**From the Desk of Editor**

## DEFENCE REPRESENTATIVES -GUARDIANS OF FAIR PLAY AND NATURAL JUSTICE.

The National Academy of Trade Union Research and Education (NATURE) has, since its inception in 1991, played a very crucial role in training defence representatives across the length and breadth of the country. In all the training progrmmes and through various publications, we have been insisting that the Defence representatives must go down to the basics, understand their role, the case, the charges and through careful and dedicated preparation, present their arguments in a logical manner. The three basic stages of a case are: -

(a) **Before the Enquiry:** Analysis of the charge sheet, proper understanding and preparation including visits to the place of cause of action and collection of documents.

(b) **During the Enquiry:** (i) Handling the Examination-in-chief by the presenting officer efficiently which includes raising of objections to irrelevant documents, witnesses and objection to leading questions.

(ii) A well-prepared and proper cross examination to counter, rebut and defuse critical evidences of the presenting officer.



(c) **After the Enquiry:** Preparation of the Defence Brief, submissions, Appeal and review, as the case may be, and support to the charge sheeted officer in case of personal hearing or his seeking external remedies like filing of a writ in the court or any other legal action.

It is needless to mention that throughout the enquiry process the Defence representatives should ensure that the Principles of Natural justice is adhered to in letter and spirit.

It has come to our notice, in the course of discussions and sharing of the experiences by the Defence representatives of various banks, that certain basic tenets of domestic enquiries, and the principles of Natural Justice are not being followed, despite repeated remainders. Some such observations and common errors in the enquiry process are as follow: -

(a) Not allowing document verification by the charge-sheeted officer(CSO).

(b) Permitting marking of documents without originals or without verification with the originals.

(c) Permitting introduction of documents by the holders of the documents and not by the maker or author, thereby denying the basic constitutional right of cross examination.

(d) Wrong practice of introduction of the documents by the presenting officer/management representative instead of a prosecution witness/management witness (PW/MW).

(e) Conducting Ex-parte hearings without providing reasonable opportunity the charge sheeted officer.

(f) Not recording the proceedings of the enquiry verbatim or refusal to record the entire proceedings, because of the whims and fancies of the IA/EO.

(g) Not allowing reasonable adjournments.

(h) Bias by the Inquiring authority/Enquiry Officer.

The above list is only indicative and not exhaustive. Apart from the above one very important observation is that the orders by the Disciplinary authorities are not speaking orders. They normally do not speak on why the Disciplinary Authority disagrees with the logic, the oral and documentary evidences of the charge sheeted officer. They do not clearly spell out why a particular penalty is imposed. This is against the various supreme court judgements, thus making mockery of the enquiry/Inquiry process. This is the reason why many of the banks loose the cases in the court. Also, the Disciplinary authority has to clearly spell out the impact and implication of a penalty- its impact on the reduction, on increments earned in between, on restoration, impact on career/promotion and on the monetary effect of penalty.

The role of the Defence representation is not just providing defence, but also to ensure fairness in all areas including the post enquiry process. Unless the Defence Representatives are alert, knowledgeable and well informed, such errors and mistakes of judgment keep happening on a regular basis. There is no point in shifting the blame.

Therefore, in conclusion, the Defence representatives have to serve as guardians of fair play and principles of natural justice.■



**[2023 (176) FLR 101]**
**(SUPREME COURT)**
**INDIRA BANERJEE and C.T. RAVIKUMAR, JJ.**
**Civil Appeal No. 6913 of 2022 and connected appeal**
**Special Leave Petition (C) No. 14996 of 2021**
**September 23, 2022**
**Between**
**ARJUN MURMU**
**and**
**STATE OF ODISHA and others**

***Constitution of India, 1950—Article 136—Promotion—From final gradation list which was under challenge before Single Judge—Order of Division Bench that interim order would continue till disposal of writ petition by learned Single Judge—Order however recalled upon the application of State Government—Hence, instant appeals—Held, earlier Division Bench had requested the learned Single Judge to dispose of the writ petition within one month which was still pending—Large number of vacancies in the promotional posts were to be filled up—Non-filling of vacancies would be prejudicial to the interests of the administration of any service—High Court requested to dispose of writ petition preferably within a period of two months—Appeals disposed of.*** [Paras 12 to 17]

The interim order passed by the Division Bench of the High Court dated 24.02.2021 itself would reveal the availability of a number of vacancies in the promotional post of ASOs/Section Officer and that they are not being filled up solely due to the pendency of W.P. (C) No. 24191 of 2020.

The fact is that those vacancies in the promotional post are still lying vacant. Certainly, non-filling of vacancies in the promotional post would be prejudicial to the interests of the administration of any service.

Normally, when the seniority list is in challenge and a number of vacancies are available in the promotional post, promotions would be permitted to be effected subject to the result of the Writ Petition carrying challenge against the seniority list. The learned Single Judge

of the High Court had actually passed such an order taking note of the balance of convenience.

