

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 5521 of 2012****Judgment reserved on 22/09/2021****Judgment delivered on 01/11/2021**

H.K. Lagar S/o Shri Laxman Rao Lagar, Aged about 51 years, Officer Grade I (Terminated), R/o Rukhmani Vihar Colony, Bilaspur, P.S. Civil Line, Post G.P.O., Distt. Bilaspur, Chhattisgarh.

---Petitioner**Versus**

1. Chhattisgarh Gramin Bank, Through the Chairman, Head Office, 15, Recreation Road, Choubey Colony, Post Rajendra Nagar, P.S. Saraswati Nagar, Raipur, Chhattisgarh, Pin 492001.
2. Regional Manager, Chhattisgarh Gramin Bank, Vyapar Vihar Road, Post Railway, P.S. Civil Lines, Bilaspur, 495001.
3. The Disciplinary Authority, Chhattisgarh Gramin Bank, Head Office, 15-Recreation Road, Choubey Colony, Post Rajendra Nagar, P.S. Saraswati Nagar, Raipur 492001.

--- Respondents

For Petitioner :- Mr. Prafull Bharat, Senior Advocate
with Mr. Keshav Dewangan, Advocate

For Respondents:- Mr. B.D. Guru and Mr. Anuroop Panda,
Advocates

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

1. By way of this writ petition, petitioner herein calls in question the legality, validity and correctness of appellate order dated 03/09/2012 (Annexure P/9) whereby the appeal preferred by the petitioner assailing the order dated 24/05/2012 (Annexure P/8) passed by the Disciplinary Authority imposing the punishment of dismissal has been dismissed finding no merit.
2. Petitioner was appointed as Officer Scale I by respondent No. 1 Bank on 26/02/1985. On 20/08/2008, alleging certain misconduct, a charge sheet was served upon the petitioner directing him to file reply within 15 days but neither the list of witnesses nor the list of documents were supplied to him along with the charge sheet. The petitioner submitted his reply (Annexure P/2) and denied the charges levelled against him. Thereafter, upon conclusion of enquiry on 07/04/2012 (Annexure P/5), petitioner was served with provisional order of dismissal and simultaneously, show cause notice dated 07/04/2012 (Annexure P/5) was also issued to him against the proposed major punishment.

3. The case of the petitioner is that he was not supplied with the copy of enquiry report and so he made an application under Right to Information Act, 2005 on 10/09/2012 for supply of enquiry report, in response of which, the respondents supplied the copy of enquiry report to him on 17/09/2012. Thereafter, petitioner submitted his reply (Annexure P/7) to the show cause notice and ultimately, vide order dated 24/05/2012 (Annexure P/8), petitioner's order of dismissal was passed by the Disciplinary Authority in accordance with Clause 38(1)(b)(v) of Chhattisgarh Gramin Bank Officers and Employees Service Regulations, 2007 and Clause 39(1)(b)(v) of Chhattisgarh Gramin Bank Officers and Employees Service Regulations, 2010 against which the petitioner preferred an appeal under Regulation 47 of the Regulations of 2007, but the Appellate Authority summarily dismissed the appeal vide order dated 03/09/2012 (Annexure P/9) finding no merit, which has been questioned by the petitioner in this writ petition principally on the ground that he has been denied reasonable opportunity of hearing to answer the charges levelled against him and to

defend himself by the act of the respondents in not supplying the copy of the documents to him which were relied upon by the Enquiry Officer and the Disciplinary Authority and even the list of witnesses was also not supplied to him and a total of 59 exhibited documents were filed which were admissible in evidence out of which 5 documents were not even brought on record and nine of those documents were the photocopies of the original documents, yet the Disciplinary Authority has passed the order of dismissal against the petitioner placing reliance upon those documents.

4. It is also the case of the petitioner that even after the conclusion of enquiry, enquiry report was not supplied to him and when the final order was passed for dismissal from service, then only under the Right to Information Act the enquiry report was obtained by the petitioner. As such, petitioner has suffered great prejudice in non-supply of entire documents and even the findings recorded are perverse, as such, the order of dismissal passed by the Disciplinary Authority as well as the order of the Appellate Authority affirming the order of the

Disciplinary Authority and dismissing petitioner's appeal, both deserve to be set aside.

