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Editorial
Stay Healthy, Stay Safe

PROLONGING IMPACT OF COVID

A number of employees and Officers working in the bank are exposed to the Covid virus for the last several months. We have reports that several branches and offices were closed whenever the cases of Covid positive amongst the employees or the customers who visited the banks were noticed in the interest of the working employees as well as for the sanitization purposes. However, the fear amongst the employees and officers who were the frontline warriors continue to haunt them day and night. There was a press report during a few days back about the Corporate Office at Mumbai getting closed for the purpose of sanitization when the covid cases were reported. The epidemic has affected all employees irrespective of their position in the bank. the employees when they return home they are scared to socialize with their family members due to their continuous contact with the public and the places which are affected by covid virus. Some of the major States are under tremendous pressure due to the increasing number of positive cases reported. The Branches/Offices are taking all necessary steps as a precautionary measure.

The Bank has also made special arrangements by reserving beds for the employees and officers in respect of those who are affected by Covid. The customers are also advised to avoid visiting for routine work which can be handled through online. The branches are still crowded with the customers due to increasing volume of business despite several initiatives taken by the bank to encourage customers to use technology for their day to day transactions.

The situation warrants a comprehensive approach. The Banks were directed to keep the offices open by the Reserve Bank of India even during the lock down period with a view to provide customer service and see that the economic activities are not choked. The Reserve Bank of India has come out with a series of measures to see that the borrowers are not put to hardship in payment of their dues to the bank on account of total stoppage of the economic activities throughout the country. The RBI has also rolled out special schemes to ensure that the accounts are not classified as NPA and the borrowers are allowed to reschedule their repayment program considering the revival of their business. In fact, the entire exercise of RBI is not to put pressure on the borrowers and allow them sufficient time for the repayment of the loan. The schemes worked out by the RBI is fully known to the customers as well.

The question of impact of Covid on the Human Resources in the bank has not been addressed

to the full satisfaction of the workforce engaged in the bank. The Branches are required to function as in the normal situation. The Customers are highly demanding at several places despite the shortage of staff. The increasing work load and mental strain is such that the employees and officers are finding it extremely difficult to manage the increasing load of the business in the bank. The recruitment is not adequate to take care of the acute shortage of staff in the branches. On the contrary the bank is busy in working out a Voluntary Retirement Scheme which is bound to affect the work in the bank when a large chunk of the workforce opt to leave the bank.

The absence of public transport has compelled many of our employees to stay out of the bank in particular the Metro Centers. The problem was severe in Mumbai where the local trains were the major mode of transportation for the bankers.

The Bank is yet to come out with a comprehensive plan to take care of the present working condition of the employees and officers. It is more interested in stop gap arrangements and the attitude of "some how you manage" at the branches. The Federation is of the firm view that a comprehensive plan is worked out to take care of the impact of covid on the employees and officers who are attending the day to day business of the bank, while all other sectors of the economy was taking their own time in settling down for their routine business. Even the Government departments had kept their Revenue Departments, the treasuries closed on the grounds of the epidemic spread across the country. The situation is slowly changing not due to the improvement in the control of the virus but due to the fact that the Central and State Governments are finding it difficult to run the administration without generating revenue. As a result, several states have relaxed the conditions which was prevailing in the earlier days of Covid epidemic in the country. The spread of epidemic is not under control. The speed with which the disease is spreading is astonishing.

Hence, the bank should immediately organize an exclusive bipartite meeting with the representatives of the Officer' Federation who would be in a position to explain the ground realities to the Management and to seek remedial measures which will also take into account the struggles and sacrifices of our workforce at the branches in keeping the bank functioning for the benefit of the public as well as the Government throughout the country. The Bank should also examine the various possibilities of providing relief to the employees and officers who are in the frontline facing the threat of covid day and night in all our branches.■

STAFF WELFARE INITIATIVES

Text of our letter No.6702/61/20,Dated: 07.09.2020, addressed to The Chairman,State Bank of India,Corporate Centre,Madame Cama Road,Mumbai – 400 021.

We are elated to know that Bank has revised the scheme for payment of ex-gratia and has introduced a scheme for financial support to the children of employees who die in harness.

