry report was sent to the petitioner and the petitioner was called upon to furnish explanation. It was also pointed out that the reinstatement was only with effect from 30.06.2001, and no backwages were paid and no subsistence allowance was paid from 05.01.1991 to 29.06.2001. The application for VRS on 07.07.2001 was rejected on 13.07.2001 by the Bank. The second respondent also rejected the application for VRS, in view of the pending disciplinary proceedings against the petitioner. On 25.08.2001, the petitioner submitted his explanation to the disciplinary authority and also sought apology and mercy from the bank. On 14.09.2001, the second respondent passed an order of dismissal without giving any backwages. It was also ordered that the petitioner was not entitled for any other subsistence allowance and also any other allowance. The subsistence allowance paid to the petitioner was for the period from 12.06.1989 to 05.01.1991. The petitioner filed an Appeal before the third respondent on 01.11.2001 and the same was dismissed on 13.11.2001. The respondents even failed to pay the gratuity to the petitioner.

(vii) Aggrieved by the same, the petitioner filed this Writ Petition on various grounds that as per Rule 14 of the Syndicate Bank Officer Employees (Discipline and Appeal) Regulations, 1976, any officer employee who was placed under suspension, during the period of suspension, will entitle to receive the subsistence allowance at the rate specified therein and therefore, non-payment of subsistence allowance for the period of suspension viz., 06.01.1991 to 29.06.2001 is violative of Discipline and Appeal Regulations and also violative of Article 21 of the Constitution of India, which protects every citizen the right of his life. By referring the decision of the Hon'ble Supreme Court's in Paul Antony .Vs. Bharat Gold Mines reported in AIR 1999 SC 1416, in which, it is laid down that non-payment of subsistence allowance during the suspension period vitiates the entire case, the petitioner stated that the said decision applies to the case in hand. It is also submitted that the Disciplinary Authority has not considered any of the submissions, but simply accepted the Enquiry Authority's order and no other clear reason has been given and the charges are only trivial in nature and he is suffered with major punishment

and the rejection of VRS application is also an act of abuse and with mala fides and the petitioner has reached the age of superannuation and has been denied of terminal benefits by the respondents. Hence, the petitioner has sought an order of interim direction directing the respondents to pay the petitioner a sum of Rs.10,000,00/- being the subsistence allowance payable to the petitioner for the period of 06.01.1991 to 29.06.2001 and also prayed for Writ of Certiorari calling for the records of the second respondent herein bearing No.138/PD: IRD: DA : 6 and 137/PD : IRD : DA : 6 dated 14.09.2001 and confirmed by the order bearing No.186/PD/IRD/DA/7 and 187/PD/IRD/DA/7 dated 13.11.2001 issued by the third respondent herein and quash the same.

3. The 3rd respondent - General Manager (Personnel) filed a counter denying all the allegations in the Writ Petition and submitted as follows:-

(i) The petitioner committed grave delinquencies during his service and as the investigation was contemplated, he was transferred to Chennai Regional Office on 26.07.1986. He was issued with two charge sheets on 27.03.1987 and 18.08.1988 containing the charges detailed therein, which culminated in issuance of two separate orders of dismissal. Hence he failed to discharge his duties with utmost integrity, honesty, devotion and diligence and exhibited conduct unbecoming of the status of a Bank Officer and thus, contravened Regulation No.3(1) read with Regulation No.24 of the Syndicate Bank Officer Employees (Discipline and Appeal) Regulations, 1976.

(ii) In compliance of the order of this Court in W.P.No.3886 of 1993, the petitioner was reinstated by letter dated 13.06.2001 and the petitioner joined duty on 30.06.2001 and by letter dated 02.07.2001, the Disciplinary Authority furnished him a copy of the Enquiry Officer's Report in respect of the first Charge Sheet and the petitioner gave explanation on 07.08.2001 and the Disciplinary Authority had examined in detail and passed final order on 14.09.2011 awarding the penalty of "removal from service of the bank, with immediate effect, which shall not be a disqualification for future employment". It was also ordered that the petitioner is not entitled to any back wages, consequential benefits/notional increments/leaves etc., during the period of suspension, other than what has been paid to him as subsistence allowance".

