

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 6863 of 2010 (O&M)
Reserved on : September 15, 2017

Date of Decision: September 27, 2017

Karma Devi

... Petitioner

Versus

Punjab National Bank and others

... Respondents

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

Present: Mr. Avtar Singh Khaira and
Mr. Satbir Singh Katnoria, Advocates,
for the petitioner.

Mr. Sanjiv Ghai, Advocate,
for the respondents.

P.B. Bajanthri, J.

1. In the instant writ petition, petitioner has challenged the validity of orders dated 02.08.2008, 11.10.2008 and 30.11.2009 passed by the disciplinary, appellate and reviewing authority (Annexures P/13, P/15 and P/16 respectively).

2. Petitioner while working as Manager in the respondents-Bank, she was charge-sheeted on 21.11.2006 by Articles I and II. Article of I charge - statement of imputation consists of (a) to (i) (statement of allegations) and Article of II charge – Statement of imputation. Petitioner submitted her reply denying the alleged charges on 23.12.2006. Respondents-Bank were dis-satisfied with the petitioner's reply proceeded

to appoint Inquiry Officer to hold an inquiry on the alleged charges. On 19.05.2008, Inquiring Officer submitted his report to the extent that charge No.I(a), (c),(d), (e), (f), (h) and (i) were proved and charge No.1 (b) and (g) were proved partly and charge No.2 was proved. The disciplinary authority forwarded the Inquiring Officer's report to the petitioner permitting her to make her submissions / representation on the findings of the Inquiring Officer. Accordingly, petitioner submitted her detailed explanation on 25.07.2008. The disciplinary authority after perusal of the Inquiring Officer's report and petitioner's explanation on the inquiry report imposed the penalty of compulsory retirement under Regulations 7(3) read with 4(h) of Punjab National Bank Officer Employee's (Discipline and Appeal) Regulations 1977 (hereinafter referred to as "Regulations 1977") vide order dated 02.08.2008. The petitioner feeling aggrieved by the order of compulsory retirement, preferred an appeal under Regulation 17 of Regulations 1977 on 01.09.2008. Her appeal was rejected by the appellate authority on 11.10.2008. Consequently, she filed a review petition before the reviewing authority under Regulation 18 of Regulations 1977 and thereafter, supplementary materials were placed on record on 15.10.2009 for the purpose of deciding her review petition. On 30.11.2009 review petition of the petitioner was also rejected. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that petitioner joined respondent – Bank on 25.01.1985 as a Clerk-cum-Cashier. By dint of hard work and passing of competitive examination, she has earned promotion to various cadre and reached upto Officer Scale-II on

04.02.2002. Her work was appreciated by the then Assistant General Manager – Sh. P.K. Mittal on 11.09.2004 while over-all rating of the petitioner's the then branch as a Good and further on 30.12.2004 her work was appreciated by the then Assistant General Manager – Sh. P.S. Bedi. She is eligible for further promotion, however, the same was stalled due to pendency of departmental enquiry initiated on 21.11.2006.

4. The petitioner while working in the Audit Wing of the respondents-Bank under the direct control of Head Office, she found certain irregularities which have been committed in Sector 23 Branch, Chandigarh of the Bank which was under the over-all control of respondent no.6 – Sh. B.P. Chopra. Petitioner had submitted certain adverse report against Sh. B.P. Chopra and other staff while auditing on 04.05.2004 (Annexure P/4) which was addressed to the Executive Director of the respondent-Bank, New Delhi. Submission of such adverse report against 6th respondent annoyed him. Consequently, when petitioner was posted in Branch under the administrative control of respondent no.6 and others they were harassing the petitioner on the grudge that petitioner had sent adverse report. In this regard, petitioner reported to the higher authorities. She had filed a civil suit against 6th respondent and others on 10.04.2006 and summons were served upon 6th respondent and others on 21.04.2006. In this background, 6th respondent and others implicated the petitioner with certain allegations that she had quarreled with Bank customers like Sh. Shyam Singh and Sh. Anis Ahmed. Both of them have submitted complaints against the petitioner. While entertaining those complaints further alleged that petitioner held a press conference in the