Our Bank, true to its image and tradition, has been a pioneer in introducing avant-garde HR initiatives in the banking industry of the country. We thank you profusely for revising the existing scheme and additionally providing a financial security net to the family of State Bankers. We are proud of our Bank's path breaking HR initiatives and wish that the working conditions in the Bank should be second to none, commensurate with the stature of the Bank as "the employer of choice" of the country. These policies, enriched with original thoughts and innovative initiatives will eventually motivate all the staff and officers who have been extending yeoman service tirelessly to the citizenry and the country as well during such unprecedented pandemic. This landmark initiative of the Bank, which speak volumes of its empathy and compassion for the employees, will be remembered by all.

SUCCESS AWAITS AT THE DOOR WHERE DILIGENCE IS

We would have been happier if the present compassionate appointment scheme in vogue, could have been simultaneously revised to offer a beacon of hope to the family of our deceased colleagues. We fervently hope that the same would be duly revised shortly. We, from our Federation, will continue to offer constructive suggestions to further achieve the aim and objective of the Bank, as a responsible stakeholder, whose vision is also to foster growth and development of our esteemed institution.

We on behalf of our entire fraternity, once again express our heartfelt gratitude and place on record our sincere appreciation for putting in place such humane policies, which will remain as your enduring legacy in the domain of HR matters.■

WAGE NEGOTIATION TALKS: CURRENT STATUS

Text of AIBOC Circular No.2020/60 dated 21/09/2020 reproduced joint communication of AIBOC,AIBOA,INBOC,NOBO dated 21.09.2020.

CURRENT WAGE REVISION TALKS UPDATES

Consequent upon signing the MOU on 22nd July 2020, after a day-long discussion, there were two rounds of discussions held by IBA with the four officers' organisations on 24th August and 10th September 2020. The working group core team was led by Shri. Alok Kumar Choudhary, Dy.Managing Director(HR & CDO), SBI, Shri Gopal Murli Bhagat Deputy Chief Executive, IBA, Shri.S.K.Kakkar, Senior Advisor (HR and IR), IBA and Shri B.N.Sahoo, Advisor (HR and IR), IBA and the four General Secretaries of the organisations participated in the discussions.

2. In the first round of discussions, while initiating the discussions Shri Alok Kumar Choudhary, Chairman of the Working Group for officers, expressed that the scope of the meeting was mainly for working out the exercise for allocation of remaining 12.5% out of the 15% and the maximum members should get the maximum benefits. Representing the four organisations, Com. Soumya Datta expressed the happiness for the meaningful exercise and categorically made it clear that there was an imperative need to provide the four organisations with the clarifications about the following issues:

a) The quantum of ₹ 1155 crore for allocation of construction of new pay scales with 2.5% loading after merging 6352 points of D.A. which is inadequate for working out the new pay scales;

b) PLI should be w.e.f. 31/03/2020 instead of 31/03/2021.

c) The introduction of 5 Day week

d) Updation of pension

e) Exclusive discussions on Non-Financial Demands

f) COVID-19 related issues – Enhanced Insurance Coverage, Hospitalisation expenses reimbursement, fast-tracking the compassionate appointments in banks

g) Restoration of mandates of Laxmi Vilas Bank and Catholic Syrian Bank.

We further insisted that IBA should first provide their proposal for construction of new pay scales.

3. As the first step, this time our four organisations have submitted the suggestions of new wage proposal to IBA duly acknowledging the suggestion of the Chairman of the Working Group for officers to distribute the 12.5% of the allocated amount to ensure that maximum benefits should accrue to maximum officers. Our proposal therefore, focused on maximising the special allowance with marginal improvement in other areas within the overall cost ceiling of ₹ 4513 crore. In the second round of discussions, there was a passing reference of internal relativity made by IBA and we categorically made it clear that we cannot accept the concept and stressed that in the area of allocation of the amount should be entirely left to the four officers organisations'. The Chairman, while concluding the discussion proposed that IBA will forward two proposals consisting of two suggestions viz. creation of Locational Allowance and Professional Development Allowance and other suggestions regarding the existing allowances. He further assured that the IBA will convene a meeting with us to discuss

on Non-Financial demands parallelly.

4. The proposals received from the IBA have since been rejected assigning cogent and convincing reasons recently. We are expecting to receive the information from IBA regarding the next round of discussions.

We shall keep the developments posted for the benefit of the units and all officers.■

REVERSAL OF RECOVERY AND PAYMENT OF COMPENSATION FOR WORKING DURING DEMONETIZATION TO eAB OFFICERS

Text of our letter No: 6180/62/20, dated 09.10.2020, Addressed to The Deputy Managing Director (HR) & CDO,State Bank of India, Corporate Centre, MUMBAI-400 021.