(iii) Insofar as the second Charge Sheet dated 18.08.1988 is concerned, an Enquiry Officer was appointed and after enquiry, he submitted his report dated 27.11.1990 holding the charges 1 and 3 as proved and the Disciplinary Authority by its proceedings dated 05.01.1991 awarded penalty of "removal from service of the bank with immediate effect, which shall not be a disqualification for future employment". The Appeal

preferred by the petitioner was dismissed by the Appellate Authority on 26.04.1991 and the Review Petition was also disposed of by the Reviewing Authority on 24.10.1991. In compliance of the order of this Court, the petitioner was reinstated on 29.06.2001 and by letter dated 02.07.2001, the Disciplinary Authority furnished him a copy of the Enquiry Officer's Report in respect of the second Charge Sheet and the petitioner gave explanation on 25.08.2001 and the Disciplinary Authority had examined in detail and passed final order on 14.09.2011 awarding the penalty of "removal from service of the bank, with immediate effect, which shall not be a disqualification for future employment". It was also ordered that the petitioner is not entitled to any back wages, consequential benefits/notional increments/leaves etc., during the period of suspension, other than what has been paid to him as subsistence allowance".

(iv) The petitioner filed Appeals to the Appellate Authority and the third respondent by an order dated 13.11.2001 dismissed Appeals. The VRS application submitted by the petitioner was not considered in view of the condition that the employees against whom the disciplinary proceedings are contemplated, pending or under suspension, are not eligible under the scheme. The petitioner is not entitled to any subsistence allowance prior to 29.06.2001 or the date of writ order ie., prior to the date of his joining the duty on reinstatement, as during this period he was not in suspension to be entitled to any subsistence allowance from 05.01.1991, the date of termination of service, nor he is entitled to backwages in view of reinstatement, because this Court, on 15.03.2001 in W.P.No.3886 of 1993, left it to the conclusion of the disciplinary authority to decide about the payment of backwages. Hence, the respondents have not paid any subsistence allowance during this period and the petitioner is not entitled for the same. The petitioner is not entitled to gratuity in terms of Regulation 46 of the Syndicate Bank (Officers') Service Regulations, 1979. The petitioner was paid the subsistence allowance during the period, in which he was under suspension, ie., 12.06.1989 to 05.01.1991 and thereafter, he was removed from service and he was not under suspension to be entitled to subsistence allowance and if he is not sought employment elsewhere, it is his own wrong and he cannot seek for subsistence allowance. He was reinstated into service and he was salaried for the period he was in service and the judgment of "Paul Antony .Vs. Bharat Gold Mines" cited supra will not apply to the facts of this case.

(v) The respondents also stated that the petitioner's removal from service on the basis of charge sheet dated 27.03.1987, which is culminated in the order dated 14.09.2001 by a Disciplinary Authority and confirmed by the order dated 13.11.2001 passed by the Appellate Authority. As more than five

years have been lapsed, the petitioner's right to question is not only lost, but also barred by laches. Hence, the third respondent sought for dismissal of the Writ Petition.

4. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

5. The learned counsel for the petitioner would submit that there were no reasons given in the impugned orders for passing such orders. He would further submit that if any order passed by an authority affecting the rights of the parties, the same must be a speaking order supported with reasons. To substantiate his contention, the learned counsel for the petitioner would rely on the following decisions:-

(i) AIR 2009 SC 3276 (Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank ..vs.. Jagdish Sharan Varshney and Others);

(ii) 2010 (9) SCC 496 (Kranti Associates Pvt. Ltd. and another ..vs.. Sh.Masood Ahmed Khan and Others);

(iii) 2008 (9) SCC 407 (Steel Authority of India Ltd., ..vs.. Sales Tax Officer, Rourkela - I Circle and others);

(iv) Manu/TN/2175/2009 (S.Veeramani ..vs.. Chairman, Managing Director and the General Manager, REPCO Bank); and

(iv) 1995 AIR 258 (Depot Manager A.P.S.R.T.C ..vs.. V.Venkateswarulu).

6. The learned counsel for the petitioner would further submit that as per Regulation 12(4) of the Syndicate Bank Officer Employees' (Conduct) Regulations, 1976, the petitioner shall be deemed to have been placed under suspension during the period from 06.01.1991 to 29.06.2001 and therefore, urge upon his point mainly on the claim of subsistence allowance for the period from 06.01.1991 to 29.06.2001.

7. In support of his contention that the petitioner is entitled to subsistence allowance during the entire period of suspension, the learned counsel for the petitioner cited the decisions of the Hon'ble Supreme Court reported in <https://indiankanoon.org/doc/1225419/> in the case of Punjab National Bank and another .vs. Bernard Lakra; AIR 1999 SC 1416 (Capt. M.Paul Anthony ..vs.. Bharat Gold Mines Ltd., and another); and the Order of this Court dated 01.07.2013 made in W.P.No.27674 of 2003 between "S.Natarajan vs. Indian Bank, represented by its Deputy General Manager / Concurrent Disciplinary Authority, Central Office, Chennai and another";