5. Return has been filed by the respondents stating that the exhibited documents were allowed to be inspected by the petitioner and witnesses were also introduced to him at the time of recording of evidence. It has also been pleaded that by show cause notice dated 07/04/2012 (Exhibit P/5) adverse findings in the enquiry report have been explained to the petitioner, as such, the order passed by the Disciplinary Authority dismissing petitioner from service is strictly in accordance with law.

6. Rejoinder has been filed by the petitioner controverting the averments made in the return.

7. Mr. Prafull Bharat, learned senior counsel appearing on behalf of the petitioner, would make the following submissions :-

(i). that, no documents including the 59 exhibited documents, making the basis for departmental enquiry, were served to the petitioner and further no list of witnesses who were examined was served to him by which the

petitioner has been deprived of reasonable opportunity to reply to the charges levelled against him and to defend himself which is in violation of Regulation 38 of Regulations of 2007. He would rely upon the decisions rendered by the Supreme Court in the matter of State of U.P. v. Saroj Kumar Sinha¹, Bilaspur Raipur Kshetriya Gramin Bank and Anr. v. Madanlal Tandon² and Shobha Sinha v. State of Bihar and Ors.³.

(ii). that, the non-supply of the enquiry report has caused serious prejudice to the petitioner as he could not defend himself properly and in view of the decision rendered by the Constitution Bench of the Supreme Court in the matter of Managing Director, ECIL, Hyderabad and Ors. v. B. Karunakar and Ors.⁴ the supply of copy of enquiry report to the delinquent employee is a must. He would also rely upon the decision rendered by the Supreme Court in Punjab National Bank and Ors. v. K.K. Verma⁵.

1 AIR 2010 SC 3131

2 (2015) 8 SCC 461

3 (2013) 16 SCC 456

4 (1993) 4 SCC 727

5 (2010) 13 SCC 494

(iii). that, the photocopy of the 9 exhibited documents, being inadmissible, could not have been relied upon by the Disciplinary Authority to bring home the charges levelled against the petitioner, when the original documents were never produced and as such, the findings recorded by the Disciplinary Authority on the basis of the photocopy of the said documents is perverse and is liable to be set aside. He would further rely upon the decision of the Supreme Court in the matter of Makhan Singh v. Narainpura Co-operative Agricultural Service Society Limited and Anr.⁶ and S.R. Tewari v. Union of India and Anr.⁷.

(iv). that, the show cause notice was issued to the petitioner on 07/04/2012 (Annexure P/5) but at the same time, by the same notice-cum-order, the Disciplinary Authority has provisionally dismissed the petitioner from service which goes to show that the Disciplinary Authority was prejudiced to the petitioner and even without awaiting the reply to the show cause notice and even without supplying the copy of enquiry report to the petitioner, he was provisionally

6 (1987) 3 SCC 571

7 (2013) 6 SCC 602

dismissed whereas there is no such provision of provisional dismissal either in applicable regulation or in service jurisprudence, as such, it shows the bias and prejudice in the mind of the Disciplinary Authority towards the petitioner during the course of enquiry. Therefore, the order dated 24/05/2012 (Annexure P/8) passed by the Disciplinary Authority dismissing petitioner from service deserves to be set aside.

(v). that, in the appeal preferred by the petitioner, the Board of Directors being the Appellate Authority did not consider the appeal in its right prospective and casually affirmed the order of the Disciplinary Authority without deciding the appeal on merits, as such, the Appellate Authority has failed to perform its duty conferred on it and thus, the order dated 03/09/2012 (Annexure P/9) passed by the Appellate Authority is liable to be set aside.

8. Mr. B.D. Guru and Mr. Anuroop Panda, learned counsel for the respondents, would also make the following submissions :-

(i). The exhibited documents relied upon by the Respondent No. 1 Bank were allowed to be

inspected by the petitioner during the course of the enquiry proceeding, as such, it fulfills the requirement of supplying the copies of said documents to the petitioner.

(ii). Though the list of witnesses was not served to the petitioner, yet the witnesses were introduced to the petitioner during the course of disciplinary proceedings at the time of examination.

