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W.A.(MD)No.1306 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.A.(MD)No.1306 of 2022

and

C.M.P.(MD)No.10139 of 2022

1.The Executive Director /Reviewing Authority,
Indian Overseas Bank, Central Office,
No.763, Anna Salai, Chennai-2.

2.The General Manager / Appellate Authority,
Indian Overseas Bank, Central Office,
763, Anna Salai, Chennai-2.

3.The Deputy General Manager / Disciplinary Authority,
Indian Overseas Bank, Central Office,
No.763, Anna Salai, Chennai-2.

... Appellants

Vs.

S.Murugesan (died)

1.M.Shanthi

2.M.Karthick Gurunathan

3.M.Aishwariya Devi

... Respondents

(Sole respondent died. R1 to R3 are substituted in the place of the deceased sole respondent vide Court order dated 27.11.2023 made in C.M.P.(MD)No.8430 of 2023)



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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed in W.P.(MD)No.21251 of 2014, dated 25.04.2022 on the file of this Court.

For Appellant : Mr.K.Srinivasamoorthy

For Respondents : Mr.C.Jeganathan

JUDGMENT

(Judgment of the Court was delivered by ***S.M.SUBRAMANIAM, J.***)

The 1st respondent in the present Writ Appeal was employed as Manager in Indian Overseas Bank. The departmental disciplinary proceedings were initiated against him and charge memo was issued. The delinquent officer submitted his explanation. Not satisfied with the explanation, the disciplinary authority appointed an enquiry officer, who in turn, conducted enquiry by affording opportunity to the delinquent officer. The delinquent officer participated in the process of enquiry and defended his case. Finally, enquiry report was submitted, holding that the charges against the delinquent officer are held to be proved. The copy of the enquiry report was communicated to the delinquent officer, who in turn, admittedly, submitted his objections on the findings given by the enquiry officer in his report. Thereafter, the disciplinary authority passed a final order, imposing penalty of reduction in rank from Grade-II



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Officer to Grade-I Officer with effect from the date of passing of the final order in the disciplinary proceedings.

2.The punishment order was taken by way of appeal by the delinquent officer, which was rejected and review petition filed was also rejected. Thus, the delinquent officer filed Writ Petition.

3.The learned counsel appearing for the appellant Bank mainly contended that the learned Single Judge has erred in modifying the punishment by exercising the power of judicial review and therefore, the Bank is constrained to move the present Writ Appeal. The punishment imposed by the disciplinary authority ie., reduction of the rank from Grade-II Police Officer to Grade-I Police Officer was modified as stoppage of increment for three years without cumulative effect. Such modification is beyond the scope of the power of judicial review and thus, the impugned order is to be set aside.

4.It is contended by the Bank that the proceedings as contemplated under the Act were scrupulously followed, while initiating departmental disciplinary proceedings and the learned Single Judge interfered with the quantum of



punishment only on the ground of proportionality. Even in such circumstances, the matter can be remanded and the Court cannot exercise the powers of the disciplinary authority for the purpose of modification of punishment.

5.The learned counsel appearing for the respondents objected the said contention by stating that no further show cause notice was issued regarding the proposed punishment by the disciplinary authority and therefore, final order of punishment is in violation of principles of natural justice. Under Article 311(2) of Constitution of India, such further show cause notice is required and therefore, the learned Single Judge has right in modifying the punishment.

6.We have considered the rival submissions made between the parties.

7.The principle of natural justices is not straight jacket formula. Whether opportunity to defend the case has been provided to the delinquent officer is to be tested by the Writ Court. Whether non-issuance of any show cause notice caused prejudice to the employee is to be looked into.



8.The Courts have to find out, whether the principles of natural justice as contemplated under rules has been complied with or not. The principles of natural justice is a flexible rule in the hands of the judiciary to reach out in fit cases to remedy injustice. Therefore, the principles of natural justice cannot be expanded unnecessarily for the purpose of interfering with the decisions, which is otherwise taken impartially and in accordance with the rules in force. When the rule itself contemplates principles of natural justice, the power of judicial review of the High Court is excepted to be restricted within the ambit of the rule, wherein the principles of natural justice has already been contemplated.

9.In the case of State Bank of ***Patiala Vs. S.K.Sharma*** reported in ***[(1996) 3 SCC 364]***, the Hon'ble Supreme Court of India, while deciding on the question of whether enquiry was not fair on the ground of non-service of documents on the delinquent officer held as follows:

“28. The decisions cited above make one thing clear, viz., principles of natural justice cannot be reduced to any hard and fast formulae. As said in Russell v. Duke of Norfolk [(1949) 1 All ER 109 : 65 TLR 225] way back in 1949, these principles cannot be put in a strait-jacket. Their applicability depends upon the context and the facts and circumstances of each case. (See Mohinder Singh Gill v.