8. Per contra, the learned counsel for the respondents would submit that pursuant to the order of this Court in W.P.No.3886 of 1993, enquiry report was furnished to the petitioner and after considering the explanation given by the petitioner and the relevant documents, the disciplinary

authority had passed the order dated 14.09.2001 giving reasons for removing the petitioner from service and the same was confirmed by the appellate authority on 13.11.2001. The learned counsel would also submit that there is no need to pass a detailed order with reasons for arriving at a decision. In support of such contention, the learned counsel for the respondents would place reliance on the following judgments:-

(i) Order of this Court dated 15.12.2009 made in W.P.No.12266 of 2000 between "M.Krishnasamy and The General Manager, Syndicate Bank, Head Office, Manipal, Karnataka State & another";

(ii) 1977 LAB. I.C. 55 Supreme Court (Tara Chand Katri .. vs.. Municipal Corporation of Delhi and others);

(iii) 1969 MLJ 447 (Som Datt Datta ..vs.. Union of India and others);

(iv) AIR 1966 SC 671 (V 53 C 128) (Madhya Pradesh Industries Ltd., ..vs.. Union of India and others);

(v) AIR 1966 SC 1827 (V 53 C 367) (State of Madras ..vs.. A.R.Srinivasan);

(vi) 1999 (II) LLJ 210 (Management of Catholic Syrian Bank Ltd., ..vs.. Industrial Tribunal, Madras & another); and

(vii) AIR 1955 SC 600 (V.42 C. 93 Sept.) (Om Prakash Gupta ..vs.. State of Uttar Pradesh)

9. The learned counsel for the respondents would further submit that the period to which the petitioner claimed subsistence allowance is from 06.01.1991 to 29.06.2001 and during that period, the petitioner was not placed under suspension, but he was terminated from service, ie., by order dated 05.01.1991, the petitioner was removed from service, but pursuant to the order of this Court dated 15.03.2001 made in W.P.No.3886 of 1993, he was reinstated into service and he joined duty on 30.06.2001. Therefore, the petitioner was not entitled to subsistence allowance for the period between the date of termination and the date of reinstatement ie., from 06.01.1991 to 29.06.2001.

10. I have considered the submissions made by both counsels and perused the materials available on record pertaining to the Writ Petition.

11. Points to be answered in this Writ Petition are :-

(1) Whether the orders of removal passed by the respondents are perverse and without reasons?

(2) Whether the petitioner is entitled for subsistence allowance for the period from 06.01.1991 to 29.06.2001 ?

12. The facts which are undisputed by both parties are as follows:-

As a matter of fact, the petitioner was an employee of the respondent bank and he joined the bank as a clerk on 01.07.1974 and on 23.07.1987 and 18.08.1988, the respondents issued him charge sheets levelling the following charges:-

- a. Misappropriation of Rs.5,000/- by making false entry in the Pass Book.
- b. Wrongful credit of Rs.5,000/- to another person's account.
- c. Sanction of Eleven loans to the tune of Rs.47,000/- for fictitious or false purposes.
- d. Withdrawal of Rs.28,350/- by the petitioner under Sundry Advance, between the period January 1984 to June 1985, which is disproportionate to the actual expenditure.
- e. Petitioner drew the salary in advance on 23.02.1985.
- f. The petitioner discounted to a customer a DD for Rs.4,000/- and allowed him to withdraw, when his earlier dues were pending.

Pending enquiry, the petitioner was placed under suspension on 12.06.1989. The Enquiry Officer filed a report on 27.11.1990 as to the charges 1 and 3 being proved. The said report was not furnished to the petitioner and the Enquiry Officer submitted his report to the Punishing Authority, who confirmed the same and recommended for removal of the petitioner from the bank service and accordingly, the petitioner was removed from the bank service by order dated 05.01.1991. The petitioner filed the Appeal before the Appellate Authority and the Appeal came to be dismissed, on 24.10.1991, confirming the order of removal. Challenging the above orders, the petitioner filed W.P.No.3886 of 1993 before this Court. By order dated 15.03.2001, this Court set aside the orders of removal, by relying various case laws and dictum reported in 1999 SCC (L & S) 623 (U.P. (Madhya) Ganna Beej Evam Vikas Nigam Limited ..vs.. Prem Chandra Gupta and others), and directed the respondents to reinstate the petitioner with liberty to the bank to proceed with the enquiry, after furnishing Enquiry Report to the petitioner, within a period of four months. Regarding the backwages, this Court, however, left it open to the respondents to decide the same. On 13.06.2001, letter of reinstatement was given by the bank to the petitioner and on 30.06.2001, the Joining Report was given by the petitioner and he was reinstated into service. After serving Enquiry Report dated 27.11.1990 to the petitioner, as per the orders of this Court, the second respondent had re-opened the enquiry on 02.07.2001 and conducted further enquiry. On 14.09.2001, the second respondent removed the petitioner by passing an order of removal from service, which was later on confirmed by the third respondent, by his order dated 13.11.2001 made in the Appeal filed by the petitioner. Challenging the aforesaid orders, the petitioner has filed this Writ Petition.