## JUDGMENT

**C.T. RAVIKUMAR, J.**— Leave granted.

2. These Appeals are filed against the final judgment and order dated 14.07.2021, passed by the High Court of Orissa at Cuttack in I.A. No. 1000 of 2021 in Writ Appeal (W.A.) No. 612 of 2020. The Appeal arising from SLP(C) No. 14996 of 2021 is filed by the Appellant in W.A. No. 612 of 2020 and he is Respondent No. 7 in the Appeal arising from SLP(C) No. 17933 of 2021 filed by third parties to the stated interlocutory application and also the stated Writ Appeal. As a matter of fact, the Appellants in the Appeal arising from SLP(C) No. 17933 of 2021 are not parties even to Writ Petition No. 24191 of 2020 and the interim order passed in I.A. No. 10848 of 2020 thereon dated 24.09.2020 led to the filing of W.A. No. 612 of 2020. The party Respondents in W.P.(C) No. 24191 of 2020 are Respondent Nos. 5 and 6 in both the Appeals. For the sake of convenience, the parties are referred to hereinafter in this judgment in accordance with their rank and status in the latter Appeal arising from SLP(C) No. 17933 of 2021 as all the parties in the former Appeals are arrayed as Respondents therein, unless otherwise specifically mentioned. All the private parties viz., the petitioners and the party Respondents belong either to the batch of directly recruited Assistant Section Officers (for short, 'ASOs') under the special recruitment drive for the backlog vacancies for Scheduled Tribes or batch of directly recruited ASOs under the General Quota, in Governor's Secretariat / State Secretariat in the State of Odisha. The subject-matter of the W.P.(C) No. 24191 of 2020 is regarding the fixation of inter se seniority between the said batches of ASOs (evidently recruited and appointed in the same recruitment years), in the final gradation list of ASOs published vide Notification dated 11.06.2020.

3. In view of the manner in which we intend to dispose of the Appeals it is unnecessary to delve into the facts. Notification for the special recruitment drive was first in point of time and naturally on culmination of the selection process candidates from the rank concerned were appointed earlier in point of time. It is the case that



direct recruitment notification for direct recruitment under the General Recruitment Drive and the appointments of candidates from the consequently drawn list were effected subsequently. Pursuant to their appointment, the first Respondent, State of Orissa published a tentative gradation list of seniority in the post of ASOs in the State of Orissa on 12.04.2018. In the said gradation list, the appointees from the General quota were assigned seniority over the special recruitees. Aggrieved by the assignment of seniority in the aforesaid manner in the gradation list dated 12.04.2018 Respondent No. 7 filed representation raising objection. According to her, similarly situated persons have also filed such representations. Disregarding their contentions and objections the final seniority list in the said grade of ASOs was drawn and published and this led to the filing of the afore-stated Writ Petition.

4. When the Writ Petition came up for admission, a learned Single Judge of the High Court passed an order on 24.09.2020 in I.A. No. 10848 of 2020 on the following lines :

> "As an interim measure it is directed that, any promotion pursuant to the Gradation List vide Annexure -13 shall be subject to the result of the writ petition."

5. It is assailing the said interlocutory order dated 24.09.2020 that Writ Appeal No. 612 of 2020 was filed. The Division Bench passed an interim order in I.A. No. 1694 of 2020 on 25.01.2021 on the following lines :

> "Heard learned Counsel for the parties.
>
> As an interim measure, this Court directs that there shall be no promotion shall be given to anybody without the leave of this Court.
>
> The I.A. is accordingly disposed of."

6. Later, the said Writ Appeal itself was disposed of on 24.02.2021. Taking note of the pendency of the Writ Petition, the Division Bench ordered that it would be open to the parties to argue the Writ Petition on merits and requested the learned Single Judge to dispose of W.P.

(C) No. 24191 of 2020 within a period of one month as a number of promotional posts were lying vacant due to the pendency of the said Writ Petition. It was further ordered therein thus: - "Since we request the learned Single Judge to dispose of the Writ Petition within a period of one month, the interim order dated 24.09.2020 passed in I.A. No. 10848 of 2020 shall continue till disposal of the W.P. (C) No. 24191 of 2020 by the learned Single Judge. The Writ Appeal is disposed of. In view of disposal of the Writ Appeal, all the pending I.As. are accordingly disposed of."

7. Subsequent to the disposal of the Writ Petition, I.A. No. 606 of 2021 was moved by the 7 th Respondent viz. , the Appellant in the former Civil Appeal, essentially, contending that taking advantage of an inadvertent mistake in the order dated 24.09.2020, the opposite parties are initiating steps to effect promotions from the final gradation list of ASOs dated 12.06.2020 which is under challenge in the Writ Petition. Consequently, they sought for modification of the order dated 24.02.2021 with direction to continue with the interim order dated 25.01.2021 passed in I.A. No. 1694 of 2020 till disposal of W.P.(C) No. 24191 of 2020. On 18.03.2021, the Division Bench disposed of the said interlocutory application by modifying the order dated 24.02.2021 to the extent that interim order dated 25.01.2021 passed in I.A. No. 1694 of 2020 shall continue till disposal of the Writ Petition by the learned Single Judge. It was made clear that the rest of the order dated 24.02.2021 would remain unaltered.