branch without prior sanction of the higher authorities and unfounded allegations of defamatory character of sexual harassment at work place against branch officials and the allegations made by the petitioner to the press were published in different newspapers like “Dainik Bhaskar” and “Dainik Tribune” on 03.02.2006 and “Punjab Kesari” on 04.02.2006, proceeded to take disciplinary action. In this background, petitioner was charge-sheeted on 21.11.2006. It was contended that Article of Charge No.I and II is not in consonance with sub regulation 3 of regulation 6 of Regulations 1977 since sub regulation specify that “definite and distinct charges on the basis of allegations” were to be framed, whereas reading of Article of charges No. I and II are not definite and distinct charges, therefore, penalty order and consequential orders are liable to be set aside for non compliance of sub regulation 3 of regulation 6 of Regulations, 1977.

5. It was further contended that Article of charge No.I is with reference to complaints of Shyam Singh and Anis Ahmed they were dated 01.12.2005 and 02.02.2006. As soon as receipt of any complaint against officer/employee of the respondent-Bank, the concerned authority was required to register those complaints in the register book, thereafter, further action is to be taken with reference to circulars issued on 18.11.1988 and 26.04.2000. Circulars also stipulate that complaints are required to be disposed of within a month from the date of receipt of complaint. In the present case, admittedly, respondents have not registered the complaints of Shyam Singh and Anis Ahmed as required under the Bank procedure. Therefore, the alleged charge relating to complaints of

Shyam Singh and Anis Ahmed is impermissible. Moreover, no application of demand draft was pending. So question of quarreling with Shyam Singh do not arise so also no work of Anis Ahmed was pending with petitioner. The respondent-Bank should not have acted upon for holding the disciplinary action.

6. It was further submitted that petitioner was not examined herself. Therefore, there is violation of sub regulation 17 of regulation 6 of Regulations 1977.

7. It was further contended that insofar as alleged charge of holding of press conference which were reported in local television channel and reported in the newspapers are concerned, relevant witnesses have not been cited so also not examined like author of the news report. On the other hand, evidence of two officers of the Bank has been taken into consideration. In other words, author of the news report has not been examined. In the absence of non-examination of author of a documents and examining extraneous persons vitiate the charge of holding press conference and its publication in the newspapers.

8. It was also submitted that respondents' allegation is that petitioner has failed to obey the orders of her superiors in discharging certain assigned duties on the relevant dates. The respondents have not produced any material to show that what type of work was assigned to the petitioner and when she refused to discharge those assigned work and whether such works were get it done by any other officer or not are not forthcoming to state that petitioner has refused to discharge the assigned work. On the contrary, materials are available to show that petitioner has

discharged the duties on the relevant date. Some of the assigned duties to the petitioner were incomplete due to failure of server to the computer which was beyond the control of the petitioner.

9. The petitioner service record is good from the year 1985 to 2006. The petitioner as Audit Officer sent adverse report and in the year 2006, due to filing of civil suit against respondents no. 6 to 9 on 10.04.2006 in which summons were served on 21.04.2006 in order to take revengeful and vindictive against the petitioner as a counter-blast to the civil suit proceeded to issue tabular proforma on the petitioner on 24.04.2006. In fact, efforts were made by respondent no.6 – B.P. Chopra and others to see that suit filed against them is to be withdrawn. Petitioner did not budge for withdrawal of suit. Consequently, respondent no.6 and others got annoyed against the petitioner and proceeded at their behest for taking disciplinary action.