Reversal of recovery and payment of compensation for working during Demonetization to eAB Officers You are aware that the issue of payment of compensation to the officers for working on holidays and till late night every day during the period of demonetization including the officers of eABs was amicably resolved after a protracted negotiation with the Federation representing the officers' fraternity and the amount of compensation was also credited to the officers' accounts following a directive from the Corporate Centre which marked as a gesture of goodwill on the part of the bank management that boosted up the morale of the officers.

2. Unfortunately, Corporate Centre, later on, issued an instruction to all the Circles to recover the compensation paid to the officers of eABs and stop payment of compensation to this category of officers, wherever it was not paid. Subsequently, the amount of compensation was recovered from the officers, who had received the same.

3. It is pertinent to mention here that the officers in eABs like any other officer in the industry worked long hours under tremendous pressure and handled the chaotic situation efficiently despite the short supply of currency notes.

4. The more serious question that has arisen is the way the recovery was made from the officers of eABs and the issue of disrespecting the bilateral understanding reached by the Circle Managements with the Circle Associations after the directives from Corporate Centre. The recovery of compensation has not only resulted in discriminatory treatment to these sets of officers but is also not in keeping with the HR practices adopted by the Bank.

5. It is also distressing to note that while the Circle Associations and the Circle Managements adopted the inclusive approach at the cost of lesser compensation to the officers of the SBI to compensate the officers of eABs, the Corporate Centre reversed the decision through an exclusive and discriminatory approach. The bank in a directive clarified that compensation was intended only for employees who were part of its family during demonetisation and put the onus of dispensing the reward to its employees on the associate banks. It is the right of the eAB officers to claim compensation like anybody else in the industry and a mere merger with the parent bank cannot preclude them from their legitimate claim. The recovery of compensation from these officers is purely an act of discrimination, which we have been consistently pointing out at all forums and during discussions with the HR team at Corporate Centre.

6. Your attention is drawn to the order dated 06.03.20 passed by the Hon'ble High Court of Bombay on the Writ Petition No. 1027 of 2019 filed by the Staff Union. In terms of the order, the Bank has been directed to reverse the amount recovered from the workmen staff of the eABs, i.e. related to the payment of compensation in lieu of extra work done during demonetisation. In the fitness of things, and based on the principle of mutatis mutandis, it would be appropriate to reverse the similar recoveries made from officers of eABs too, who endured humongous workload under unprecedented chaos and tension, to obviate the possibility of separate litigation.

In the above backdrop, we request your good self to kindly revisit the issue urgently with a pragmatic approach and arrange to restore the amounts already recovered and also release the payment of the said compensation amount to the officers of eABs who have not been paid so far.■

MEDICAL INSURANCE POLICY FOR IN-SERVICE EMPLOYEES/OFFICERS W.E.F.01.10.2020

Text of AIBOC Circular No.2020/61 dated 23/09/2020, addressed to the Sr. Advisor (HR&IR), IBA from UFBU

We learn that since the current year's policy is coming to an end by this month but we have not received any communication from your side till date. However, we have come to know through many Banks that this year after getting revised quotations, etc. for the ensuing year 2020-21, the Policy is being renewed with National Insurance Co.

2. It has been brought to our notice that National Insurance Company has given their rates for Super Top Up Policy and some of the Banks have also advised their employees/officers to give their option to avail this facility for additional cover of ₹ 4 lacs and ₹ 5 lacs for award staff and officers respectively over and above the existing coverage of ₹ 3 lacs and ₹ 4 lacs for the award staff and officers respectively as is provided in the Bipartite Settlement and Joint Note. These circulars further state that the premium towards these additional Super Top up Policy has to be paid by the employee or officer concerned upto a date fixed by them.

3. In this connection, you are aware that as per the Settlement/Joint Note, the Scheme covers 1) basic cover of ₹ 3 lacs and ₹ 4 lacs and 2) additional coverage under buffer amount to be provided by the Insurance Company. Hence Super Top up facility for the in-service employees/officers has no meaning. Since extra cover over and above the basic limit is already available under the Scheme and Policy as buffer amount, this additional option to the employees is not warranted.