8. The first Respondent-State of Odisha filed interlocutory application viz. , I.A. No. 1000 of 2020 which led to the passing of the impugned order in the Appeals arising from the above special leave petitions. As per the impugned order dated 14.07.2021 in I.A. No. 1000 of 2021, the Division Bench recalled the order dated 18.03.2021 and restored the order dated 24.02.2021 as the final order of disposal of Writ Appeal No. 612 of 2020. It is in the aforesaid circumstances, the Appellant in the said Writ Appeal who is also the petitioner in W.P.(C) No. 24191 of 2020 filed the captioned Appeals.

9. Heard, learned Counsel for the parties.

10. From the aforesaid narration, it is clear that the Writ Petition challenging the fixation of seniority under the final seniority list of



ASOs dated 12.06.2013, of the above mentioned two batches is still pending before the learned Single Bench of the High Court. The impugned order of the Division Bench modifying the interim order passed by the learned Single Judge in W.P.(C) No. 24191 of 2020 as also modifying its own interim order passed in the W.A. No. 612 of 2020 was passed while disposing of the Appeal with liberty to the writ petitioner to apply for an early disposal of the pending Writ Petition. It is also evident that originally, the Appeal was disposed of as per order dated 24.02.2021 requesting the learned Single Judge to dispose of the Writ Petition within one month. Obviously, the Writ Petition was not disposed of within the stipulated time limit and it is still pending. It is the availability of a large number of vacancies in the promotional post and the non-availability of incumbents to mann the posts and the consequential exigency in administration that made the first Respondent to file I.A. No. 1000 of 2021.

11. We are of the considered view that the rival contentions advanced before us have to be appreciated in the light of the aforesaid undisputed position that the Writ Petition is still pending before the learned Single Judge of the High Court. When the Special Leave Petitions came up before this Court on 08.10.2021, this Court passed the following order :

> "Issue notice.
>
> In the meanwhile, there will be ad interim stay of operation of the impugned order dated 14.07.2021 in IA No. 1000 of 2021 in Writ Appeal No. 612/2020 passed by the High Court."

12. The scope of exercise of corrective jurisdiction under Article 136 of the Constitution of India has to be looked into in the light of the aforesaid undisputable position that the Writ Petition itself is pending before the learned Single Judge of the High Court. It is a fact that no issue was finally decided by the High Court, warranting exercise of corrective jurisdiction of this Court under Article 136 of the Constitution. It is also a fact that this Court has not passed any order transferring the pending Writ Petition into the file of this Court either suo motu or on application. In such circumstances, the short question is what should be the nature of the interim order, in view of the conflicting orders referred to hereinbefore, to be maintained,

pending consideration of W.P. (C) No. 24191 of 2020. We have taken note of the order passed by the learned Single Judge as also the conflicting orders passed by the Division Bench in Writ Appeal No. 612 of 2020 and lastly, the impugned order passed in I.A. No. 1000 of 2021 in the said Writ Appeal.

13. The interim order passed by the Division Bench of the High Court dated 24.02.2021 itself would reveal the availability of a number of vacancies in the promotional post of ASOs/Section Officer and that they are not being filled up solely due to the pendency of W.P. (C) No. 24191 of 2020.

14. The fact is that those vacancies in the promotional post are still lying vacant. Certainly, non-filling of vacancies in the promotional post would be prejudicial to the interests of the administration of any service.

15. The Writ Petition is pending before the learned Single Judge and on its disposal, the party or parties aggrieved would be having a remedy to file intra Court appeal. Taking note of all the aforesaid aspects, we think it wholly appropriate to desist from making any observation touching the merits of the rival contentions and at the same time to emphasize on the expediency of an early disposal of the Writ Petition, which would be in the interest of all concerned. Normally, when the seniority list is in challenge and a number of vacancies are available in the promotional post, promotions would be permitted to be effected subject to the result of the Writ Petition carrying challenge against the seniority list. The learned Single Judge of the High Court had actually passed such an order taking note of the balance of convenience. In other words, as an interim measure it was ordered by the learned Single Judge that promotion pursuant to the final gradation list would be subject to the result of the Writ Petition. In froth, as per the original order dated 24.02.2021, Writ Appeal No. 612 of 2020 itself was disposed of maintaining the interim order passed by the learned Single Judge dated 24.09.2020 in I.A. No. 10848 of 2020. That order was admittedly varied by the Division Bench time and again, as explained earlier. As per order dated 08.10.2021, this Court stayed the operation of the order dated 14.07.2021 in I.A.No.1000 of 2021 in Writ Appeal No. 612 of 2020 passed by the High Court.



16. Taking note of the totality of the circumstances and also the balance of convenience, we dispose of these Civil Appeals with request to the High Court of Orissa to dispose of the Writ Petition No. 24191 of 2020 as expeditiously as possible, preferably, within a period of two months from the date of receipt of a copy of this judgment. All the parties to the Writ Petition shall co-operate for the early disposal of the Writ Petition, within the stipulated time. If for any reason, the disposal of the Writ Petition is not possible within the stipulated period of time, it would be open for the Respondent authorities to fill up vacancies in the promotional post of ASOs from the final gradation list of ASOs, referred to as Annexure 13 in the interim order dated 24.09.2020 in I.A. No. 10848 of 2020 in Writ Petition (C) No. 24191 of 2020, provisionally and subject to the result of the Writ Petition.