(iii). Though the copy of enquiry report was not served to the petitioner but the contents of the enquiry report were extensively quoted in the show cause notice dated 07/04/2012 (Annexure P/5) issued to the petitioner, as such, there was no need to supply the copy of enquiry report to the petitioner.

(iv) He would also submit that an affidavit has been filed by the Disciplinary Authority before this Court stating that though show cause notice was issued to the petitioner proposing major penalty of dismissal from service, but it was issued to give an opportunity to the petitioner to make representation on the quantum of punishment in accordance with the decision of the Supreme Court in the matter of **Boloram**

Bordoloi v. Lakhimi Gaolia Bank and Ors.⁸. As such, the order passed by the Disciplinary Authority as well as by the Appellate Authority are strictly in accordance with law and the instant writ petition deserves to be dismissed.

9. I have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

10. Upon hearing learned counsel for the parties and after a careful perusal of the record, the following questions would arise for adjudication in this writ petition :-

(a). Whether due to the non-supply of the documents relied upon by the respondent No. 1 Bank and non-supply of list of witnesses, petitioner has been deprived of reasonable opportunity to answer the charges levelled against him and to defend himself in the enquiry proceedings ?

(b). Whether the supply of copy of enquiry report at the conclusion of the enquiry was necessary to be made to the petitioner and whether the non-supply of the enquiry report has

resulted into serious prejudice to the petitioner ?

(c). Whether the findings of the enquiry report is based on surmises and conjectures including the production of photocopy of the 9 exhibited documents and non-production of 5 exhibited documents, as such, the order of punishment is liable to be quashed ?

(d). Whether the provisional order of dismissal along with the show cause notice dated 07/04/2012 (Annexure P/5) is in accordance with law ?

(e). Whether the Appellate Authority has decided the appeal in accordance with Regulation 48(ii) of the Regulations of 2007 ?

11. In order to answer the aforesaid questions, it would be appropriate to notice the provisions contained in Chhattisgarh Gramin Bank Officers and Employees Service Regulations, 2007. Under the Regulations of 2007, one of the major penalty covered under Regulation 38(1)(b)(iv) has been inflicted upon the petitioner, which states as under :-

"38. Penalties

Without prejudice to foregoing Regulations of this Chapter an officer or employee who commits a breach of these Regulations or who displays negligence, inefficiency or indolence or who commits acts detrimental to the interests of the Bank or in conflict with its instructions, or who commits a breach of discipline or is guilty of any other acts of misconduct, shall be liable for any one or more penalties as prescribed hereinafter.

1. Officers

(a) Minor Penalties

XXX

XXXX

(b) Major Penalties

(I) to (iii) XXX

(iv) Removal from service which shall be a disqualification for future employment.

Explanation :

Provided further that no order imposing any of the major penalties specified above shall be made except by an order in writing signed by the Competent Authority and no such order shall be passed without the charge or charges being formulated in writing and given to the officer and enquiry held so that he shall have reasonable opportunity to answer the charge or charges and defend himself."

12. A careful perusal of the aforesaid Regulation would show that removal from service which shall be disqualification for future employment is a major penalty. The proviso appended to explanation provides that no order imposing any of the major penalties specified shall be made except by an order in writing signed by the

Competent Authority and no such order shall be passed without the charge or charges being formulated in writing and given to the Officer and enquiry held so that he shall have reasonable opportunity to answer the charge or charges and defend himself. As such, the officer concerned has to be given reasonable opportunity to answer the charges and to defend himself and in this background, the questions formulated above have to be answered.

Answer to Question 10 (a) :-

13. It is admitted position on record that the respondent No. 1 Bank has exhibited 59 documents in order to bring home the charges levelled against the petitioner but it is the case of the petitioner that none of the exhibited documents were supplied to him and as such, he has been deprived of the opportunity to defend himself as no reasonable opportunity of hearing was afforded to him to answer the charges levelled against him whereas it is the case of the respondents that though the documents were not supplied to the petitioner but the details of the said documents were given to him and in the return filed by the respondents, it has been

stated that petitioner was afforded sufficient opportunity to examine and inspect the documents for filing of reply to the charge sheet served to him.