4. Since these instructions are bound to create confusion and misunderstandings amongst the employees and officers, we seek your immediate intervention to suitably advice the Banks as well as National Insurance Company, not to make this Super Top up facility applicable to the working employees/officers and this offer should immediately be withdrawn under advice to us.■

UPDATION OF PENSION AND RELATED ISSUES

Text of AIBOC Circular No.2020/63 dated 03/10/2020 reproduced joint communiqué of AIBOC,AIBOA,INBOC,NOBO dated 03.10.2020 to the Convenor UFBU.

You are aware that updation of pension for bank retirees is a key issue taken up by UFBU in various forums. All the constituents of UFBU are genuinely concerned about the issue of updation of pension. In this context, we place on record our appreciation for the determined pursuit of the same by your good office, on behalf of all constituents during discussions with IBA. While an announcement was made by IBA Chairman Shri Rajnish Kumar ji on 22nd July'20 during the signing of the MOU that family pension would be revised (30% of last drawn pay without any ceiling), IBA is silent about the progress of updation of pension.

02. As the 11th Bipartite is nearing conclusion, we wish to table certain facts concerning the entire approach of updation of pension.

a) In the background of of RBI introducing, the Pension in place of Contributory Provident Fund (CPF) with effect from 01.01.1986, the unions in our Industry felt the need of demanding the same for its implementation in Public Sector Banks.

b) After thorough working and analysing the pros and cons, an MOU was signed on 20th May, 1993, which was converted into a full settlement under ID Act on 29th October 1993 and joint notes were signed by officers' organisations too on the same day.

c) The scheme was gazetted by the Government of India in September 1995 and the option was extended to all, who had not exercised earlier.

d) In the year 2001, a special VRS was introduced by the Banks. Nearly 1,25,000 people opted for the said scheme in which 20% were officers, who had opted for Pension and opted out from the services.

e) They were paid Commutation as well as Pension from the date of their severance together with compensation for the left over service with a maximum of 60 months' Salary.

f) This led to the depletion of funds in the pension Corpus as well as interest accrued on the fund.

g) Banks had not sufficiently funded the Pension Corpus and on the contrary, the Banks got the sanction the payouts amortised over 5 years from RBI.

h) In the settlements entered into during 2000 and 2005, negotiating unions were agreeable to apportion certain percentage from the agreed amount towards the pension corpus.

i) In 2010, severe pressure was exerted by the Unions to secure Pension in the original form and accordingly, a committee was constituted with representatives of 9 unions with two actuaries – one from Hyderabad and another from Kolkata, to arrive at the quantum required to extend the option. Incidentally, IBA and Government had pegged the amount required at ₹ 26000 crore. Following the findings of the actuaries, the quantum was scaled down to ₹ 6000 crore.

j) It was agreed between the parties that an amount of ₹ 4200 crore would be provided by the management and ₹ 1800 crore should be borne by the new pension seekers.

k) Against the agreed understandings, there are several legal disputes raised by the associations/individuals.

l) From 2005 onwards, the concept of AS-15 was introduced in Accounting Standards by The Institute of Chartered Accountants of India (ICAI), according to which every bank is required to make mandatory provisioning for pension funds every year.

m) Now, RBI in consultation with Government of India updated Pension with effect from 05.03.2019, the DA index of 4440 points being taken as the point of merger and accordingly the pension has been updated for all retirees without payment of any arrears. Similar exercise has also been implemented in NABARD very recently.

n) While extending the first and second option of pension in 1995 and 2010 the employees who had resigned from the service of the bank were not made eligible to opt for the pension, even though they had put in more than 20 years of qualifying service, the Service Regulations / Service Rules / Settlements do not disentitle such employees from receiving superannuation benefits and in case of bank employees, there is no difference between resignation or voluntary retirement, with regard to notice period, provision for acceptance of notice and other terminal benefits like Provident Fund and Gratuity are applicable and leave encashment is also eligible for both the categories of employees/officers. Considering that number of such employees is very few in the banking industry, the resignees constitute the category that is being unlawfully denied the pension option by the banks even after passage of two-and-half decades since the

penning of the pension agreement in the banking industry.

o) For the family pension, the findings of the actuary engaged by AIBOC was given due cognizance by IBA. Under the circumstances, for arriving at the cost of updation of pension also, UFBU should insist on appointment of two more actuaries in order to estimate and examine adequacy of the existing corpus for such updation. IBA should also provide the required data in a specified format as would be required by the actuaries.

p) While we continue to rake up the issue and stand firm for pension updation, we should also simultaneously insist that the pension / family pension of the pre 1986 retirees should also be properly upgraded, who are few in numbers.