10. It is also submitted that disciplinary authority failed to appreciate the contention raised by the petitioner. In fact, disciplinary authority was bound by petitioner's reply on the Inquiring Officer's report insofar as consideration. Perusal of the disciplinary authority's order it is evident that not even a single issue has been considered. Therefore, disciplinary authority's order is not a speaking order. In other words, object of furnishing reply to the Inquiring Officer's report and its consideration is defeated due to non-consideration of the petitioner's reply while imposing the penalty of compulsory retirement. The appellate and reviewing authority have not appreciated the contentions of the petitioner in respect of charges that complaints were required to be registered in the

register maintained in the branch with reference to circulars dated 18.11.1988 and 26.04.2000. On the other hand, they are of the view that registration of complaints would arise only in the case of vigilance matter. Whereas for the purpose of vigilance matter, there is a separate Vigilance Manual how complaints in respect of vigilance issues are to be dealt. Even they have not appreciated petitioner's service record from the year 1985 to 2006 and the fact that petitioner has earned promotion while passing a departmental competitive examination. Even adequacy of penalty has not been dealt with while affirming the order of compulsory retirement passed by the disciplinary authority. Hence, the impugned orders are liable to be set aside.

11. Per contra, learned counsel for the respondents vehemently resisting the petitioner's claim submitted that there were no animosity between the petitioner and 6th respondent and others so as to contend that mere furnishing of adverse report as Audit Officer and filing of civil suit against the 6th respondent and others by the petitioner, therefore, the contention of the petitioner in order to counter-blast to the adverse report and civil suit, respondents have initiated disciplinary proceedings are not appreciable. It was contended that no doubt article of charges are not specific at the same time supporting article of charges statement of imputation is enclosed. The statement of imputation is crystal clear which cover up the article of charges. Therefore, there is no infirmity in contending that article of charges are not in terms of sub-regulation 3 of regulation 6 of Regulations 1977. In non-compliance of circulars dated 18.11.1988 and 26.04.2000 in not registering the complaints of Shyam

Singh and Anis Ahmed, it is only a procedural irregularity, therefore, the contention of the petitioner that in not registering the complaint and complaint has been obtained subsequent to holding of press conference by the petitioner and in order to implicate the petitioner is not tenable. One of the petitioner contention is that no bank draft of BSNL was pending consideration as on the date of Shyam Singh's complaint cannot be accepted since Shyam Singh is to transact with the respondent-Bank, mere non-pendency of application that does not vitiate the complaint of Shyam Singh.

12. The contention of the petitioner that there is violation of sub-regulation 17 of regulation 6 of Regulations 1977 with reference to non-examination of petitioner herself is not tenable for the reasons that petitioner was permitted to submit her written brief after closure of evidence by the Inquiring Officer. Therefore, there is no violation of the aforesaid regulation.

13. The contention of the petitioner that author of the news report with reference to holding of press conference is concerned, it was supported by two officers of the Bank. Consequently, petitioner's contention that author of the news report are required to be examined in support of holding of press conference is not tenable. It was also submitted that petitioner's contention that 22 employees of the respondent-Bank submitted complaints against the petitioner and only two witnesses have been examined and remaining 20 witnesses have not been examined or non-examination of author of the complaint is not tenable for the reasons that two witnesses are sufficient to support the documents. Even though

they were interested witnesses as argued by the learned counsel for the petitioner.

14. No doubt the disciplinary authority has not considered each of the contention raised in her reply on the Inquiring Officer's report that does not vitiate order of the disciplinary authority since the disciplinary authority's order was subject matter before the appellate and reviewing authority. Both the authorities have dealt the matter in detail. Therefore, disciplinary authority in not considering the various contentions of the petitioner and the reply to the Inquiring Officer's report since next higher authorities have considered the contentions of the petitioner.

15. Certain documents which were not cited at the time of issuance of article of charges. The same have been adduced before the Inquiring Officer during the process of inquiry after furnishing those documents to the petitioner. In other words, due opportunities have been given to the petitioner, therefore, unlisting management documents which were relied in the inquiry cannot vitiate the inquiry proceedings. In view of above facts and circumstances, the petitioner has not made out a case so as to interfere with the impugned orders.