17. These Appeals stand disposed of as above. All pending applications/ interlocutory applications are also disposed of.■

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**[2024 (181) FLR 128]**
**( ALLAHABAD HIGH COURT— Lucknow bench)**
**JASPREET SINGH, J.**
**C.M. Pet. (Under Art. 227) No. 20407 of 2021**
**January 17, 2024**
**Between**
**MANOJ KUMAR**
**and**
**PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-II, LUCKNOW and another**

***U.P. Industrial Disputes Act, 1947—Section 2-A—Dismissal—Ground taken was that his performance was below the requisite standards—During proceeding before Industrial Tribunal the petitioner relied upon a magazine 'Tata Engineering Darpan' to indicate that CX-CWP department had made record production and the allegation upon petitioner regarding non-satisfactory performance was illegal—Learned Tribunal rejected the application with regard to submission of magazine as evidence—Tribunal with regard to other documents also rejected the application on the ground that***

***the same were already on record—Hence, the present petition—Held, merely because certain record production had been achieved by the department, it would not mean that the same was on account of the efficiency of the petitioner —Tribunal had already permitted to the petitioner to lead secondary evidence—Tribunal would consider those evidences for which no direction could be given to the Tribunal—Tribunal to expedite the matter as that was pending from year 2007—Petition dismissed.*** [Paras 14 to 18]

It may be noted that the magazine which is referred to by the petitioner is not a document which can be made binding on the institution i.e. the respondent No. 2, as it is merely a magazine which is for internal circulation and there is already a disclaimer that the company does not subscribes to the view as expressed in the said magazine.

Merely because certain record productions have been achieved by the department, it does not infer that the same is on account of the efficiency of the petitioner alone nor it can be seen to notice that in case if there is any deficiency, the same can be attributed to the petitioner solely.

Since there is already an order passed by the Industrial Tribunal permitting the petitioner to lead the secondary evidence and in case if something cogent is filed. Needless to say that the same shall be considered by the Tribunal and the issue regarding adverse inference is also in the discretion and domain of the Industrial Tribunal for which no observation is required to be made by this Court especially when only a limited order is under challenge here.

**Counsel for the Petitioner :** Girish Kumar Tiwari and Anand Prakash Pandey.

**Counsel for the Respondent :** C.S.C.

**JUDGMENT**

**Jaspreet Singh, J.—** Heard learned counsel for the petitioner and learned Standing Counsel for the respondent No. 1. None has put in appearance on behalf of the respondent No. 2-company.



2. The record indicates that notices were issued to the private respondent No. 2 by means of order dated 15.03.2023. As per office report dated 08.05.2023, notice on the private respondent was held to the sufficient but none has put in appearance, accordingly the Court has heard the learned counsel for the petitioner.

3. By means of the instant petition, the petitioner assails the order dated 24.08.2021 passed by Industrial Tribunal (II), Lucknow in Adjudication Case No. 117 of 2007 ( Manoj Kumar v. M/s. Tata Engineering & Locomotive Co., Chinhat, Deva Road, Lucknow).

4. Submission of the learned counsel for the petitioner is that he has been working on the post of Operator in Production (Chassis Assembly) Department vide order dated 02.11.1994. The petitioner was also given a level promotion by the Manager (H.R.) vide order dated 31.01.1998 and was transferred to SQIG. He was later transferred from SQIG Department to CX-CWP Department.

5. It is the case of the petitioner that on 05.04.2005, he was issued a charge sheet wherein allegations were levelled against the petitioner that his work was below the requisite standards. The petitioner contested the proceedings and dismissal order was passed on 01.06.2006. The petitioner assailed the same by filing the petition under Section 2-A of the U.P. Industrial Disputes Act, 1947 registered as C.P. Case No. 223 of 2006. Since the conciliation proceedings between the petitioner and his employer i.e. the private respondent No. 2 failed, accordingly the matter was referred to Industrial Tribunal wherein it was registered as Adjudication Case No. 117 of 2007.

6. During the course of proceedings before the Industrial Tribunal, the petitioner had made an application seeking to summon certain documents from the employer which did not find favour with the Tribunal, as a consequence, the petitioner preferred writ petition before this Court bearing No. 6247 (M/S) of 2012. The said writ petition came to be disposed of by means of order dated 03.12.2013 and the High Court modified order dated 12.09.2012 passed by the Tribunal to the extent that the other documents demanded by the petitioner may be supplied to him.

7. It is urged that despite the categorical order passed by the High Court yet the respondent No. 2 did not provide the requisite documents as a result the Presiding Officer of the Industrial Tribunal (II), Lucknow on 10.02.2015 noticed that since the private respondent had defaulted and not provided the requisite documents to the petitioner, accordingly the petitioner was granted liberty to lead the secondary evidence and in the impugned order it was also observed that an adverse inference would be drawn against the private respondent No. 2 for willfully suppressing evidence.