13. Point No.1:

The main prayer in the Writ Petition is to quash the impugned orders dated 14.09.2001 and 13.11.2001, viz., the order of the second respondent herein bearing No.138/PD: IRD: DA : 6 and 137/PD : IRD : DA : 6 dated 14.09.2001 and confirmed by the order bearing No.186/PD/IRD/DA/7 and 187/PD/IRD/DA/7 dated 13.11.2001 issued by the third respondent herein. Since the charges 'a' and 'c' levelled against the petitioner were proved, the aforesaid orders were passed. Therefore, it would be appropriate to refer the charges 'a' and 'c' which were proved against the petitioner.

" (a) He misappropriated an amount of Rs.5,000/- given to him by Sri.B.Sundar Ramaiah for crediting the same to his SB A/c No.92, by making fictitious / false credit entries to the extent of Rs.5,000/- on 23.12.1985 in the concerned SB A/c Ledger folio and the Pass Book.

(c) that in order to conceal his above fraudulent acts on 17.07.1986, he credited a sum of Rs.5,000/- to SB A/c No.92 of Sri B.Sundar Ramaiah and reimbursed the amount fraudulently credited to depositor's SB A/c on 23.12.1985 by way of aforesaid fictitious / false credit entry."

14. As far as the above charges, the petitioner in the entire affidavit filed in support of the writ petition has raised a ground that 'no other clear reason has been given in the impugned orders', and not raised any serious grounds to set aside the findings regarding the above charges, which were proved against the petitioner.

15. In the decision of the Hon'ble Supreme Court reported in AIR 1999 SC 1416 (Capt. M.Paul Anthony ..vs.. Bharat Gold Mines Ltd., and another), it is held that ex parte proceedings initiated against the appellant is against the principles of natural justice. Relevant paragraph reads as under:-

"33. Since in the instant case the appellant was not provided any Subsistence Allowance during the period of suspension and the adjournment prayed for by him on account of his illness, duly supported by medical certificates, was refused resulting in ex parte proceedings against him, we are of the opinion that the appellant has been punished in total violation of the principles of natural justice and he was literally not afforded any opportunity of hearing. Moreover, as pleaded by the appellant before the High Court as also before us that on account of his

penury occasioned by non-payment of Subsistence Allowance, he could not undertake a journey to attend the disciplinary proceedings, the findings recorded by the Inquiry Officer at such proceedings, which were held ex-parte, stand vitiated. "

16. In the decision reported in 2008 (9) SCC 407 (Steel Authority of India Ltd., ..vs.. Sales Tax Officer, Rourkela - I Circle and others), while setting aside the impugned order, the Hon'ble Supreme Court directed the Assistant Commissioner to dispose of the appeal by a reasoned order. Relevant portion reads as under:

"12. Therefore, in terms of the observations made by this Court while issuing notice on 19.10.2006, we set aside the impugned order of the Assistant Commissioner and remit the matter to him for a fresh consideration of the appeal. Needless to say, he has to dispose of the appeal by a reasoned order dealing with all the points of challenge highlighted by the appellant."

17. In AIR 2009 SC 3276 (Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank ..vs.. Jagdish Sharan Varshney and Others), the Hon'ble Supreme Court held that an order should contain some reasons for passing such order, so that the affected party can know why such decision should be taken and whether the authority has applied its mind, which reads as under:-

"8. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover's case(supra) has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority. The view we are taking was also

taken by this Court in Divisional Forest Officer vs. Madhusudan Rao, JT 2008 (2) SC 253 (vide para 19), and in Madhya Pradesh Industries Ltd. vs. Union of India, AIR 1966 SC 671, Siemens Engineering & Manufacturing Co. Ltd. vs. Union of India, AIR 1976 SC 1785 (vide para 6), etc.

10. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation."

18. Similar view is taken in the case reported in Manu/TN/2175/2009 (S.Veeramani ..vs.. Chairman, Managing Director and the General Manager, REPCO Bank), which is as follows:-

"9. In view of the specific stand taken by the Department in the affidavit which we have referred to above, the cryptic order passed by the High Court cannot be sustained. The absence of reasons has rendered the High Court order not sustainable. Similar view was expressed in State of U.P. v. Battan. About two decades back in State of Maharashtra v. Vithalrao Pritirao Chawan the desirability of a speaking order was highlighted. The requirement of indicating reasons has been judicially recognised as imperative. The view was reiterated in Jawahar Lal Singh v. Naresh Singh. "

19. In 1995 AIR 258 (Depot Manager A.P.S.R.T.C ..vs.. V.Venkateswarulu) it is held that the competent authority ought to have passed a reasoned order. Relevant paragraph is extracted hereunder:-

6. The competent authority is bound to examine each case in terms of Regulations 21 (1) or (sic and) 21(2) and in case it comes to the conclusion that the employee concerned is

not entitled to full salary for the period of suspension then the authority has to pass a reasoned order after affording an opportunity to the employee concerned.