16. Heard learned counsel for the parties.

17. The petitioner arrayed respondents no.5 to 9 impleading them by name alleging mala fide against them to the extent that at their behest inquiry was proceeded. Despite service of notice on them, respondents no. 1 to 4 have taken the responsibility of appearing on behalf of respondents no.5 to 9, as is evident from the reply statement. In other words, respondents no.1 to 4 have filed their statement of objections on behalf of

respondents no. 5 to 9 also. When an official(s) is/are impleaded by his or her name, bank or bank's counsel cannot represent him or her/them (respondents no. 5 to 9). When petitioner has alleged certain allegations/misdeeds have been committed by respondent nos. 6 to 9, it was bounden duty of them to defend mala fide attributed against them of the petitioner and it is not for the respondents no. 1 to 4 – Bank to defend on behalf of respondents no. 5 to 9. Therefore, an inference can be drawn that petitioner's averments against respondents no. 5 to 9 are to be accepted. Initiation of inquiry is at the behest of respondents No.6 (Sh. B.P. Chopra), No.7 (Sh. T.R. Verma), No.8 (Sh. Jagir Singh) and No.9 (Sh. Parveen Mahajan). Since they were served un-represented and the fact that they have not appeared in person or engaged any counsel reveals that they have no say in the matter.

18. The petitioner's contention that initiation of inquiry is at the behest of respondents no. 6 to 9 and others to the extent of 22 employees who have made complaint against the petitioner. As petitioner had furnished adverse report as an Audit Officer and filing of civil suit against respondent no. 6 and others on 10.04.2006 in which summons were served on 21.04.2016, consequently, the respondent no.6 and others created two complaints from the bank customers and further made allegations against the petitioner that she is not obeying the orders of her superiors like respondents no. 6 to 9. In other words, respondent no.6 and others associated with the idea of initiating inquiry against the petitioner and bias commitment with the result of inquiry became somewhat more direct and personal, this kind of situation does create an impression in the right

mind person that there is real likelihood of bias in the circumstances of the case. In the backdrop of furnishing adverse report and filing of a suit against the respondent no. 6 and others and the fact that they have approached the petitioner for withdrawal of the suit, consequently, when the petitioner refused to withdraw the suit, respondents no.6 to 9 proceeded to take revenge. Therefore, the complaints are stated to be created at the behest of the respondent no.6 and others and it is undisputed factual aspects that complaints of Bank customers against petitioner were not processed in accordance with known Bank Procedure like registering those complaints. Disciplinary action initiated against petitioner to oblige respondents no. 6 to 9 who were at daggers drawn with the petitioner. Private grudge or vindictiveness should not be the basis of an action by superior authorities. No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives and any action purporting to be of that body but proved to be committed in bad faith or from corrupt motives, would certainly be held to be bad and such actions are in-operative. Background of the matter read with correspondence of respondents no. 6 to 9 and to the Head Office, it is crystal clear that with ulterior motive initiation of inquiry was done. Consequently, the initiation of inquiry itself is liable to be set aside on the ground of likelihood of bias.

19. The petitioner contended that framing of article of charge No. I and II is not in accordance with sub-regulation 3 of regulation 6 of Regulations 1977. It is true that when statutory provision specifically command for doing a particular thing in a particular manner, it is to be done in the manner known to the law, the authority cannot deviate from

the statutory provision which mandates to do in a particular manner. The respondents-Bank's contention that even though article of charge is not definite and distinct, however the same is covered in the statement of allegations which has cured the defect. Thus, it is crystal clear that the respondents while framing article of charge No. I and II have violated sub-regulation 3 of regulation 6 of Regulations, 1977 in not framing article of charge definite and distinct charges on the basis of allegations. Supreme Court in the case of ***Transport Commissioner, Madras-5 vs. A. Radha Krishna Moorthy***, reported in (1995) 1 SCC 332, in the case of ***Surath Chandra Chakrabarty vs. State of West Bengal*** reported in AIR 1971 SC, 752 and ***Union of India and others vs. Gyan Chand Chattar*** reported in (2009) 12 SCC 78, held that charges must be specific when rule specifically commend disciplinary authority to frame article of charge with definite and distinct charges on the basis of allegations. Supreme Court in the case of ***Narayan Laxman Patil vs. Gala Construction Company Private Limited and others***, reported in [(2016) 14 S.C.C., 388 - para no. 25] held as under:-

“25. Merely saying that the Respondent No. 1 or the original owner did not object at any time to the possession, does not make his possession lawful, even if it is accepted that he was in possession. The appellant has to prove his title of possession by pointing out that it was lawful and if such requirement could not be proved, mutation entry is required to be cancelled. Recording the name of the appellant along with six others in the other rights column merely on the basis of possession is nothing short of perversity and unless the officer

concerned was satisfied that the said possession was lawful such an entry could not have been made irrespective of whether the original owners appeared and contested the plea and more so when the officer was performing a statutory duty. When the statute states that a duty has to be performed or an enquiry has to be conducted in a particular manner, it is well settled, it has to be done in that manner alone and it was necessary for the Tehsildar to ensure that the requirements of the Code were satisfied by the petitioners' predecessor."