8. It is in the aforesaid backdrop that the petitioner moved another application to bring on record certain subsequent events and alongwith the said application, the petitioner attempted to introduce a magazine published by the private respondent No. 2-company for its personal and internal consumption. The said magazine known as Tata Engineering Darpan was being published on yearly basis and it was a sort of a news letter indicating the various achievements accomplied by the company.

9. The contention of the learned counsel for the petitioner is that since the petitioner was charge sheeted with the allegations that his performance in the production department for the year 2003 and 2004 was below the requisite standards, hence in order to rebut the same, he preferred to rely upon the said magazine and certain article published therein to indicate that CX CWP department had made record production. This was also the situation in the year 2004 and therefore it was expedient for the Tribunal to have permitted the petitioner to rely on the said magazine as it would help the petitioner to vindicate his stand.

10. Considering the said application preferred by the Tribunal by means of its order dated 24.08.2021 rejected the same on the ground that the said magazine sought to be introduced by the petitioner was only for internal consumption and any view published therein may not be treated as view of the company. The Tribunal also noticed that in so far as certain other documents which the petitioner wanted to introduce the same were already on record, hence the application came to be rejected which is now under challenge before this Court.

11. The thrust of the submission of the learned counsel for the



petitioner is that the respondent No. 2 was behaving in a highhanded fashion and despite the order passed by the High Court yet the documents as called for by the petitioner was not granted.

12. Noticing the same, the Tribunal had also passed an order drawing is adverse inference and permitting the petitioner to lead secondary evidence and in furtherance of the said liberty granted, the petition wanted to introduce the said magazine.

13. At the outset, it may be noted that the magazine which is referred to by the petitioner is not a document which can be made binding on the institution i.e. the respondent No. 2, as it is merely a magazine which is for internal circulation and there is already a disclaimer that the company does not subscribes to the view as expressed in the said magazine.

14. The core issue as to whether the petitioner's performance is below standard or not, for that there is no material in the said magazine. However, unless and until it can be shown that the magazine refers to certain accolade which may have been conferred upon the petitioner himself and may have been published in the magazine printed under the aegis of the respondent No. 2.

15. Even considering the submissions made by the counsel for the petitioner and noticing the contents of the said magazine, all that can be seen is the fact that the department where the petitioner was specifically posted, it had achieved certain record productions. Merely because certain record productions have been achieved by the department, it does not infer that the same is on account of the efficiency of the petitioner alone nor it can be seen to notice that in case if there is any deficiency, the same can be attributed to the petitioner solely.

16. It is not disputed by the learned counsel for the petitioner that there are about 50 persons working in the department and in case if any achievement has been reached by the department concerned, this in itself, ipso facto , does not prove the fact regarding the efficiency of the petitioner. It is in view of the aforesaid that this Court does not find that there is any error in the order passed by the Industrial Tribunal. Since there is already an order passed by

the Industrial Tribunal permitting the petitioner to lead the secondary evidence and in case if something cogent is filed. Needless to say that the same shall be considered by the Tribunal and the issue regarding adverse inference is also in the discretion and domain of the Industrial Tribunal for which no observation is required to be made by this Court especially when only a limited order is under challenge here.

17. However, it is further noticed that the adjudication case is pending before the respondent No. 1 since 2007, accordingly the same is expedited and the Tribunal shall ensure that after affording full opportunity of hearing to the parties but without granting any unnecessary adjournments shall endeavour to decide the entire controversy preferably within a period of four months, from the date a copy of this order is placed before the Tribunal concerned.

18. For the forgoing reasons, this Court does not deem appropriate to interfere in the impugned order dated 24.08.2021. Accordingly, the petition is dismissed. Costs are made easy.■

***Petition Dismissed.***

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**[2025 (185) FLR 370]**
**(ALLAHABAD HIGH COURT)**
**AJIT KUMAR, J**
**Civil Misc, Writ Petition NO. 18272 of 2021**
**July 8, 2024**
**Between**
**SANJAY SHARMA**
**And**
**STATE OF U.P. and others**

***Dismissal from Service-Legality-Oral enquiry is sine qua non in matters of disciplinary enquiry when conducted for awarding major penalty-While holding regular enquiry against petitioner, committee failed to record statement of witnesses whose statement was recorded before preliminary enquiry conducting committee-Therefore, finding of fact based upon such report-Cannot be relied upon so as o bring home charge-As such order of punishment which is maximum penalty in nature of dismissal-Cannot be sustained in the eyes of law-Impugned order along with order of appeal affirming same-Set aside-Petition allowed with direction.*** [Paras 11,17,21 and 22]

**Counsel for the Petitioners;** Siddhart Khare ad Ahok Khare.

**Counsel for the Respondents:** Abhishek Srivastava and Brajesh Pratap Singh.

**JUDGMENT**

**AJIT KUMAR J.-**. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Siddharth Khare, learned counsel for the petitioner and Sri Abhishek Srivastava, learned counsel for respondent nos. 2 and 3 and Sri Brajesh Pratap Singh, learned counsel for respondent no. 4.

