

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4336 OF 2013

Deepak s/o Gopichand Shende,
Aged about 40 years, Occupation – Nil,
R/o Khalashi Lines, Mohan Nagar,
Nagpur
Presently at Bilaspur (MP).

.... **PETITIONER**

VERSUS

1) The State Bank of India,
through its Deputy General Manager
(B & O) Zonal Office, State Bank of
India, Kingsway, Nagpur.

2) The Regional Manager,
Region-1, State Bank of India,
Zonal Office, Kingsway, Nagpur.

3) ~~Shri S.S. Zadgaonkar,~~
~~Enquiry Officer, State Bank of India,~~
~~Mulund (West), Mumbai.~~

(Dismissed vide order
dated 07-11-2014)

.... **RESPONDENTS**

Mr. S.P Kshirsagar, Counsel for the petitioner,
Mr. M. Anilkumar, Counsel for respondents 1 and 2.

CORAM : ROHIT B. DEO & ANIL L. PANSARE, JJ.
DATED : 25th AUGUST, 2022

ORAL JUDGMENT : (PER : ROHIT B. DEO, J.)

The petitioner, who was working with the State Bank of India
(employer) from 14-7-1994, is assailing the order of punishment dated

21-3-2012 whereby the employee was removed from service, with superannuation benefits.

2. In fairness to the learned Counsel for the employer Mr. Anilkumar, we note the preliminary objection that since the employee was working as Senior Assistant, he has alternate and equally efficacious remedy under the provisions of the Industrial Disputes Act, 1947.

3. We are not inclined to relegate the employee to the alternate remedy. We note that the petition is filed in 2013 and Rule was issued on 24-3-2015 in the presence of the learned Counsel for the employer. The employer did file affidavit-in-response dated 06-3-2014 in which the objection on the ground of existence of alternate remedy is taken. However, it is not clear from the order dated 24-3-2015 whether the objection was pressed at that stage. It is quite possible that the learned Counsel for the employer may have raised the objection at the stage of consideration of the petition for admission. Be that as it may, even if we assume that such an objection was raised, and despite such objection, Rule is issued, we are not inclined to compel the employee, ten years after the order of punishment and seven years after the issuance of Rule, to take recourse to the alternate remedy. The other

reason and which is more compelling, is that we have considered the record of the enquiry, and having done so, we are satisfied that the employee has been condemned in gross breach of the principles of natural justice. Perusal of the charge-sheet dated 23-9-2010 reveals that the only allegation levelled was “you remained on unauthorised absence for 240 days from 31-8-2009 to 27-4-2010, without intimation to the bank”. The employee submitted reply to the charge-sheet, and it would be apposite to extract the same.

“Sir, I was sick with chest pain since 31-8-2010 and was taking treatment from Dr. Mohd. Abid Khan, who has advised me to take bed rest, necessary medical certificates were issued by the attending physician and were submitted by me at the time of resuming my duties.

Sir, since my family is put at Bhilai and there was no one to look after me here at Nagpur. Hence I had no other alternative except to go over to Bhilai to take complete rest. During my stay at Bhilai I had to get admitted at Rly. Hospital (as my wife is working in Railways at Bhilai) for the same disease and the attending Doctor advised me complete rest. The necessary discharge card of Rly. Hospital at Bhilai was enclosed for your perusal. During my absence due to my ill-health I had informed over the telephone to the Branch about my ill-health and leave needed till my recovery.

Sir, my absence from the duties which was due to my serious disease may kindly be condoned I assure Sir I will discharge my duties to the full satisfaction of my superiors and in future such incidence will not occur.”

4. The manner in which the enquiry was conducted, gives an impression that the enquiry officer laboured under an impression, that the charge is virtually admitted. The proceedings of the enquiry reveal

that the enquiry officer noted the submission of the Presenting Officer, then referred to the fourteen documents on record, which pertinently and interestingly, also include the documents pertaining to the medical treatment and hospitalization of the employee, then records the submission of defence and in conclusion observes thus :

*“I have perused the submissions submitted by the PO with all the enclosures, along with the submission of Defense Counsel & have come to conclusion that **the charge of Unauthorisedly remaining absent from 31-8-2009 to 27-4-2010 leveled against CSE stands PROVED.**”*

5. It does not appear that a structured and formal enquiry was conducted. The enquiry officer did not record evidence. The submission of the Presenting Officer and the employee was noted and fourteen documents were referred to, without recording any finding qua the documents and the reasonable and permissible inference which could have been drawn on the basis of the documents on record. The passage which is extracted supra reveals that the enquiry officer arrived at the conclusion without recording reasons in its support. It is well settled that recording of reasons is an integral and non negotiable facet of the principles of natural justice. Reasons constitute the link between the material on record and the conclusion and lend an assurance to the aggrieved person that he has been fairly treated. In the absence of reasons, the credibility of the decision making process stands seriously

compromised.

6. We have no hesitation in holding that the enquiry which was conducted, was an empty and ritualistic formality. We cannot, and will not, permit the drastic punitive action to hold the field on the basis of the farcical enquiry. At this stage, the learned Counsel for the employer Mr. Anilkumar has placed on record praecipe, which reads thus :

“Without prejudice and without asserting anything on merits, in view of the arguments that the petitioner was not provided with due opportunity of hearing and representation, the respondent Bank is ready to provide hearing before the disciplinary authority once again; without reinstating the petitioner in service, which shall be subject to the outcome of fresh decision thereafter.”

7. We are inclined to extend an opportunity to the employer to have a re-look and to conduct the enquiry *de novo* from the stage of issuing of charge-sheet. The enquiry shall be concluded within the next ninety days.

8. We quash and set aside the punitive order impugned dated 21-3-2012 (Annexure-XIII) and the order of the appellate authority dated 05-5-2012 (Annexure-XV).

9. While we are quashing the orders, we direct that the employee

shall be deemed to have been on suspension from 21-3-2012. The employee shall be paid subsistence allowance with effect from 01-9-2022. The entitlement of the arrears of the subsistence allowance and back-wages, if any, shall be considered and decided by the employer subject to the decision in the *de novo* enquiry.

10. The petition is allowed in the afore-stated terms.

(ANIL L. PANSARE, J.)

(ROHIT B. DEO, J.)

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