Even on this ground, the initiation of inquiry and consequential proceedings are liable to be set aside.

20. One of the charge is that petitioner quarreled with bank customers namely Shyam Singh and Anis Ahmed for which they had submitted complaints dated 01.12.2005 and 02.02.2006 respectively. Those complaints have not been acted upon by the respondents-Bank as per the procedures laid down in the circulars dated 18.11.1988 and 26.04.2000. The same is not disputed by the respondents. Consequently, alleged charge relating to those two complaints and holding of an inquiry is farce. That apart it was undisputed that application for demand draft was not pending etc. so as to say that Shyam Singh work was pending with petitioner so as to contend that there was quarrel. Even perusal of the statements made by MW2 – Sh. Jagir Singh and MW3 – Sh. Parveen Mahajan in respect of receipt of complaints till filing of charge-sheet in respect of certain questions posed in the inquiry, witnesses have no answer to authenticate procedures adopted by them in processing the complaints of Shyam Singh and Anis Ahmed. For example, some questions and

answers read as under:-

“Q. No. 22 of MW2:

Do you also agree that the complaint register of the 22 D, Chandigarh vide exhibit D-5 does not have an entry as an evidence pertaining to the alleged complaints of Sh. Shyam Singh and Anis Ahmed, pertaining to the month of December, 2005 and February, 2006 and these complaints were not acknowledged by you and do not have an evidence with the suggestion given to you.

Ans: As per the practice in the branches and branch office 22 D, Chandigarh the complaints which are received from the higher authorities are being entered in the complaint register. The complaints in question have been received directly from the complainant and matter might have resolved by the intervention of the senior officers on the spot so these does not seem to be entered in the complaint register.

Q. No. 27 of MW 2

Do you also agree that you did not call for an explanation of Smt. Karma Devi, CO pertaining to the alleged complaint of Sh. Shyam Singh and Anis Ahmad as a subject matter of this charge sheet.

Ans: No, we had not called any comments as we were not knowing that the charge sheet will be served upon the charge sheet officer.

Q.No. 94 of MW 2

Do you also agree that the alleged allegations are of serious nature and explanation of the erring official should be called/should have been called on the same day as per the instructions of the Head Office, Bank practice/Norms and in consonance of the principles of natural justice?

Ans. Previously allegations were not of serious nature because little disputes always take place in branch. With intention to solve the matter we had tried that matter will be

solved. But on again and again insistence of CO comments was called and immediately notice from the advocate was received and from that time the matter became serious.

Q.No.2 of P.O. to MW 3

Please see Ex.M-1 and explain to E.O.?

Ans. Chief had called me inside his cabin, where Sham Singh was already present, in my presence Sham Singh has presented the letter to the Chief Manager.

It also contradicts to Sh. Shyam Singh's question No.16 where he admitted that he had handed over the complaint to the reception counter of the bank.

Q.No. 13 of MW 3

Do you agree that had you received the exhibit M1 and M2 on dated 01.12.2005 or 02.12.2005 then the same would have been mentioned and enclosed in your letter dated 02.12.2005 vide exhibit M4.

Ans: Sir, the letter dated 01.12.2005 was shown to me by Sh. Jagir Singh by calling me in his cabin and on 01.12.2005 Sh. Shyam Singh was present in the cabin of Sh. Jagir Singh and was complaining. As I had deposed earlier that exhibit M4 is in my personal capacity so it has no connection with M1 and M2.