2. The petitioner before this Court while working as Executive Engineer came to be suspended on 5.10.2019 setting into motion a regular disciplinary enquiry. It transpires from the record that some preliminary fact-finding enquiry report was submitted by a three member committee constituted in that regard on 3rd April, 2020 and as a consequence thereof, a regular chargesheet was issued on 26.10.2020 to the petitioner which as many as three articles of charges to which petitioner submitted a detailed reply on 31.12.2020 denying all the charges.

3. It further transpires that thereafter an oral enquiry was held as per chargesheet itself petitioner was issued with notice by the enquiry officer to appear before the enquiry committee and get himself examined. In response to the same petitioner did appear before the Enquiry Committee on 15.2.2021 and an oral statement was recorded, which has come to be so noted on the order sheet of the enquiry proceeding as has come to be annexed along with counter affidavit as Annexure CA-1. It has come further to be noted therein that petitioner did not ask for any other witness to be examined, nor did he file any other document in addition to what he had already submitted along with reply. It is thereafter that oral enquiry was stated to have been concluded

and the final enquiry came to be submitted indicting the petitioner of the charges levelled in the chargesheet. Soon after the report was submitted bringing home the charge by enquiry committee on 15.2.2021, petitioner was issued with a show cause notice to which he submitted reply and finally his reply having not been found satisfactory, he was awarded with maximum punishment of dismissal from service. Upon appeal being preferred against the said order, it met the same fate as his explanation offered to the show cause notice not found satisfactory and hence this petition.

4. Twin arguments advanced by learned counsel for Senior Advocate appearing for the petitioner:

> a. The chargesheet issued to the petitioner was approved only by Managing Director and Chairman of the U.P. Power Corporation being appointing authority and the disciplinary authority, the chargesheet ought to have been issued only after approval of the Chairman under the relevant regulation. In the circumstances, therefore, once the chargesheet was not approved by the competent authority, the entire enquiry pursuant thereto was taken to be without lawful authority and resultantly the order of dismissal from service was also to be held bad; and b. Except for the oral examination of the petitioner, no oral enquiry was held, inasmuch, no departmental witness was examined and enquiry officer instead of getting preliminary enquiry report proved before him proceeded to rely upon the same and the statement made before the committee that had held preliminary enquiry report brought home the charge which was against procedure prescribed for holding major enquiry.

5. Learned Senior Advocate has relied upon the relevant regulations as contained in 2021 Regulation.

6. Meeting the arguments advanced by learned Senior Advocate Sri Abhishek Srivastava, learned counsel for the respondent submitted that the Board of Directors of the U.P. Power Corporation Ltd. had adopted a resolution as back as on 28th April, 2010, by which Managing Director have been conferred



with power of the disciplinary authority in all matters of disciplinary proceeding and imposition of various penalties except penalty of dismissal, which power continues to be vested with Chairman of Corporation. He has brought on record the consequential letter issued pursuant to resolution brought by the Board of Director dated 28th April, 2010. He, therefore, argues that since at the time of issuance of chargesheet, it could not have been perceived as to whether petitioner was to be awarded with major penalty in the nature of dismissal from service as it was to depend upon the outcome of the enquiry report, therefore, Managing Director was the competent authority in the matter to approve the chargesheet to set into motion a regular disciplinary enquiry.

7. In so far as second argument advanced by learned Senior Advocate is concerned, Sri Srivastava has submitted that from the perusal of the enquiry report, it does appear that petitioner demanded and yet no departmental witness was examined. He, however, submits before the Court that these pleas were not taken either in reply to the show cause notice, nor even at the stage of enquiry when it was being conducted, nor at the stage of appeal and so this may not be open for the petitioner to raise two issues here before the Court first time under Article 226 of the Constitution. He has also submitted that in the matter of disciplinary enquiry, this Court will be rarely interfering in exercise of its extra ordinary jurisdiction of under Article 226 of the Constitution.

8. Meeting the argument, in rejoinder affidavit, Mr. Khare has placed the judgment of Supreme Court in the case of State of Tamil Nadu v. Pramod Kumar, IPS and Another (2018) 17 SCC 677, in which Supreme Court held that if there is inherent flaw in framing of the chargesheet then it goes to the root of the matter of disciplinary proceeding being de hors the beyond procedure and so cannot result in valid imposition of penalty. It is further submitted that it is well settled legal proposition that when rules require a thing to be done in a particular manner then it should be done in that manner alone M/s Tata Chemicals Ltd. v. Commissioner of Customs (Preventive) Jamnagar (2015) 11 SCC 628 and 2022 8 SCC 713

9. Having heard learned counsel for the respective parties and having perused the records, I find that first argument advanced by Mr. Khare regarding incompetent chargesheet deserves to be rejected. Under the relevant rules cited before me the authority to impose punishment of dismissal/removal from service has only been vested with Chairman and so at the stage of issuance of charge sheet a punishment could not have been proved. However, if authority chooses to impose punishment of dismissal after enquiry, it is at that stage show cause notice should be issued only by the Chairman.