Chief Election Commr. [(1978) 1 SCC 405 : (1978) 2 SCR 272]).

The objective is to ensure a fair hearing, a fair deal, to the person whose rights are going to be affected. (See A.K. Roy v. Union of India [(1982) 1 SCC 271 : 1982 SCC (Cri.) 152] and Swadeshi Cotton Mills v. Union of India [(1981) 1 SCC 664].) As pointed out by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262], the dividing line between quasi-judicial function and administrative function (affecting the rights of a party) has become quite thin and almost indistinguishable--a fact also emphasised by House of Lords in Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 All ER 935 : (1984) 3 WLR 1174 : 1985 AC 374, HL] where the principles of natural justice and a fair hearing were treated as synonymous. Whichever the case, it is from the standpoint of fair hearing--applying the test of prejudice, as it may be called--that any and every complaint of violation of the Rule of audi alteram partem should be examined. Indeed, there may be situations where observance of the requirement of prior notice/hearing may defeat the very proceeding--which may result in grave prejudice to public interest. It is for this reason that the Rule of post-decisional hearing as a sufficient compliance with natural justice was evolved in some of the cases, e.g., Liberty Oil Mills v. Union of India [(1984) 3 SCC 465]. There may also be cases where the public interest or the interests of the security of State or other similar considerations may make it inadvisable to observe the Rule of audi alteram partem altogether [as in the case of situations contemplated by Clauses (b)



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and (c) of the proviso to Article 311(2)] or to disclose the material on which a particular action is being taken. There may indeed be any number of varying situations which it is not possible for anyone to foresee. In our respectful opinion, the principles emerging from the decided cases can be stated in the following terms in relation to the disciplinary orders and enquiries: a distinction ought to be made between violation of the principle of natural justice, *audi alteram partem*, as such and violation of a facet of the said principle. In other words, distinction is between "no notice"/"no hearing" and "no adequate hearing" or to put it in different words, "no opportunity" and "no adequate opportunity". To illustrate-- take a case where the person is dismissed from service without hearing him altogether (as in *Ridge v. Baldwin* [1964 AC 40 : (1963) 2 All ER 66 : (1963) 2 WLR 935]). It would be a case falling under the first category and the order of dismissal would be invalid--or void, if one chooses to use that expression (*Calvin v. Carr* [1980 AC 574 : (1979) 2 All ER 440 : (1979) 2 WLR 755, PC]). But where the person is dismissed from service, say, without supplying him a copy of the enquiry officer's report (*Managing Director, ECIL v. B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704]) or without affording him a due opportunity of cross-examining a witness (*K.L. Tripathi* [(1984) 1 SCC 43 : 1984 SCC (L&S) 62]) it would be a case falling in the latter category-- violation of a facet of the said Rule of natural justice—in which case, the validity of the order has to be tested on the touchstone of



prejudice, i.e., whether, all in all, the person concerned did or did not have a fair hearing. It would not be correct--in the light of the above decisions to say that for any and every violation of a facet of natural justice or of a Rule incorporating such facet, the order passed is altogether void and ought to be set aside without further enquiry. In our opinion, the approach and test adopted in B. Karunakar [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] should govern all cases where the complaint is not that there was no hearing (no notice, no opportunity and no hearing) but one of not affording a proper hearing (i.e., adequate or a full hearing) or of violation of a procedural Rule or requirement governing the enquiry; the complaint should be examined on the touchstone of prejudice as aforesaid.”

10.It is relevant to rely on the judgment of the Hon’ble Supreme Court of India in the case of State of ***U.P. Vs. Sudhir Kumar Singh and Others in Civil Appeal No.3498 of 2020 dated 16.10.2020***, wherein all the earlier important judgments of Hon’ble Supreme Court on the principles of natural justice have been considered by Hon’ble Mr. Justice R.F.Nariman and the principles are summarised as under:

*“39. An analysis of the aforesaid judgments thus reveals:
(1) Natural justice is a flexible tool in the hands of the*



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judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of



likelihood of prejudice flowing from the nonobservance of natural justice.”

10. In the above judgment the Hon'ble Supreme Court of India reiterated that where procedural / or substantive provisions of law embody the principles of natural justice, their infractions per se does not lead to invalidity of the orders passed.