14. True it is that the Regulations of 2007 do not expressly contain any provision with regard to supply of documents, but it fairly provides that a reasonable opportunity to answer the charges and to defend himself has to be given to the petitioner. It has been a long standing rule of natural justice that if relevant evidentiary material is not disclosed then the decision making process would be vitiated.

15. 'Reasonable opportunity' has been interpreted and considered by Their Lordships of the Supreme Court in the matter of Indu Bhushan Dwivedi v. State of Jharkhand⁹ wherein it has been held that reasonable opportunity includes the duty to disclose material adverse to the employee, even where there is no statutory rule to this effect.

16. The Supreme Court in the matter of Chandrama Tewari v. Union of India (through General Manager, Eastern Railways)¹⁰ has held that non-

9 (2010) 11 SCC 278

10 1987 (Supp) SCC 518

disclosure of the documents to the delinquent Government servant would amount to denial of reasonable opportunity. It has been observed by Their Lordships as under :-

"It is now well settled that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges proved against the officer, the enquiry would be vitiated for the violation of principles of natural justice. Similarly, if the statement of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry is not supplied to the delinquent officer, as that would amount to denial of opportunity of effective cross-examination. It is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case."

17. Similarly, in the matter of Saroj Kumar Sinha

(supra), the Supreme Court has held that non-disclosure of copies of the documents forming foundation of the charge-sheet having a potential to cause prejudice to the Government servant in the enquiry proceedings would clearly be denial of a reasonable opportunity to submit a plausible and effective rebuttal to the charges being enquired into against the

Government servant. Paragraphs 29, 36 and 38

state as under :-

"29. The effect of non disclosure of relevant documents has been stated in Judicial Review of Administrative Action by De Smith, Woolf and Jowell, Fifth Edition, Pg.442 as follows:

"If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing. This proposition can be illustrated by a large number of modern cases involving the use of undisclosed reports by administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a judicial tribunal and receives or appears to receive evidence ex parte which is not fully disclosed, or holds ex parte inspections during the course or after the conclusion of the hearing, the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked."

36. The proposition of law that a government employee facing a department enquiry is entitled to all the relevant statement, documents and other materials to enable him to have a reasonable opportunity to defend himself in the department enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in the case of State of Punjab vs. Bhagat Ram (1975) 1 SCC 155: (AIR 1974 SC 2335) :

"The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of

confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken."

38. In our opinion, the appellants have miserably failed to give any reasonable explanation as to why the documents have not been supplied to the respondent. The Division Bench of the High Court, therefore, very appropriately set aside the order of removal. "

18. Thereafter, in the matter of Bilaspur Raipur Kshetriya Gramin Bank (supra) Their Lordships have held that if the documents were not supplied along with the charge-sheet on the

basis of which charges were framed and findings were recorded, then the order of punishment cannot be sustained.

19. Reverting to the facts of the instant case in light of the principle of law laid down by their Lordships of the Supreme Court in the above-statement judgments (supra), admittedly, 59 documents were exhibited by the respondent No. 1 Bank and none of them were supplied to the petitioner. The said documents are said to have been inspected by the petitioner which appears to be only a formality as there is no material produced by this Court to demonstrate that the petitioner was allowed to inspect those documents considering the fact that 59 documents were exhibited and out of them five documents were not even produced on record and nine documents were the photocopies of the original documents. Similarly, it is the case of the petitioner that list of witnesses was also not supplied to him, therefore, he could not defend himself properly whereas it is the stand of the respondents in paragraph 5 of the return that though the list of witnesses was not supplied to the petitioner, however, during the course of

enquiry, the witnesses were introduced to the petitioner and he was permitted to cross-examine the said witnesses. As such, the petitioner was not supplied the exhibited documents which were the basis of the charges levelled against him though voluminous documents were filed and exhibited. It is extremely difficult for a Bank servant to inspect 59 documents and make a note of it and cross-examine the Bank's witnesses. No reason has been assigned by the respondent No. 1 Bank for not furnishing the said documents to the petitioner and out of those 59 documents, five documents were not even produced but the respondent No. 1 Bank relied upon them and nine documents produced therein were photocopies of original documents being inadmissible in evidence, could not have been considered by the competent authority. Similarly, the list of witnesses was also not supplied to the petitioner on account of which, the petitioner has been deprived of reasonable opportunity to answer the charges and to defend himself, thereby suffered serious prejudice as held in the judgments of the Supreme Court noticed herein-above.