20. In the decision relied on by the learned counsel for the respondents reported in CDJ 2010 MHC 144 (W.P.No.12266 of 2000) cited supra, the Writ Petition was dismissed by this Court stating that the order of the disciplinary authority and the appellate authority contained reasons. In the said order, reliance was placed on the decisions of the Hon'ble Supreme Court that if the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently.

21. In yet another decision relied on by the learned counsel for the respondents reported in 1977 LAB. I.C. 55 Supreme Court (Tara Chand Katri ..vs.. Municipal Corporation of Delhi and others), it is held as follows:-

"19. The second limb of the third contention raised on behalf of the appellant which also overlooks the decisions of the Constitution Bench of this Court does not commend itself to us. In this connection, we would like to make it clear that while it may be necessary for a disciplinary or administrative authority exercising quasi-judicial functions to state the reasons in support of its order if it differs from the conclusions arrived at and the recommendations made by the enquiring officer in view of the scheme of a particular enactment or the rules made thereunder, it would be laying down the proposition a little too broadly to say that even an order of concurrence must be supported by reasons. It cannot also, in our opinion, be laid down as a general rule that an order is a non-speaking order simply because it is brief and not elaborate. Every case, we think, has to be judged in the light of its own facts and circumstances. Reference in this connection may be made with advantage to a catena of decisions.

20. In Som Datt Datta v. Union of India while approving the English law and practice and overruling the contention advanced on behalf of the petitioner that the orders of the Chief of the Army Staff confirming the proceedings of the Court-Martial under Section 164 of the Army Act and the order of the

Central Government dismissing the appeal of the petitioner under Section 165 of the Army Act were illegal and ultra vires as they did not give reasons in support of the orders, the Constitution Bench of this Court summed up the legal position as follows:

Apart from any requirement imposed by the statute or statutory rule either expressly or by necessary implication, there is no legal obligation that the statutory tribunal should give reasons for its decision. There is also no general principle or any rule of natural justice that a statutory tribunal should always and in every case give reasons in support of its decision."

22. In AIR 1966 SC 671 (V 53 C 128) (Madhya Pradesh Industries Ltd., ..vs.. Union of India and others), the Hon'ble Supreme Court held that the order of the Central Government was not bad and since it agreed with the reasons given in the order of the State Government, it was not bound to give fuller reasons in its order rejecting the revision. The same view is taken in AIR 1966 SC 1827 (V 53 C 367) (State of Madras ..vs.. A.R.Srinivasan).

23. In the judgment reported in AIR 1955 SC 600 (V.42 C. 93 Sept.) (Om Prakash Gupta ..vs.. State of Uttar Pradesh), it is held thus:-

"The order of suspension made against the appellant was clearly one made pending an inquiry. It certainly was not a penalty imposed after an enquiry. As the result of the inquiry an order of dismissal by way of penalty had been passed against the appellant. With that order, the order of suspension lapsed. The order of dismissal replaced the order of suspension which then ceased to exist. That clearly was the position between the Government of the United Provinces and the appellant. The subsequent declaration by a Civil Court that the order of dismissal was illegal could not revive an order of suspension which did not exist."

24. In the decision of this Court reported in 1999 (II) LLJ 210 (Management of Catholic Syrian Bank Ltd., ..vs.. Industrial Tribunal, Madras & another), it is held that the order of dismissal cannot be invalidated on ground of sympathy, where such sympathy would be misplaced because of proved grave misconduct of fraud committed by employee.

25. Even though, the learned counsel for the respondents cited the decisions to substantiate his contention that there is no obligation for the authority to give reasons for passing an order, those decisions are of the years 1955 to 1977. In recent years, the Hon'ble Supreme Court held that even an order of affirmation must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority. Hence, this Court is of the view that all orders should contain some reasons for arriving at such decision.

