

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**CWP-14820-1994 (O&M)
Date of decision:15.12.2017**

Sonia and others

....Petitioners

Versus

State Bank of India and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. S.K.S. Bedi, Advocate for the petitioners.

Mr. Adarsh Jain, Advocate for the respondents.

P.B. BAJANTHRI, J. (ORAL)

On 06.12.2017 following order was passed:-

“Matter was heard for some time and it was found that order of disciplinary authority dated 11.01.1992 (Annexure P5) is not a speaking order as is evident from reading. What has been stated in respect of the petitioners is as follows:-

“3. The Disciplinary Authority has considered the submission/representation made by Shri Rastogi on the findings of the Inquiring Authority, which have also been seen by me.”

Thus, it is evident that contention of the petitioners in his representation against show cause

notice and on the inquiring officer's report has not been considered by the disciplinary authority and it is not a speaking order. Learned counsel for the respondent-State Bank of India submitted that appellate authority as well as revisional authority have passed speaking orders. Therefore, merely there is non-speaking order of the disciplinary authority would not vitiate further proceedings by the appellate authority and revisional authority.

Learned counsel for the respondents seeks time.

List this matter on 15.12.2017.”

2. Pursuant to the order dated 06.12.2017 learned counsel for the respondent-State Bank of India relied on decision of Andhra Pradesh High Court reported in 1991(2) SCT 137 titled as ***V.J.M. Rao versus Canara Bank represented by its Managing Director, Bangalore and others*** Relevant extract of judgment reads as under:-

“17. The second contention advanced on behalf of the petitioner is also not sustainable. Even assuming for a minute that the disciplinary authority's (3rd respondent) order does not comply with the Regulation 7(3) of 'the Regulations', when the same is confirmed in appeal by the second respondent giving elaborate reasons and findings, it is only the order of the appellate authority that can be questioned and not the order of the disciplinary authority. In other words, when once the order of the Appellate Authority and thereafter, it is only the order of the Appellate Authority that can be questioned and not the order of the disciplinary authority (3rd respondent). In view of the above, it is contended by the learned counsel for the respondent that

when once the order of the disciplinary authority, even assuming that it is illegal, is confirmed in appeal by the appellate authority, it gets merged in the order of the appellate authority and it is not longer open to the petitioner to question the order of the primary authority. In support of the said contention, the learned counsel for the respondent relied upon a decision in Somanath v. State of Orissa, 1951(2) SLR 550. In the said Judgment, the learned Judges assumed that the order of the disciplinary authority was illegal because no enquiry into the alleged misconduct was made before making that order. But there was an appeal, as in our case, to the appellant authority. The appellate authority dismissed the appeal. The learned judges on the above facts and circumstances held as under:-

'In those circumstances we are of the opinion that the order of respondent No.4 dated the 11th March, 1960 has merged in the appellate order of the State Government dated the 2nd January, 1962 and it is the appellate decision along which subsists and is operative in law and is capable of enforcement. In other words, the original decision of respondent No.4 dated the 11th March, 1960 no longer subsists for it has merged in the appellate decision of the State Government and unless the appellant is able to establish that the appellate decision of the State Government is defective in law, the appellant will not be entitled to the grant of any relief.'

3. Thus, it was contended that disciplinary authority order is merged with the appellate authority and reviewing authority. Consequently, even if there is defect in the disciplinary authority order of the appellate authority and reviewing authority is required to be upheld if it is in accordance with

law. The aforesaid contention cannot be accepted. In view of the decision passed by the Supreme Court in the case of ***T.P.Senkumar, IPS versus Union of India and others*** reported in 2017(6) SCC 801 in para 85 reads as under:-

“85. The law has been well settled for many years now that when an order is passed in exercise of a statutory power on certain grounds, its validity must be judged by the reasons mentioned in the order. Those reasons cannot be supplemented by other reasons through an affidavit or otherwise. Were this not so, an order otherwise bad in law at the very outset may get validated through additional grounds later brought out in the form of an affidavit”

Further justice MEGARRY ruled in ***Leary versus National Union of Vehicle Builders***, reported in (1970) 2 All ER 713 held as under:-

“If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him.”

Supreme Court in the case of ***Oryx Fisheries Private Limited versus Union of India and others*** reported in (2010)13 S.C.C.427 in paras 41, 43 to 45 held as under:-

“41. In the instant case the appellate order contains reasons. However, absence of reasons in the original order cannot be compensated by disclosure of reason in the appellate order.

43. For the reasons aforesaid, this Court quashes the show-cause notice as also the order dated 19.3.2008 passed by the third respondent. In view of that, the appellate order has no legs to stand and accordingly is quashed.

44. We are constrained to observe that unfortunately this aspect of the matter was not considered by the High Court. We cannot, therefore, approve the order of the High Court and the same is accordingly quashed. The cancellation of the registration certificate of the appellate is set aside and we declare the registration to be valid if it is not vitiated for any other reason.

45. We, however, make it clear that if the authorities are so inclined, they can proceed from the stage of showcause notice afresh but strictly in accordance with law and following the fair procedure indicated in this judgment.”

Supreme court in the case of **Ravi Yashwant Bhoir versus District Collector, Raigad and others** reported in (2012) 4 SCC 407 held that recording of reasons for a decision is held to be a part of principle of natural justice. Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. Similar view was expressed by the Supreme Court in the case titled as **Babu Lal versus State of Haryana and others** reported in (1991) 2 SCC 335. If the original order

was a nullity, an order passed by the higher authority in revision could be of no greater value or effectiveness. Even though the latter order complied with natural justice; in such a case, the original order did not get merged with the order passed in revision. Supreme Court in the case of ***Mohd. Yunus Khan versus State of Uttar Pradesh and others*** reported in (2010) 10 SCC 539 in para 27 held as under:-

“27. The existence of an element of bias renders the entire disciplinary proceedings void. Such a defect cannot be cured at the appellate stage even if the fairness of the appellate authority is beyond dispute. (Vide S. Parthasarathi v. State of A.P. and Tilak Chand Magatram Obhan v. Kamala Prasad Shukla.)”

If the foundation of a structure is removed the superstructure cannot stand and must collapse. Therefore, if the order of the lower authority could not be saved and sustained, the order of the higher authority made in revision must also fall along with it. Supreme Court in the case of ***Mysore State Road Transport Corporation versus Mirja Khasim Ali Beg and another*** reported in AIR1977 SCC 747 held that the principle that an order which was null and void could not become valid by confirmation by higher authority in appeal.

4. In view of the aforesaid principle laid down by the Supreme Court, disciplinary authority order cannot be cured by the appellate authority and reviewing authority. Accordingly, orders of the disciplinary authority, appellate authority and reviewing authority vide Annexures P5, P7 and P9 are set aside. Matter is required to be remanded to the

disciplinary authority to pass speaking order in accordance with law. Learned counsel for the petitioners submitted that present petition is presented by legal heirs of the deceased employee. Therefore, questioning of remanding the matter to the disciplinary authority do not arise. Hence, no action against legal heirs can be taken under the regulation governing disciplinary action against Bank employee. In view of the setting aside the order of disciplinary authority, appellate authority and reviewing authority, legal heirs of deceased employee are entitled to monetary benefits which were due to the deceased employee. The same shall be calculated and disbursed within a period of 4 months from today.

5. Accordingly, CWP stands allowed.

15.12.2017

pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No