We, therefore, propose focusing on the above issues in the ensuing discussion under the 11th Bipartite settlement.■

2020-I-LLJ-632 (Bom)
LNIND 2020 NGP 27
IN THE HIGH COURT OF BOMBAY
Present:
Hon'ble Mr. Justice Manish Pitale

W.P.No. 1691 of 2018 **29th January, 2020**

Zilla Parishad, Wardha, through its
Chief Executive Officer, Tq.District Wardha **....Petitioner**

Versus

Subhash Tukaramji Buche,-Aged 55 years, Wardha **.....Respondent**

Unfair-Labour Practice-Violation of Principles of Natural Justice –Maharashtra Zilla Parishad district Services (Discipline and Appeal) rules, 1964, rules 4 (i) (a)and 6(10)(i)(a) –Maharashtra Recognition of Trade Unions and Prevention of Unfair-Labour Practices Act, 1971, Item 9 of Schedule-IV-Industrial Court allowed complaint filed by Respondent-complainant under provisions of Act and it declared that Petitioner indulged in unfair labour practice under Item 9 of Schedule-IV of Act-Punishment of withholding of increments for three years permanently and suspension period set aside, and directed Petitioner to pay all consequential benefits to Respondent within period of six months, hence this petition –Whether, principles of natural justice violated due to non-supply of copy of enquiry report, and due to opportunity of hearing not granted under Rule 6 (10) (i) (a) of Rules-Held, Respondent was in receipt of show-cause notice along with copy of enquiry report-No violation of principles of natural justice due to non-supply of copy of enquiry-report-In case of violation of principles of natural justice, parties could be relegated to stage at which there was such violation-In present case defective showcause notice was issued more than 20 years ago and no purpose would be served by relegating parties to that stage-Material on record does indicate that Respondent could have been more careful, while distributing cheques for grants to training institutes-Respondent failed to exercise due care and could certainly be held responsible and appropriate penalty could be imposed upon him-Imposition of penalty of withholding of increment for two years permanently with cumulative effect, disproportionate –Penalty of censure under Rule 4 (1) of rules imposed on Respondent –Finding rendered by Industrial Court that principles of natural justice violated due to non-supply of copy of enquiry report, liable to be set aside-Finding rendered by Industrial Court that there was violation of principles of natural justice, as opportunity of hearing not granted under Rule 6 (10) (i) (a) of Rules, upheld-Petition disposed of.

JUDGMENT

Heard.

(2) Rule. Rule made returnable forthwith. Heard finally by the consent of learned counsel appearing for the rival parties.

(3) By this writ petition Zilla Parishad, Wardha, has challenged judgment and order dated 02/07/2016, passed by the Industrial Court, Nagpur, whereby complaint filed by the respondent under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, has been allowed. It was declared by the Industrial Court that the petitioner had indulged in unfair labour practice under Item 9 of Schedule-IV of the aforesaid Act. The punishment of withholding of increments for three years permanently and treating suspension period between 07/08/1994 to 05/12/1996, as suspension period, was set aside and the petitioner was directed to pay all consequential benefits to the respondent within a period of six months.

(4) The respondent, who was working as Cashier (Junior Assistant) in the finance department of the petitioner was proceeded against in a departmental enquiry on 02 charges pertaining to loss caused to the State Exchequer due to handing over of cheques by the respondent to an unauthorized person, who claimed to be representing training institutes for grants given by the department of vocational education and training. The first charge pertained to the loss caused by such handing over of cheques to unauthorized person and the second charge pertained to violation of accepted procedure for distribution of such cheques, on the part of the respondent. An enquiry was instituted against the respondent on the said charges under the provisions of Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964. By enquiry report submitted on 13/06/1999, the Chief Executive Officer of the petitioner Zilla Parishad, rendered findings against the respondent and he was found partly guilty of charge No.1, while he was absolved for charge No.2.

5. On the basis of the said enquiry report, the Chief Executive Officer of the petitioner Zilla Parishad as the disciplinary authority, issued show cause notice to the respondent on 20/08/1999. It was stated in the said show-cause notice that insofar as charge No.1 was concerned, the same stood proved against the respondent as per the enquiry report, while the said disciplinary authority disagreed with findings on charge No.2 in the enquiry report. In the said show-cause notice, it was stated that the disciplinary authority found on the basis of material on record that even the second charge was proved. On this basis, the respondent was called upon to show-cause as to why his service should not be terminated. The respondent submitted reply to the said disciplinary authority, in response to the show-cause notice.