Answer to Question 10 (b), (c) and (d) :-

20. Admittedly and undisputedly, petitioner was not supplied the enquiry report along with the show cause notice issued to him by order dated 07/04/2012 (Annexure P/5) by which provisional order of dismissal was passed against him under Section 38(1)(b)(v) of Regulations of 2007. A copy of the enquiry report has not been served to the petitioner which is apparent from paragraph 3.10 of the return filed by the respondents wherein it has been stated that show cause notice dated 07/04/2012 itself demonstrate that the report of the enquiry officer in detail has been mentioned in the proposed show cause notice and hence sufficient opportunity of hearing has been given to the petitioner. As such, it is quite vivid that copy of enquiry report has not been supplied to the petitioner before passing the impugned order of dismissal.

21. The Supreme Court in the matter of **Union of India v. Mohd. Ramzan Khan**¹¹ has held that a delinquent is entitled to copy of inquiry report and he will also be entitled to make a representation against it, if he so desires, and

11 (1991) 1 SCC 588

not furnishing of the report, would amount to violation of rules of natural justice.

22. In the matter of Managing Director, ECIL (supra), the Constitution Bench of the Supreme Court has held that when enquiry officer is other than the disciplinary authority, delinquent employee is entitled to a copy of enquiry report, before the disciplinary authority takes decision on the question of guilt of the delinquent. It has been held in paragraph 26 as under :-

"26. The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the employee to consider the

findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusion. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it. "

23. In the instant case, admittedly and undisputedly, no enquiry report was served to the petitioner and second show cause notice dated 07/05/2012 (Annexure P/5) was issued to

him proposing provisional order of dismissal
from service, which states as under :-

पत्र क्रमांक/सतर्कता/12/2012-13

दिनांक: 07.04.2012

श्री एच.के. लगर
निलंबित अधिकारी
छत्तीसगढ़ ग्रामीण बैंक
शाखा सक्ती
जिला बिलासपुर (छ.ग.)

प्रिय महोदय,

कारण बताओ नोटिस

आपको सुपुर्द किये गये आक्षेप सह आरोप पत्र क्र. सतर्कता/01/2008-09 दिनांक 20.08.08 पर सम्पन्न जांच कार्यवाही की संक्षेपिका का सूक्ष्म अध्ययन करने तथा दस्तावेजी साक्ष्यों, एवं गवाहों के बयानों का अवलोकन करने के उपरान्त आपके ऊपर लगाये गये अधिकांश आरोपों को प्रमाणित पाते हुए अनुशासनिक अधिकारी द्वारा आपको सेवा से पदच्युति (Dismissal from service) करने के दण्ड से दण्डित करने का अनन्तिम निर्णय लिया गया है। आपके निलंबन काल को बैंक की सेवा में न मानते हुए उक्त अवधि का वेतन भुगतान नहीं किया जायेगा। कृपया इस पत्र की प्राप्ति के 15 दिनों के अंदर अवगत करायें कि क्यों न आपको प्रस्तावित दण्ड से दण्डित किया जाये।

2. निर्धारित समयावधि में आपका उत्तर प्राप्त न होने पर यह मानकर कि आपको इस विषय में कुछ नहीं कहना है, अनुशासनिक अधिकारी द्वारा अगली कार्यवाही की जावेगी जो पूर्वाग्रह से रहित मानी जायेगी।

3. अनुशासनिक अधिकारी द्वारा पारित अनन्तिम आदेश दिनांक 07.04.2012 संलग्न है। इस पत्र की द्वितीय प्रति पर पावती स्वरूप तिथियुक्त हस्ताक्षर कर हमें प्रेषित करें।

भवदीय,

सही/-

अध्यक्ष

संलग्न:उपरोक्तानुसार।

24. A careful perusal of the afore-stated show cause notice would show that the respondent No. 1 Bank had already decided to dismiss the services of the petitioner though provisionally and as such, the show cause notice was a mere formality. In the matter of Siemens Ltd. v. State of Maharashtra¹² the Supreme Court has clearly held that, if while issuing the show cause notice, competent authority has already applied its mind, hearing pursuant to show cause notice, would not yield any fruitful result and held in paragraph 11 as under :-

"11. A bare perusal of the order impugned before the High Court as also the statements made before us in the counter-affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification thereof, the same does not remain in the realm of a show-cause notice. The writ petition, in our opinion, was maintainable."

