

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-6491-2014 (O&M)
Date of Decision:-21.02.2018.

Ram Chander

.....Petitioner

Versus

Union Bank of India and others

.....Respondents

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

Present: Mr. G.S. Bajwa, Senior Advocate with
Mr. R.K. Vashishtha, Advocate for the petitioner.

Mr. K.K. Gupta, Advocate for the respondents.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioner has questioned the validity of the disciplinary authority order dated 26.12.2012 and consequential orders passed by the Appellate as well as reviewing authority dated 11.06.2013 and 26.12.2013 vide Annexures P-11, P-13 and P-15, respectively.

(2.) Petitioner while working with the respondent-Bank as a Branch Manager of ULP Branch, Sector 35, Chandigarh was stated to be involved in fraudulent transactions and passed various entries also the debit to various customers/borrowers so also impersonal accounts and credited the amount to his own account, his wife's account as also account of casual workers. In this regard he was subjected to disciplinary proceedings.

Inquiry Officer held that charges levelled against the petitioner were proved.

Consequently, disciplinary authority furnished a copy of the Inquiry Officer's report for which petitioner is stated to have furnished his explanation on the Inquiry Officer's report. Being not satisfied, disciplinary authority proceeded to impose the penalty of dismissal from service. Thereafter, Appellate Authority as well as reviewing authority affirmed the decision of the disciplinary authority relating to imposition of major penalty of dismissal from service. Hence, the present petition.

(3.) Learned counsel for the petitioner submitted that disciplinary authority has not apprised each of the contentions raised on the Inquiry Officer's report. Disciplinary authority simply made a statement that submission on the Inquiry Officer's report was taken note of. It was further submitted that Appellate as well as reviewing authority have not given personal hearing to the petitioner before deciding the appeal. Thus, orders of the disciplinary authority and consequential orders passed by the Appellate and reviewing authority are liable to be set aside.

(4.) Per contra, learned counsel for the respondents, while resisting the contentions of the petitioner submitted that disciplinary authority need not right a judgment. He has passed order in terms of Rule 7 of the Union Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 (for short "the Regulations, 1976"). Therefore, there is no infirmity in the order of disciplinary authority so also by the Appellate and reviewing authority. It was further submitted that there is no provision for consideration of petitioner's explanation on the Inquiry Officer's report and so also giving personal hearing to the appellant/petitioner by the Appellate as well as reviewing authority. Learned counsel for the respondents relied

1. State of U.P. & Others Vs. Harendra Kumar 2004 (13) SCC 117. (Para 11 and 12).
2. State Bank of India and others Vs. Ramesh Dinkar Punde 2006(7) SCC 212. (Para 6, 8 and 13).
3. Bank of India Vs. Degala Suryanarayana 1999(5) SCC 762 (Para 11 and 13).
4. Govt. of A.P. and others Vs. Mohd. Narsullah Khan 2006 (2) SCC 373. (Para 10, 11 and 12).
5. R.S. Saini Vs. State of Punjab 1999(8) SCC 90. (Para 16).

It was also contended that in view of the principle laid down in the aforesaid decisions that disciplinary authority need not write a reasoned order so also he need not consider each of the contentions raised in the explanation to the Inquiry Officer's report, when he is agreeing with Inquiry Officer's report.

(5.) Heard learned counsel for the parties.

(6.) Short question for consideration in the present petition is whether disciplinary authority's order is in accordance with law or not. No doubt Rule 7 of the Regulations, 1976 provides for how the disciplinary authority has to take action on the Inquiry Officer's report like disagreeing on any point, agreeing with the Inquiry Officer's report and passing of orders. In fact in the Regulations, 1976, there is no provision for furnishing of Inquiry Officer's report and seeking explanation. Supreme Court in the case of Managing Director, ECIL, Hyderabad and others Vs. B. Karunakar and others reported in (1993) 4 SCC 727 held that where there is no provision under the Regulations for furnishing Inquiry Officer's report,

even in such circumstances, it was bounden duty of the

employer/disciplinary authority to furnish a copy of the Inquiry Officer's report and seeking explanation before imposing the penalty. In the present case, even though Regulations, 1976 do not provide for furnishing Inquiry Officer's report but still disciplinary authority has followed the principle laid down in the aforesaid Supreme Court decision in furnishing Inquiry Officer's report and sought his explanation. Perusal of disciplinary authority's order, it is crystal clear that disciplinary authority refers to the submission of the petitioner's explanation (submissions), however, not even a single issue has been considered, whereas, petitioner's explanation runs from para 1 to 27 vide Annexure P-10 dated 5.11.2012. Therefore, the very object of furnishing copy of the inquiry report and seeking explanation is defeated. Supreme Court in the case of **ORYX Fisheries Private Limited Vs. Union of India and others (2010) 13 SCC 427** in para 40 while dealing with the challenge to show cause notice and its non-consideration has held as under:-