(6) By order dated 07/11/2000, the petitioner issued order inflicting punishment of withholding increments for two years permanently with cumulative effect and further directed that the period of suspension would be treated as suspension for all purposes. Aggrieved by the said order issued by the petitioner, the respondent filed the aforesaid complaint before the Industrial Court. The respondent claimed that there was violation of principles of natural justice, because copy of the enquiry report was never furnished to him along with show-cause notice and further that while disagreeing with the findings in the enquiry report, the disciplinary authority ought to have issued notice under Rule 6(10)(i)(a) of the aforesaid Rules and having failed to do so, there was breach of the principles of natural justice. The respondent also claimed that the material on record was not sufficient to prove the charges against him and on this basis it was claimed that unfair labour practice was committed by the petitioner, further seeking relief of setting aside of the aforesaid order dated 07/11/2000, inflicting punishment upon him.

(7) By the impugned judgment and order dated 02/07/2016, the Industrial Court allowed the complaint and directed that the respondent be paid all consequential benefits. The Industrial Court found that copy of the enquiry report was not furnished to the respondent along with show-cause notice and that therefore, there was breach of principles of natural justice and that the disciplinary authority ought to have given hearing to the respondent under Rule 6(10)(i)(a) of the said Rules.

(8) Shri. D. R. Bhoyar, learned counsel for the petitioner submitted that the Industrial Court committed error in holding that copy of the enquiry report was not furnished to the respondent with the show-cause

notice. It was submitted that in the reply dated 06/09/1999, the respondent had specifically stated in the opening paragraph itself that he had received show- cause notice along with copy of enquiry report dated 30/06/1999. On this basis it was submitted that the finding of the Industrial Court was unsustainable regarding violation of principles of natural justice. It was further submitted that the contention raised on behalf of the respondent that there was violation of Rule 6(10) (i)(a) of the said Rules was also without any substance, because in the show-cause notice dated 20/08/1999, the petitioner had proposed punishment to be imposed upon the respondent under the said Rules and he had ample opportunity to demonstrate that the conclusion of the disciplinary authority in the present case regarding both charges being proved, was erroneous and that it was unsustainable. On this basis, it was submitted that the impugned order deserved to be set aside.

(9) On the other hand Shri. J. R. Kidilay, learned counsel appearing for the respondent submitted that the Industrial Court was justified in holding that principles of natural justice had been violated. It was submitted that proper reading of Rule 6(10)(i)(a) of the said Rules would show that the disciplinary authority ought to have issued show-cause notice to the respondent and granted hearing at the stage when it had decided to disagree with the findings in the enquiry report regarding charge No.2. This requirement of granting hearing to the employee at two stages was already recognized by the Hon'ble Supreme Court while considering a similar provision, in the case of Yoginath D. Bagde vs. State of Maharashtra and Another AIR 1999 SC 3734 : (1999) 7 SCC 739: LNIND 1999 SC 827. It was further submitted that with passage of time, there was no question of putting the clock back and relegating the parties to the stage where the principles of natural justice were violated and that therefore, the writ petition deserved to be dismissed.

(10) Having heard the learned counsel for the rival parties and upon perusal of the material on record, it is found that the Industrial Court by the impugned judgment and order held in favour of the respondent by concluding that the principles of natural justice were violated. The first ground was the alleged non-supply of copy of enquiry report to the respondent along with the show-cause notice, thereby, causing grave prejudice to him. This finding was specifically rendered by the Industrial Court in paragraph 34 of the impugned order and it was held that the assertion made on behalf of the respondent that copy of enquiry report was not supplied to him remained unchallenged on the part of the petitioner.

(11) But, on a specific direction given by this Court, the petitioner placed on record reply to the show-cause notice submitted by the respondent. A perusal of the said reply dated 06/09/1999 submitted by respondent shows that in the opening paragraph itself, the respondent stated that he was in receipt of show-cause notice along with copy of the enquiry report dated 30/06/1999. This document is fairly admitted by the learned counsel appearing on behalf of the respondent. Therefore, the finding rendered by the Industrial Court in paragraph 34 of the impugned order is found to be unsustainable. It could not be said that there was violation of principles of natural justice in the present case due to non-supply of copy of enquiry report and therefore, to that extent the impugned order is found to be unsustainable.