26. In the present case, the Disciplinary Authority in the order dated 14.09.2001, found Charges 1 and 3 as proved and held that the acts for which the petitioner has been held guilty constitute misconducts within the meaning of Regulation No.3(1) read with Regulation No.24 of the Syndicate Bank Officer Employees' (Conduct) Regulations, 1976. Charge No.1 relates to misappropriation of an amount of Rs.5000/- given to the petitioner by one B.Sundar Ramaiah for crediting the same to his SB A/c No.92, by making fictitious / false credit entries to the extent of Rs.5,000/- on 23.12.1985 in the concerned SB A/c Ledger folio and the Pass Book. The other charge, viz., Charge No.3, which is also proved against the petitioner is that in order to conceal his above fraudulent acts on 17.07.1986, the petitioner credited a sum of Rs.5,000/- to SB A/c No.92 of B.Sundar Ramaiah and reimbursed the amount in fraudulent manner. On perusal of the Enquiry Report, it is clear that both the above charges are categorically proved based on the records. The disciplinary authority, on the basis of the Enquiry Report, arrived at a finding that the charges are grave in nature and came to the conclusion that removal from service was appropriate for breach of Regulation No.3(1) read with Regulation No.24 of the Syndicate Bank Officer Employees' (Conduct) Regulations, 1976. Furthermore, the orders of the Disciplinary Authority and the Appellate Authority contain reasons for passing such order. Both the above charges are grave in nature. The bank officials, who deals with the money of the depositors and customers shall discharge their duties with utmost integrity, honesty, devotion and diligence. Therefore, the order of removal passed by the respondents cannot be said as perverse, from any quarter of angle. Point No.1 is answered accordingly.

27. Point No.2:

Even though the petitioner has filed the Writ Petition seeking a Writ of Certiorari calling for the records of the second respondent herein bearing No.138/PD: IRD: DA : 6 and 137/PD : IRD : DA : 6 dated 14.09.2001 and confirmed by the order bearing No.186/PD/IRD/DA/7 and 187/PD/IRD/DA/7 dated 13.11.2001 issued by the third respondent herein and quash the same, during the course of argument, the learned counsel for the petitioner would submit that the petitioner would be satisfied

if he is paid with subsistence allowance and not any backwages. Hence, this Court is not inclined to entertain the claim of the petitioner regarding backwages and other benefits.

28. Insofar as the claim of subsistence allowance is concerned, perusal of records would show that when the application in W.P.M.P.No.21275 of 2002 was filed seeking an order of interim direction directing the respondents to pay the petitioner a sum of Rs.10,000,00/- being the subsistence allowance payable to the petitioner for the period of 06.01.1991 to 29.06.2001,, this Court has dismissed the same by observing as follows:-

"The question of payment of subsistence allowance cannot be considered at the interim stage, particularly in view of the Judgment of this Court dated 15.03.2003 in which, the petitioner was directed to be reinstated. Very strangely, at that time, the petitioner seems to have kept quiet in respect of subsistence allowance. Admittedly, the claim of subsistence allowance pertains to the period prior to 15.03.2001, when the Writ Petition was disposed of. In that view, it cannot be decided at this stage. It shall be decided at the final hearing of the Writ Petition."

Hence, this Court thinks it proper to decide the petitioner's claim of subsistence allowance, at this stage.

29. Since the petitioner claims subsistence allowance by placing reliance on the Regulation 12(4) of the Syndicate Bank Officer Employees' (Conduct) Regulations 1976, it is useful to extract the same, for better understanding:-

"12. Suspensions:

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an officer employee under suspension is set aside or declared or rendered void in consequence of or by a decision of a court of law, and the Disciplinary Authority, on consideration of the circumstances of the case, decides to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the officer employee shall be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders."

30. In the decision relied on by the learned counsel for the petitioner reported in <https://indiankanoon.org/doc/1225419/> in the case of Punjab National Bank and another .vs. Bernard Lakra, the Hon'ble Supreme Court uphold the decision of the Bank that the respondent was entitled to only half of pay and allowances as subsistence allowance during the entire period of suspension.

31. In yet another decision cited by the learned counsel for the petitioner reported in AIR 1999 SC 1416 (Capt. M.Paul Anthony .vs.. Bharat Gold Mines Ltd., and another), the Hon'ble Supreme Court, while allowing the appeal, held that the appellant shall be reinstated forthwith on the post of Security Officer and shall also be paid entire arrears of salary, together with all allowances from the date of suspension till his reinstatement, within three months. Relevant paragraphs are extracted hereunder:

"19. The entire case law was reviewed once again by this Court in State of Rajasthan vs. B.K. Meena & Ors. (1996) 6 SCC 417 = AIR 1997 SC 13 = 1997 (1) LLJ 746 (SC), wherein it was laid down as under :