Q. No. 32 of MW 3

Please see exhibit D6 vide I & CD circular number 26/98 dated 18.11.1998 and do you agree that it stipulates that all the complaints received in the branch should be entered in the complaint register number PNB 640 and same must be acknowledged to the complainant for the redressal of the grievance, whereas you have no proof of the alleged complaint vide M-1, M-2, M-18 and M-18A were acknowledged and if they were entered in complaint register?

Ans: That according to the bank guidelines all the complaints are to be entered in the register, but even after

that only those complaints which come from Zonal Office, Regional Office or head office are entered in the complaint register cum disposal register because everyday verbal or written complaints come in the bank and to keep the working properly we dispose off the complaints or these complaints we don't enter in the register. Whereas the question of M-1, M-2, M-18 and M-18A, the proceedings were going on in this regard.

Q.No. 43 of MW 3

Please see exhibit M16 and confirm to EO that it is signed by Sh. Mahesh Gupta that too without any date and time.

Ans: Yes, it is signed by Sh. Mahesh Gupta. Though he has not put any date and time on it still he has signed it on 02.02.2006.”

The aforesaid depositions of MW-2 (Sh. Jagir Singh) and MW-3 (Sh. Parveen Mahajan) are evident that some fishy thing had happened to the extent of entertaining the complaints of Shyam Singh and Anis Ahmed.

21. The contention of the petitioner that she was not examined, thus, there is a violation of sub-regulation 17 of regulation 6 of Regulations 1977 is concerned, the respondents – Bank tried to cover up the aforesaid violation with reference to the fact that petitioner had submitted brief statement after completion of evidence procedure under sub-regulation 18 of regulation 6 of Regulations 1977. In other words, the respondents-Bank have admitted that there is violation of sub-regulation 17 of regulation 6 of Regulations 1977, therefore, there is lacuna in the inquiry proceedings to the extent not adhering to sub-regulation 17 of regulation 6 of Regulations 1977.

22. The petitioner contended that in respect of charge of holding

of press conference the concerned persons have not been examined or cross-examined like news reporter and concerned person of television channel, whereas respondent no.6 and other bank officials have been examined (MW 5, MW 6 and MW 8). Thus, it is evident that author of the news report and television channel persons have not been examined. Supreme Court in the case of ***S.C. Girotra vs. United Commercial Bank (UCO Bank) and others***, reported in ***1995 Supp. (3) SCC 212*** held that author of the documents are to be examined in order to prove the relevancy of the documents. Therefore, the respondents' contention that examination of MW5, MW6 and MW8 are sufficient in respect of alleged charge relating to holding of press conference do not sustain. That too MW5, MW6 and MW8 are interested witnesses who have animosity against the petitioner with reference to the fact that petitioner had filed civil suit against them and who are biased against petitioner. Therefore, their evidence is unbelievable to the extent that petitioner had invited for press conference.

23. The contention of the petitioner that she had disobeyed the orders of superior in respect of discharging the duties of post is concerned, appropriate materials have not been placed on record to the extent that respondents-Bank have assigned XYZ duties, if the petitioner failed to perform those duties in that event such duties have been assigned to whom and the duties have been get it done by whom, no material has been placed, therefore this is an after thought. In respect of the some of the duties were not discharged timely is concerned, the respondents-Bank officials were aware of the fact that servers of the computers were shut

down for some time. Consequently, there is delay in completing the assigned duties timely which is beyond the control of the petitioner. Petitioner also submitted that stand of Bank that computers were set right by calling technician but no documents are made available which are the communications with technician.

24. The petitioner's contention that she has a good record throughout from the year 1985 to 2006 as is evident from the fact that from time to time she has appeared for the departmental examination and she had been promoted. Latest promotion is in the year 2002. Therefore, the respondents-Bank contention that petitioner was not discharging the duties appropriately and she was disobeying the orders of her superiors are contrary to the factual aspects and service record.