25. Thus, the second show cause notice dated 07/04/2012 (Annexure P/5) issued to the petitioner was only a formality and the respondent No. 1 Bank had already decided and imposed a penalty of dismissal from service

though provisionally and when the reply was filed by the petitioner, respondent No. 1 Bank concluded that petitioner had failed to make out a case for interference in the provisional order of dismissal dated 07/04/2012. As such, the respondent No. 1 Bank, on its own showing, has failed to provide a reasonable opportunity to defend himself to the petitioner by which he suffered prejudice. Even otherwise, the provisional order of dismissal/removal is not contemplated in Regulations of 2007 and is unknown to service jurisprudence.

Answer to Question 10 (e) :-

26. The Appellate Authority was required to decide the appeal in accordance with Regulation 48(ii) of Regulations of 2007, which states as under :-

"48. Appellate authorities

An appeal shall lie :-

(i) to the Board where the Chairman or Committee or Directors is the Competent Authority,

(ii) to the Chairman where any other officer is the competent Authority,"

27. The order dated 24/05/2012 passed by the Disciplinary Authority imposing punishment of removal from service upon the petitioner states as under :-

छत्तीसगढ़ ग्रामीण बैंक

प्रधान कार्यालय, रायपुर

अंतिम आदेश

श्री एच.के. लगर (निलंबित अधिकारी), शाखा सक्ती को शाखा लिमतरा में शाखा प्रबंधक के पद पर कार्य करते हुये बरती गई गंभीर अनियमितताओं हेतु आक्षेप सह आरोप पत्र क्र. सतर्कता/01/08-09 दिनांक 20.08.2008 दिया गया था। श्री लगर को बचाव का समुचित अवसर प्रदान करने के उद्देश्य से एवं नैसर्गिक न्याय के सिद्धांतों का पालन करते हुये जांच कार्यवाही सम्पन्न कराई गई। जांच अधिकारी द्वारा प्रस्तुत जांच प्रतिवेदन एवं समस्त तथ्यों के सूक्ष्म अवलोकन के पश्चात् अनुशासनिक अधिकारी द्वारा श्री लगर (निलंबित अधिकारी) को छत्तीसगढ़ ग्रामीण बैंक अधिकारी एवं कर्मचारी सेवा विनियम 2007 की कंडिका 38 (1) ख (V)/2010 की कंडिका 39 (1) ख (V) के अंतर्गत सेवा से पदच्युति (Dismissal from service) करने के दण्ड से दण्डित करने का अनन्तिम आदेश दिनांक 07.04.2012 को पारित करते हुए कारण बताओं नोटिस जारी किया गया है।

श्री लगर द्वारा दिया गया कारण बताओं नोटिस का उत्तर दिनांक 19.05.2012 को प्राप्त हुआ है। श्री लगर ने अपने उत्तर/बचाव में ऐसा कोई नया तथ्य प्रस्तुत नहीं किया है जिसके कारण अनन्तिम आदेश में परिवर्तन संभाव्य हो। अतः अनन्तिम आदेश को यथावत रखते हुए श्री लगर को सेवा से पदच्युति (Dismissal from service) करने के दण्ड से दण्डित करने का अंतिम आदेश पारित करता हूँ। मेरा यह आदेश मेरे पूर्व के अनन्तिम आदेश दिनांक 07.04.2012 के तारतम्य में पढ़ा जाये। यह आदेश तत्काल प्रभाव से प्रभावशील है।

सही/-

(शेखर श्रीवास्तव)
अनुशासनिक अधिकारी
छत्तीसगढ़ ग्रामीण बैंक
प्रधान कार्यालय, रायपुर

स्थान – रायपुर
दिनांक – 24.05.2012

28. The aforesaid order dated 24/05/2012 passed by the Disciplinary Authority was challenged by the petitioner in an appeal wherein the order of the

Disciplinary Authority was taken up for consideration before the Board of Directors in their meeting held on 30/08/2012. The order dated 30/08/2012 states as under :-

छत्तीसगढ़ ग्रामीण बैंक

प्रधान कार्यालय, रायपुर (छ.ग.)