"It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situation, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charge. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that 'the defence of the employee in the criminal case may not be prejudiced.' This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety', as the case may be, has to be "determined in each case taking into consideration all the facts and circumstances

of the case. The ground indicated in D.C.M. (AIR 1960 SC 806) and Tata Oil Mills (AIR 1965 SC 155) is also not an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be - and should not be - delayed unduly. So far as criminal cases are concerned, it is well known that they drag on endlessly where high officials or persons are involved. They get bogged down on one or the other ground. They hardly ever reach a prompt conclusion. That is the reality in spite of repeated advice and admonitions from this Court and the High Courts. If a criminal case is unduly delayed that may itself be a good ground for going ahead with the disciplinary enquiry even where the disciplinary proceedings are held over at an earlier stage. The interests of administration and good government demand that these proceedings are concluded expeditiously. It must be remembered that interests of administration demand that undesirable elements are thrown out and any charge of misdemeanour is inquired into promptly. The disciplinary proceedings are meant not really to punish the guilty but to keep the administrative machinery unsullied by getting rid of bad elements. The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e., for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings.

Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view of the various principles laid down in the decisions referred to above."

26. To place an employee under suspension is an unqualified right of the employer. This right is conceded to the employer in service jurisprudence everywhere. It has even received statutory recognition under service rules framed by various authorities, including Govt. of India and the State Governments. (See: for example, Rule 10 of Central Civil Services (Classification, Control & Appeal) Rules. Even under the General Clauses Act, this right is conceded to the employer by Section 16 which, inter alia, provides that power to appoint includes power to suspend or dismiss.

27. The order of suspension does not put an end to an employee's service and he continues to be a member of the service though he is not permitted to work and is paid only Subsistence Allowance which is less than his salary. (See: State of M.P. vs. State of Maharashtra, 1977 (2) SCR 555 = (1977) 2 SCC 288 = AIR 1977 SC 1466).

28. Service Rules also usually provide for payment of salary at a reduced rate during the period of suspension. (See: Fundamental Rule 53). This constitutes the "Subsistence Allowance". If there is no provision in the Rules applicable to a particular class of service for payment of salary at a reduced rate, the employer would be liable to pay full salary even during the period of suspension."

32. In the order of this Court dated 01.07.2013 made in W.P.No.27674 of 2003 between "S.Natarajan vs. Indian Bank, represented by its Deputy General Manager / Concurrent Disciplinary Authority, Central Office, Chennai and another", it is held that after the order of dismissal was set aside, the employee was deemed to have been in service for the said period and hence, entitled for subsistence allowance as per Regulation 14, which reads as follows:-

"16. In this case, admittedly, after the order of dismissal was set aside by this Court and the matter was remitted back to the Disciplinary Authority for fresh disposal, the petitioner was deemed to have been in service for the said period and the respondents should have paid the subsistence allowance as per Regulation 14. But the respondents failed to do so. The submission of the learned counsel for the petitioner before the Hon'ble Supreme Court was that the petitioner was not very particular in getting reinstatement. The same has been recorded in the judgment. This means, that the petitioner will not ask for reinstatement by revoking the order of suspension. It cannot be understood as though he was not in service during the said period. To repeat, I can only say that he was under suspension during the said period. Therefore, as per the regulations, he should have been paid subsistence allowance.

17. Now, turning to the judgments relied upon by the learned counsel appearing for the respondents, it is not clear as to whether there were any Regulations like that of the Indian Bank in respect of the parties to those cases. Therefore, those judgments cannot be made use of in favour of the respondents.

18. In this case, since the bank has not paid interest for several years, they are liable to pay interest at the rate of 9% per annum."

33. Paragraph -12 of the order, dated 15.03.2001, passed by this Court in W.P.No.3886 of 1993 filed by the petitioner herein, reads as under:-

" 12. Following the decision of the Supreme Court in U.P.(Madhya Ganna Bee) Evam Vikas Nigam Limited v. Prem Chandra Gupta and others, 1999 SCC (L & S) 623, the respondent is directed to reinstate the petitioner in service as he was not furnished with a copy of the report of the enquiry Officer, before the order of removal from service, was passed against him by the disciplinary authority. The reinstatement of the petitioner shall be made within a period of four months from the date of receipt of a copy of this order. After the reinstatement of the petitioner and also the

furnishing of a copy of the report of the enquiry officer, to him, the respondent shall have the liberty to proceed with the enquiry if they so consider it proper and in that event, they may even place the petitioner under suspension if found necessary by them and continue the enquiry from the stage of furnishing the petitioner with a copy of the enquiry report. Insofar as the grant of backwages is concerned, that will be decided, in case an enquiry is held, at the conclusion of that enquiry. The entire proceedings shall be completed within a period of six months from the date of reinstatement of the petitioner in the services of the respondent bank. At this stage, learned counsel for the petitioner submitted that the petitioner may be granted liberty to make a representation to the concerned authorities, opting to go on voluntary retirement, after his reinstatement. The petitioner is permitted to make a representation to the concerned authorities opting to go on voluntary retirement, after his reinstatement. On making such representation, it is open to the respondents to consider the case of the petitioner for voluntary retirement. Since the orders were passed in the main writ petition, the petition to fix an early date for disposal of the writ petition i.e. W.M.P.No.15631 of 1998 is dismissed."