(12) But, the next issue that arises for consideration is, as to whether the respondent was justified in insisting before the Industrial Court that there was violation of the principles of natural justice, because under Rule 6(10)(i)(a) of the said Rules, while disagreeing with the findings in the enquiry report on charge No.2, the disciplinary authority was not only required to give brief reasons, but it was required to issue notice and grant an opportunity of hearing to the respondent with regard to such disagreement. According to the learned counsel for the respondent, notice was required to be issued to the respondent at two stages. Firstly, at the stage when the disciplinary authority disagreed with the findings in the enquiry report pertaining to charge No.2 and it gave its brief reasons, because the respondent was entitled to explain or represent before the disciplinary authority as to why such disagreement was improper. Secondly, after this stage was crossed, the disciplinary authority could have issued show-cause notice under Rule 6(10)(i)(b) of the said Rules regarding penalty proposed to be imposed on the respondent. According to the learned counsel for the respondent, by directly issuing show-cause notice dated 20/08/1999, regarding penalty proposed to be imposed on the respondent, principles of natural justice had been violated.

(13) A perusal of the impugned order passed by the Industrial Court shows that although the main reason why the Industrial Court held in favour of the respondent appears to be non-supply of copy of enquiry report, but the aforesaid argument raised on behalf of the respondent in the context of Rule 6 of the said Rules also weighed with the Industrial Court in holding in favour the the respondent. It was contended on behalf of the petitioner that such two stage issuance of notices and granting of opportunity of hearing under Rule 6(10) of the said Rules was not warranted.

(14) But, the judgment of the Hon'ble Supreme Court in the case of Yoginath D. Bagde vs. State of Maharashtra and Another (supra) covers the position of law in favour of the respondent. In the said case, the Hon'ble Supreme Court was concerned with Rule 9 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, which has a parimateria provision as compared to Rule 6(10) of the aforesaid Rules. In the said Rules also, it is stated that when the disciplinary authority disagrees with findings of the enquiry authority, brief reasons are required to be given and then there is a provision for issuance of notice for penalty proposed to be imposed on the employee.

(15) In the context of such similar Rule, the Hon'ble Supreme Court in the said judgment has held as follows :-

> "28. In view of the provisions contained in the statutory rule extracted above, it is open to the disciplinary authority either to agree with the findings recorded by the enquiring authority or disagree with those findings. If it does not agree with the findings of the enquiring authority, it may record its own findings. Where the enquiring authority has found the delinquent officer guilty of the charges framed against him and the disciplinary authority agrees with those findings, there would arise no difficulty. So also, if the enquiring authority has held the charges proved, but the disciplinary authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those cases in which the enquiring authority has recorded a positive finding that the charges were not established and the delinquent officer was recommended to be exonerated, but the disciplinary authority disagreed with those findings and recorded its own findings that the charges were established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the delinquent officer at that stage. Such an opportunity may either be provided specifically by the rules made under Article 309 of the Constitution or the disciplinary authority may, of its own, provide such an opportunity. Where the Rules are in this regard silent and the disciplinary authority also does not give an opportunity of hearing to the delinquent officer and records findings, different from those of the enquiring authority that the charges were established, "an opportunity of hearing" may have to be read into the rule by which the procedure for dealing with the enquiring authority's report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be "not guilty" by the enquiring authority, is found "guilty" without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of "not guilty" has already been recorded.
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> 29. We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which enables the disciplinary authority to disagree with the findings of the enquiring authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The Rule does not specifically provide that before recording its own findings, the disciplinary authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has

to communicate to the delinquent officer the "TENTATIVE" reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of "not guilty" already recorded by the enquiring authority was not liable to be interfered with."

(16) In the aforesaid judgment, the Hon'ble Supreme Court also relied upon earlier three Judge Bench judgment in the case of Punjab National Bank vs. Kunj Behari Misra AIR 1998 SC 2713: (1998) 7 SCC 84 : LNIND 1998 SC 770 : 1998-II-LLJ-809, wherein the same position of law had been laid down.

(17) In the facts of the present case, Rule 6(10)(i)(a) and (b) becomes relevant which reads as follows :-

"6. Procedure for imposing major penalties - (1) to (9) .....