“40. In Kranti Associates (supra), this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below: (SCC pp.510-12)

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision maker on the relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies. g. Reasons facilitate the process of judicial review by superior Courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp

reasons' is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to [Article 6](#) of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

Supreme Court in the case of **Himachal Pradesh State Electricity Board Limited Vs. Mahesh Dahiya** reported in **(2017)1 SCC**

768 held as under:-

“31. Both the learned Single Judge and the Division Bench have heavily relied on the fact that before forwarding the copy of the report by letter dated 02.04.2008 the Disciplinary Authority-cum-Whole Time Members have already formed an opinion on 25.02.2008 to punish the writ petitioner with major penalty which is

a clear violation of principle of natural justice. We are of the view that before making opinion with regard to punishment which is to be imposed on a delinquent, the delinquent has to be given an opportunity to submit the representation/reply on the inquiry report which finds a charge proved against the delinquent. The opinion formed by the Disciplinary Authority-cum-Whole Time Members on 25.02.2008 was formed without there being benefit of comments of the writ petitioner on the inquiry report. The writ petitioner in his representation to the inquiry report is entitled to point out any defect in the procedure, a defect of substantial nature in appreciation of evidence, any misleading of evidence both oral or documentary. In his representation any inputs and explanation given by the delinquent are also entitled to be considered by the Disciplinary Authority before it embarks with further proceedings as per statutory rules. We are, thus, of the view that there was violation of principle of natural justice at the level of Disciplinary Authority when opinion was formed to punish the writ petitioner with dismissal without forwarding the inquiry report to the delinquent and before obtaining his comments on the inquiry report. We are, thus, of the view that the order of the High Court setting aside the punishment order as well as the Appellate order has to be maintained.”

Having regard to the aforesaid principle laid down by the Supreme Court, the decisions which are cited by learned counsel for the respondents are distinguishable for the simple reason that respondents have imposed the major penalty of dismissal from service. When an opportunity has been given to the petitioner for submission of his explanation on the Inquiry Officer's report for which he had submitted his explanation, it was

bounden duty of the disciplinary authority to consider each of the contentions of the petitioner. Merely saying that submission has been taken note of would not be sufficient. Insofar as oral hearing, opportunity by Appellant and Reviewing Authorities is concerned, it depends upon the Regulation and discretionary power of the respective authorities. Therefore, disciplinary authority's order dated 26.12.2012 and consequential orders passed by the Appellate as well as reviewing authority dated 11.06.2013 and 26.12.2013 vide Annexures P-11, P-13 and P-15, respectively, are set aside. Matter is remanded to the disciplinary authority to pass fresh order after due consideration of the petitioner's explanation on the Inquiry Officer's report i.e., Annexure P-10 dated 5.11.2012. The above exercise shall be completed by the disciplinary authority within a period of 3 months from the date of certified copy of this order.

Petition stands allowed.

At this stage, learned counsel for the petitioner pointed out that petitioner is entitled to consequential benefits in view of setting aside of order of dismissal. In the Managing Director, ECIL's case (cited supra) in para 29 and 30 it is held that if the penalty order is set aside on technical ground in that event, automatically, employee is not entitled to reinstatement even in the H.P.S.E.B's case (cited supra). Therefore, respondents are hereby directed to treat the intervening period from the date of dismissal till passing of the final order in the present petition that petitioner is deemed to be under suspension. Respondents are hereby directed to calculate subsistence allowance from the date of dismissal till today and release the same within a period of 3 months from today.

order. If petitioner is exonerated in the proceedings, in that event competent authority would regulate the suspension period in accordance with law.

(P.B. BAJANTHRI)
JUDGE

February 21, 2018.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.