10. Now coming to the merit of the case regarding disciplinary proceedings and action, I find from the perusal of the chargesheet that in the chargesheet, the basic document that have been relied upon are committees' report and statements of certain consumers and other persons recorded before the committee specially constituted that had held preliminary enquiry. These documents have been relied upon including besides the bank deposits, pay slip in support of first charge. From the perusal of the enquiry report, I find that after referring to the article of charges, specially charge no. 1, the enquiry committee proceeded to refer and record the oral statement made by the petitioner and thereafter it has proceeded to examine charge no. 1 on merits and has relied upon not only preliminary enquiry report, but also statement of certain outsiders and the consumers that were recorded before the preliminary conducting committee. Thus, it is clear that while holding regular enquiry committee failed to record statement of witnesses whose statement was recorded before the preliminary enquiry conducting committee so as to ensure that those statements are proved in departmental enquiry committee. Those persons were not at all summoned by enquiry officer to test the veracity of the findings returned by the preliminary enquiry report.

11. In the considered view of the Court any document that is relied upon for arriving at finding of fact must be strictly proved. The legal proposition is very sound to the effect about a document which is required to be proved, is to be proved either by who had answered it or by the person who is witness while the document was being prepared or getting examined the person in whose presence the document was executed or if examine the person



who may said to be authorized persons to have custody of the document. Any of the procedures, if not followed in getting a particular document proved or even preliminary enquiry report is also not proved and that is relied upon then in my considered view finding of fact based upon such report cannot be relied upon so as to bring home the charge. I, therefore, find there to be basic flaw in the entire enquiry committee report even in respect of charge nos. 2 and 3. Thus findings returned by the enquiry committee could not have been reckoned with by the disciplinary authority while relied upon the same.

12. In the matter of State of Uttar Pradesh and Others v. Saroj Kumar Sinha (2010)2 SCC 772, the Supreme Court has very categorically held that oral enquiry is sine qua non in the matters of disciplinary enquiry when conducted for awarding major penalty. Vide paragraph 22, the Court has held thus:

> "34. This Court in the case of Kashinath Dikshita v. Union of India, (1986) 3 SCC page 229, had clearly stated the rationale for the rule requiring supply of copies of the documents, sought to be relied upon by the authorities to prove the charges levelled against a Government servant. In that case the enquiry proceedings had been challenged on the ground that non supply of the statements of the witnesses and copies of the documents had resulted in the breach of rules of natural justice. The appellant therein had requested for supply of the copies of the documents as well as the statements of the witnesses at a preliminary enquiry. The request made by the appellant was in terms turned down by the disciplinary authority.
>
> 35. In considering the importance of access to documents in statements of witnesses to meet the charges in an effective manner this Court observed as follows:
>
> "When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the

relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross- examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible? It is difficult to comprehend why the disciplinary authority assumed an intransigent posture and refused to furnish the copies notwithstanding the specific request made by the appellant in this behalf. Perhaps the disciplinary authority made it a prestige issue. If only the disciplinary authority had asked itself the question: "What is the harm in making available the material?" and weighed the pros and cons, the disciplinary authority could not reasonably have adopted such a rigid and adamant attitude. On the one hand there was the risk of the time and effort invested in the departmental enquiry being wasted if the courts came to the conclusion that failure to supply these materials would be tantamount to denial of reasonable opportunity to the appellant to defend himself. On the other hand, by making available the copies of the documents and statements the disciplinary authority was not running any risk. There was nothing confidential or privileged in it."

36. On an examination of the facts in that case, the submission on the behalf of the authority that no prejudice had been caused to the appellant, was rejected, with the following observations:

"Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross- examine the witnesses with reference to the contents of the



documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself."

13. A division bench of this Court in the case of Mahesh Narain Gupta v. State of U.P. and Others 2011 (2) ILR 570 had dealt with this aspect to the fact held thus:

"At this stage, we are to observe that in the disciplinary proceedings against a delinquent, the department is just like a plaintiff and initial burden lies on the department to prove the charges which can certainly be proved only by collecting some oral evidence or documentary evidence, in presence and notice charged employee. Even if the department is to rely its own record/document which are already available, then also the enquiry officer by looking into them and by assigning his own reason after analysis, will have to record a finding that hose documents are sufficient enough to prove the charges.

In no case, approach of the Enquiry Officer that as no reply has been submitted, the charge will have to be automatically proved can be approved. This will be erroneous. It has been repeatedly said that disciplinary authority has a right to proceed against delinquent employee in ex parte manner but some evidence will have to be collected and justification to sustain the charges will have to be stated in detail. The approach of the enquiry officer of automatic prove of charges on account of non-filing of reply is clearly misconceived and erroneous. This is against the principle of natural justice, fair play, fair hearing and, thus, enquiry officer has to be cautioned in this respect."