(10) (i) If the Disciplinary Authority, having regard to its findings on the charges, is of the opinion that any of the penalties specified in clauses (iv) to (vii) of Rule 4 should be imposed, it shall -

(a) furnish to the Parishad servant a copy of the resport of the Inquiring Authority, and where the Disciplinary Authority is not the Inquiring Authority, a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Inquiring Authority; and

(b) give him a notice stating the penalty proposed to be imposed on him and calling upon him to submit within a specified time such representation as he may wish to make on the proposed penalty, provided that such representation shall be based only on the evidence adduced during the enquiry."

(18) Applying the said position of law laid down by the Hon'ble Supreme Court and consistently followed thereafter, it becomes clear that in the present case, the disciplinary authority erred in directly issuing show-cause notice dated 20/08/1999 under Rule 6(10)(i)(b) for the penalty proposed to be inflicted on the respondent, without first giving an opportunity to the respondent at the stage when the disciplinary authority differed with findings in the enquiry report pertaining to charge No.2. Therefore, there was clear violation of the principles of natural justice in the present case. Although the Industrial Court did not give detailed reasons for accepting said contention raised on behalf of the respondent, the conclusion was correct, in the facts and circumstances of the present case.

(19) At this stage, the learned counsel appearing for the petitioner submitted that if it was found that there was violation of principles of natural justice, the parties could be relegated back to the stage where such violation had taken place, so that the respondent could be proceeded against from that stage. In response, the learned counsel appearing for the respondent submitted that with passage of long period of time, it was impracticable to relegate the parties to the aforesaid stage. It was further submitted that even charge No.1 found to be partly proved in the enquiry report was not supported by material on record. It was further submitted that instead of relegating the parties to the stage at which they were in the year 1999, this Court could pass appropriate orders on the basis of the material on record. In this regard reliance was placed on the judgment of the Hon'ble Supreme Court in the case of Om Kumar and others vs. Union of India AIR 2000 SC 3689 : (2001) 2 SCC 386 : LNIND 2000 SC 1585.

(20) There cannot be any doubt about the fact that when it is found that there is violation of principles of natural justice, the parties could be relegated to the stage at which there was such violation. But, in the present case the defective show- cause notice was issued on 20/08/1999 i.e. more than 20 years ago and no purpose would be served by relegating the parties to that stage. In the said decision Om Kumar and Others vs. Union of India (supra), the Hon'ble Supreme Court has laid down that in rare cases, instead of remitting the matter to the disciplinary authority for fresh decision on quantum of punishment, the Court could substitute its view, due to passage of long period of time.

(21) In the present case, the material on record does indicate that the respondent could have been more careful, while distributing cheques for the said grants to the training institutes, particularly when the very same person was appearing before him for collecting

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such cheques for various training institutes. It could have been inquired whether the very same person was authorized by all such training institutes for receiving cheques for the grants. To that extent, for having failed to exercise due care, the respondent could certainly be held responsible and appropriate penalty could be imposed upon him. The enquiry report also found that charge No.1 was only partly proved. In such a situation, imposition of penalty of withholding of increment for two years permanently with cumulative effect was clearly disproportionate. A perusal of Section 4 of the aforesaid Rules shows that the petitioner could impose penalty of censure under Section 4(i) of the said Rules. On the basis of the aforesaid position of law laid down by the Hon'ble Supreme Court, to ensure that litigation is cut-short, particularly when long period of time has been consumed in litigation, in the peculiar facts and circumstances of the present case, this Court is of the opinion that it would be in the interest of justice that while upholding the impugned order, setting aside the punishment imposed by the petitioner by order dated 07/11/2000, it be directed that penalty of censure under Section 4(i) of the aforesaid Rules is imposed on the respondent.

(22) In view of the above, the writ petition is disposed of in the following manner :-

(a)The finding rendered by the Industrial Court that Principles of natural justice were violated due to non supply of copy of enquiry report is set aside.

(b) The finding rendered by the Industrial Court that there was violation of principles of natural justice, as opportunity of hearing was not granted under Rule 6(10)(i)(a) of the said Rules, when the disciplinary authority disagreed with the finding in the enquiry report, is found to be in consonance with law and it is upheld.

(c) Although the relief granted by the Industrial Court regarding payment of consequential benefits to the respondent is upheld, it is directed that penalty of censure be imposed on the respondent under Rule 4(i) of the said Rules.

(23) Rule is made absolute in above terms. There shall be no order as to costs.

Petition disposed of.

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