निदेशक मण्डल की बैठक दिनांक 30.08.2012

प्रस्ताव क्रमांक (28)

अनुशासनिक कार्यवाही के अंतर्गत जारी दण्डादेश के विरुद्ध अपील श्री एच.के.लगर

अपील पर विचार विमर्श करने से पूर्व अध्यक्ष श्री सर्वेश्वर लेंका बैठक से उठकर बाहर चले गए, उनकी अनुपस्थिति में श्री जे.सी. महंत को अध्यक्ष मनोनीत किया गया तथा निम्न सदस्य बैठक में उपस्थित रहे:-

1. श्री जे.सी.महंत (अध्यक्ष)
2. श्री आनंद उपाध्याय
3. श्री प्रभात गोयल
4. श्री नारायण
5. श्री बसंत यादव

श्री एच.के.लगर की अपील पर सदस्यों द्वारा सभी पहलुओं पर चर्चा करते हुए गहन विचार विमर्श किया गया। सदस्यों द्वारा सर्व सम्मति से अनुशासनिक अधिकारी द्वारा लिए गए निर्णय को यथावत रखने का निर्णय लिया गया।

सत्यप्रतिलिपि

वरिष्ठ प्रबंधक

अध्यक्षीय सचिवालय

29. It is well settled position of law that the Appellate Authority in disciplinary proceeding acts in quasi-judicial capacity and order passed has to be reasoned one and showing application of mind to the question raised by the appellant and if it is not done, the appellate order is

vitiated. (See Divisional Forest Officer, Kothagudem and others v. Madhusudhan Rao¹³).

30. The Supreme Court reiterated this principle of law by observing that an Appellate Authority by deciding statutory appeal is not only required to give hearing to the Government servant, but pass a reasoned order dealing with the contention raised in the appeal. (See Deokinandan Sharma v. Union of India and others¹⁴).

31. Even if the appellate order is in agreement with that of the Disciplinary Authority, it may not be speaking order, but the Authority passing the same must show that there had been proper application of mind in compliance with the requirement of law while exercising his jurisdiction particularly when the rules required application of mind on several factors and several contentions had been raised and he was bound to assign reasons so as to enable the Court reviewing its decision to ascertain as to whether it had applied its mind to the relevant factors which the rule required to do. (See

13 (2008) 3 SCC 469

14 (2001) 5 SCC 340

Narinder Mohan Arya v. United India Insurance Co. Ltd. and others¹⁵).

32. Reverting to the facts of the case in light of the legal position enumerated herein-above, it is quite vivid that the appellate authority has not assigned any reason to indicate that it has applied its mind on the grounds raised and not even a brief reason has been indicated in the appellate order to say that due procedure as per the regulation has been followed while conducting departmental enquiry and further that the findings of the Disciplinary Authority are based on record and the penalty imposed is just and proper. As such, the Appellate Authority has failed to decide the appeal in accordance with law.

33. As a fallout and consequence of the aforesaid legal discussion, the impugned order of petitioner's removal from service dated 24/05/2012 (Annexure P/8) as well as the appellate order dated 03/09/2012 (Annexure P/9) are hereby quashed. Respondent No. 1 Bank is directed to reinstate the petitioner with all consequential service benefits.

34. Accordingly, this writ petition is allowed to
the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 5521 of 2012

Petitioner H.K. Lagar

Versus

Respondents Chhattisgarh Gramin Bank & Ors.

(English)

Provisional order of dismissal from service along with show cause notice is unknown to service jurisprudence.

(Hindi)

कारण बताओ नोटिस के साथ सेवा से पदच्युत किये जाने का अनंतिम आदेश दिये जाने का प्रावधान सर्विस जुरिसप्रुडेंस में नहीं है ।