11. The established principles of disciplinary proceedings are on receipt of any complaint or identification of any lapses, negligence etc., the disciplinary authority is empowered to place the employee under suspension immediately. Thereafter, charge memo is to be issued. The charges must be specific. The employee may avail the opportunity and submit his explanation, denying the charges. If the employer is satisfied with the explanation, then further action may be dropped. If not satisfied, then enquiry officer is to be appointed. The enquiry officer has to conduct an enquiry impartially and independently by examining the witnesses and scrutinizing the documents and evidences and by providing opportunity to the delinquent officer to defend his case. Thereafter, final report is to be filed.



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12. On receipt of final report, the disciplinary authority is bound to communicate the copy of the enquiry report to the delinquent officer, seeking further objections on the findings of the enquiry officer in his report. In the event of disagreeing with the findings of the enquiry report, the disciplinary authority is empowered to defer with the opinion of the enquiry officer by assigning reasons and issue show cause notice along with reasons for deferring with the findings of the enquiry officer. In the event of accepting the enquiry report, the show cause notice, enclosing the enquiry report seeking further objections would be sufficient. The delinquent officer is at liberty to submit his further objections on the enquiry officer's report, holding that the charges are proved against him. Such objections along with the report are to be considered by the disciplinary authority for passing final orders.

13. It is not in dispute that the above procedures were followed in the present case. The contention of the learned counsel for the respondent that the procedure in between the second show cause notice and the final order has not been followed, is not acceptable, since such procedure is not contemplated and would not serve any purpose. If the punishment is proposed or such proposed



punishment is communicated to the delinquent officer, then the delinquent officer may approach the Writ Court on the ground that the disciplinary authority has pre-determined the issues and proposed a punishment. More so, such proposal becomes unnecessary, since the authority competent on receipt of enquiry report and objections thereafter submitted by the delinquent officer, has to consider the materials available on record in entirety and pass appropriate final order, imposing the punishment or exonerating the delinquent officer from the charges.

14.This being the established procedures to be followed in disciplinary proceedings, in the present case, the procedures have been followed by the disciplinary authority.

15.In cases where the Writ Court is of the opinion that the punishment imposed is disproportionate to the gravity of the proved charges, option left open is to remand the matter back to the disciplinary authority for the purpose of reconsideration of the punishment originally imposed. In such circumstances, the disciplinary authority shall reconsider the issue and impose any other punishment contemplated under the Rules. However, the Writ Court is not expected to sit as the disciplinary authority or appellate authority and modify the punishment.



16.(i)The Supreme Court in the case of ***State of Bank of Bikaner &***

Jaipur Vs. Nemi Chand Nalwaya reported in ***(2011) 4 SCC 584***, held as follows:-

“7.It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations.”

(ii)The Supreme Court in the case of ***Union of India & Another Vs. S.S.Ahluwalia*** in ***Appeal (Civil) No.4247 of 2006, dated 24.08.2007***, held as follows:-

“7.....The scope of judicial review in the matter of



imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case the court is to remit the matter to the disciplinary authority for reconsideration of the punishment....”

(iii)The Supreme Court in the case of ***Deputy Commissioner, Kvs & Others Vs. J.Hussain*** reported in ***(2013) 10 SCC 106***, held as follows:-

“9.....Moreover, while interfering therewith, the High Court has itself prescribed the punishment which, according to it, “would meet the ends of justice”, little realizing that the Court cannot act a disciplinary authority and impose a particular penalty. Even in those cases where it is found that the punishment is disproportionate to the nature of charges, the Court can only refer the matter back to the Disciplinary Authority to take appropriate view by imposing lesser punishment, rather than directing itself the exact nature of penalty in a given case.”

17.The ratio laid down by the Apex Court in the judgment referred to supra is to be adopted, while arriving a conclusion that the punishment imposed by the disciplinary authority is not in proper with the gravity of the proved charges. The option left open is to remand the matter back to the disciplinary authority or the appellate authority as the case may be to modify the punishment.



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18.It is brought to our notice that the delinquent officer died during the pendency of the litigation. Therefore, the terminal and pensionary benefits due to the deceased 1st respondent are to be settled in favour of the spouse / legal heirs. Since we find that the order of the learned Single Judge is not in conformity with the legal principles, we set aside the order dated 25.04.2022 passed in W.P.(MD)No.21251 of 2014 and the punishment orders of the appellants are restored. The appellants are directed to settle the terminal and pensionary benefits as applicable under the rules due to the deceased employee / 1st respondent in favour of the spouse / legal heirs, if not already settled, within a period of four weeks from the date of receipt of a copy of this order.

19.With these directions, this Writ Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

(S.M.S., J.) & (V.L.N., J.)
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