34. On careful reading of the above order dated 15.03.2001 made in W.P.No.3886 of 1993, it is seen that the learned Judge while setting aside the order of removal from service dated 05.01.1991, directed the respondents to reinstate the petitioner in service and after the reinstatement of the petitioner and also furnishing copy of the report of the Enquiry Officer to the petitioner, the respondents are at liberty to proceed with the enquiry, if they so consider it proper and in that event, they may even place the petitioner under suspension, if necessary. The above said order was not challenged by the respondents and therefore, the same became final and based on the above said order, the petitioner was reinstated into service and he joined duty on 30.06.2001 and subsequently on furnishing the Enquiry Report, the respondents continued the enquiry from the stage of furnishing a copy of the Enquiry Report and finally within a period of 76 days had passed an order of removal from service on 14.09.2001, which was later came to be confirmed on 31.11.2001 by the third respondent. However, the respondents have not decided to suspend the petitioner after he was reinstated into

service on 30.06.2001, pursuant to the order of this Court passed in W.P.No.3886 of 1993.

35. It would be relevant to go back or advert back to the provisions of Regulation 12(4) of the Syndicate Bank Officer Employees' (Conduct) Regulations 1976. On the complete reading of the above Regulation, it is clear that where an order of dismissal, removal or compulsory retirement from service imposed upon an officer employee, who is under suspension, is declared void by a Court of Law, and the Disciplinary Authority who initiate proceedings whatsoever against the officer employee, on consideration of the circumstances of the case, decides to hold further inquiry against him, the officer employee shall be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders. It is an undisputed fact that the earlier order of removal dated 05.01.1991 passed by the disciplinary authority, which was latter came to be confirmed by the appellate authority on 24.10.1991, was rendered void and set aside in W.P.No.3886 of 1993 by order dated 15.03.2001 and thereafter, the petitioner was reinstated on 30.06.2001 and further enquiry from the stage of furnishing the copy of the Enquiry Report was proceeded and thereafter, the petitioner was once so over again terminated from service on 14.09.2001, which came to be confirmed on 31.11.2001 by the third respondent in the appeal filed by the petitioner on 13.11.2001.

36. Since the order of removal passed by the respondents were set aside by this Court vide order dated 15.03.2001 made in W.P.No.3886 of 1993, as per Regulation 12(4) of the Syndicate Bank Officer Employees' (Conduct) Regulations, 1976, the petitioner shall be deemed to have been placed under suspension by the competent authority during the period from 06.01.1991, the date on which the petitioner was terminated from service, to 30.06.2001, the date on which the petitioner was reinstated into service as per the order of this Court. In such circumstances, I am of the view that the petitioner is entitled for subsistence allowance during the period, he was deemed to have been placed under suspension ie., from 06.01.1991 to 29.06.2001, as per Regulation 14 of the Syndicate Bank Officer Employees' (Conduct) Regulations, 1976. This Court is of the view that the denial of subsistence allowance to the petitioner is very harsh. The respondents have to necessarily pay the subsistence allowance by treating the above said period, ie., from 06.01.1991 to 29.06.2001, as suspension period. Accordingly, Point No.2 is answered in favour of the petitioner.

37. In the result, the Writ Petition is partly allowed and the impugned orders dated 14.09.2001 and 13.11.2001 are set aside with regard to the claim of subsistence allowance payable

to the petitioner. The other portions of the impugned orders dated 14.09.2001 and 13.11.2001 are confirmed. The respondents are directed to pay subsistence allowance to the petitioner for the period from 06.01.1991 to 29.06.2001, by treating the said period as suspension period, in accordance with the provisions of Regulation 14 of the Syndicate Bank Officer Employees' (Conduct) Regulations 1976, less the amount of subsistence allowance, if any, already paid, with interest at 9% p.a from the date of due till the date of payment, which shall be paid within a period of 12 (twelve) weeks from the date of receipt of a copy of this order. No costs. Since the prayer sought for in W.P.M.P.No.16989 of 2006 is one and the same prayer already sought for in W.P.No.40477 of 2005 for amendment of the main prayer in the writ petition, and the same was already ordered on 04.09.2007, W.P.M.P.No.16989 of 2006 is closed as no order is necessary.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

mra

+1 CC to Mr.K.S.V. Prasad, advocate sr 56533
+1 CC to Srinath Sridevan, Advocate sr 55603.

Writ Petition No.15895 of 2002
and
W.P.M.P.No.16989 of 2006

SP(16/08/2017)

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