25. The petitioner's contention that the disciplinary authority failed to consider each of the contention raised in her reply on Inquiring Officer's report is concerned, it is evident from the order of the disciplinary authority and so also the respondents-Bank's counsel has admitted that the disciplinary authority has not considered the point-wise issues raised by the petitioner. At the same time, it was submitted that whatever the points raised by the petitioner before the disciplinary authority have been taken into consideration and decided by the appellate and reviewing authority, therefore, lacuna committed by the disciplinary authority has been fulfilled by the next higher authority like appellate and reviewing authority. Therefore, the petitioner's contention that disciplinary authority has not considered the points raised by the petitioner cannot be upheld and it has cured at later stage. When an order is based on certain

grounds its validity must be judged with reference to the reasoned mentioned therein. Those reasons cannot be supplement by fresh reasons in the shape of affidavit or otherwise to justify the order as held by the Supreme Court in the case of ***Mohinder Singh Gill vs. Chief Election Commissioner***, reported in ***(1978) 1 SCC 405***. In recent decision in the case of ***T.P. Senkumar, IPS vs. Union of India and others*** reported in ***(2017) 6 SCC 801***, Supreme Court in para no. 85 held 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.”

The object of disclosure of reasons is that one must have confidence in the quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the concerned authority has applied its mind or not? Also, giving reasons minimises the 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 quasi-judicial order, even if it is an order of affirmation. Supreme Court in the case of ***Ravi Yashwant Bhoori vs. District Collector, Raigad*** 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. The authority

ought to have the advantage of examining the reasons that prevailed with the court or the authority making the order. Supreme Court in the case of ***Babulal vs. State of Haryana*** reported in (1991) 2 SCC 335 held that the party who is denied natural justice “need not establish particular prejudice for want of such opportunity” because “the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice has been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. The contention of the respondents-Bank is that appellate and reviewing authority have cured the defect committed by the disciplinary authority, therefore, there is no violation of natural justice. In this regard, it is to be noted that can failure of natural justice at the original stage be cured by the appellate body giving a hearing? Failure of natural justice arises when either no hearing is given at all, or there has been some defect in the hearing procedure adopted, by the original adjudicative body. In the first situation, the general rule is that a breach of natural justice at the original stage cannot be cured by sufficiency of natural justice at the appellate stage. Because of the failure of natural justice, the order of the lower body is a nullity, and even if this order is affirmed by next higher authority, or there is natural justice provided by the next higher authority, neither the order of the lower, nor of the higher authority can be sustained. The orders of both, lower as well as higher authority must fall. Justice MEGARRY, ruled in ***Leary vs. 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.”

The Calcutta High Court in the case of ***Serajuddin & Co. vs. State of Orissa*** reported ***AIR 1974 Cal. 296*** ruled that 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. “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. The principle that an initial order which was null and void could not become valid by confirmation by a higher authority on appeal or review. Supreme Court in the case of ***Oryx Fisheries Private Limited vs. Union of India and others*** reported in ***(2010) 13 S.C.C., 427*** in para nos. 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 show-cause notice afresh but strictly in accordance with law and following the fair procedure indicated in this judgment.”

26. In view of above facts and circumstances and certain provisions which have not been followed in the inquiry as well as non-consideration of the petitioner's contentions by the disciplinary authority on the Inquiring Officer's report, orders dated 02.08.2008, 11.10.2008 and 30.11.2009 passed by the disciplinary, appellate and reviewing authority (Annexures P/13, P/15 and P/16 respectively) are hereby set aside.

27. In the result, writ petition is allowed. In order to avoid needless complications in working out mutual rights and obligations of the parties, writ petitioner shall be treated as having retired from service w.e.f. the date of her superannuation in the normal course. She shall be paid arrears of her salary from the date of retiring her compulsorily w.e.f.

02.08.2008 till date of age of superannuation. If any increments were due to her during the period from 2008 till her superannuation, the same shall be extended and arrears shall be paid to the petitioner. Retiral benefits, if any, like provident fund, gratuity etc., if she is entitled in accordance with law, shall also be calculated and disbursed to her in accordance with regulations/rules, as if no order compulsory retirement was passed against her. The above exercise shall be completed within a period of four months from today.

September 27, 2017
vkd

[P.B. Bajanthri]
Judge

Whether reasoned / speaking : Yes

Whether reportable : Yes