14. Very recently in the case of State of U.P. and Others v. Kishori Lal and Another, 2018 (9) 397 (DB) (LB) the Court has held that oral enquiry to be mandatory. Vide paragraph 14, the Court had held thus:

"14. Now coming to the question, what is the effect of non-holding of domestic/oral inquiry, in a case where the inquiry officer is appointed, oral inquiry is mandatory. The charges are not deemed to be proved suo motu merely on account of levelling them by means of the charge-sheet unless the same are proved by the department before the inquiry officer and only thereafter it is the turn of delinquent employee to place his defence. Holding oral enquiry is mandatory before imposing a major penalty, as held by Apex Court in State of U.P. and another v. T.P.Lal Srivastava, 1997 (1) LLJ 831, as well as by a Division Bench of this Court in Subhash Chandra Sharma v. Managing Director and another, 2000 (1) UPLBEC 541."

15. The court have followed recently the judgment of coordinate bench in the case of Suresh Babu v. State of U.P. and Others being Writ A No. 12991 of 2023 decided on 19.10.2023.

16. Further in the case of M/s Tata Chemicals Ltd. v. Commissioner of Customs (Preventive) Jamnagar (2015) 11 SCC 628, Supreme Court has held that "if the law requires that something be done in a particular manner, it must be done that manner, and if not done in that manner has no existence in the eye of the law at all. The Customs Authorities are not absolved from following the law depending upon the acts of a particular assessee. Something that is illegal cannot convert itself into something legal by the act of a third person."

17. In view of above, therefore, the order of punishment which is maximum penalty in the nature of dismissal cannot be sustained in law and the same deserves to be set aside and so also the order of appeal affirming the same also deserves to be set aside.

18. At this stage, Mr. Srivastava, has tried to argue that since petitioner has been dismissed from service he should not be directed to be reinstated, in this connection he has relied upon the judgment of Supreme Court in the case of State of U.P and Others v. Rajit Singh, 2022 (4) ADJ 295. He has heavily relied upon paragraph 8 of the judgment, which is reproduced hereunder:



8. It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice in as much as the documents mentioned in the charge sheet were not at all supplied to the delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the Enquiry Officer/Disciplinary Authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge sheet, which are alleged to have not been given to the delinquent officer in the instant case. In the case of Chairman, Life Insurance Corporation of India and Ors. Vs. A. Masilamani, (2013) 6 SCC 530, which was also pressed into service on behalf of the appellants before the High Court, it is observed in paragraph 16 as under:-

"16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [(1993) 4 SCC 727], Hiran Mayee Bhattacharyya v. S.M. School for Girls [(2002) 10 SCC 293], U.P. State Spg. Co. Ltd. v. R.S. Pandey [(2005) 8 SCC 264] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30]).

19. In the case of Managing Director ECIL Hyderabad etc. v. B. Karunakar etc. AIR 1994 SC 1074, a constitution bench judgment, it has been categorically held while court of law or Tribunal proceeds to quash the order of punishment then it should remand matter to be tried again from that stage where flaw has occurred and employees states as was then be retired. The Court has

observed "Where after following the above procedure the Courts/Tribunals sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority, management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report." Since here is a case where I find that departmental enquiry was not properly held in the matter, therefore, matter deserves to be remitted to the stage of holding enquiry afresh on the basis of charge sheet issued to the petitioner and reply already submitted by petitioner.

20. It is also not disputed that suspension of petitioner was revoked on 4.11.2020 and petitioner was working at the time when impugned order was passed.

21. Accordingly, while I quash the orders dated 09.06.2021 passed by Chairman U.P. Power Corporation Ltd. Lucknow and order dated 21.10.2021 issued by the Board of Director of U.P. Power Corporation Ltd. with consequential benefits to the petitioner, I hereby provide that department shall be holding enquiry afresh by appointing fresh enquiry committee giving full information in that regard to the petitioner and concluding the enquiry by holding full-fledged oral enquiry in accordance with the procedure prescribed within a maximum period of three months from the date of production of certified copy of this order and bring the disciplinary proceeding itself shall be concluded within further period of two months. Petitioner shall be entitled to current salary only and arrears of salary shall depend upon the outcome of the result of the writ petition. Since petitioner was already reinstated while enquiry was going on by revoking suspension order, the authority may not suspend him again in the given facts and circumstances of the case.

22. With the aforesaid observations and directions, this petition stands allowed.■

**Petition Allowed.**



**[2025 (185) FLR 524]**

**GUJARAT HIGH COURT**

**A.S. SUPEHIA and Mrs. GITA GOPI, JJ**

**R/Letters Patent Appeal No. 924 of 2017 with connected Appeals**

**September 25, 2024**

**Between**

**RAJKUMARSITALDAS KESWANI**

**And**

**GENERAL MANAGER and others**

***Departmental Enquiry-Modification of punishment by Labour Court-tribunal found the enquiry proceeding just and fair however reduced the punishment-Learned single Judge allowed the writ petition of employee-Hence, instant appeals by both sides-Held, finding of tribunal that departmental proceedings were fair, valid and proper was unsustainable a absence of enquiry report before the Tribunal-Learned single Judge instead of deciding the petitions should have remanded the matter to the Tribunal for a fresh consideration on the basis of enquiry report-Judgment of learned Single Judge quashed-Matter remained to Tribunal-both appeals disposed of .*** [Para 11 to 18]

The Tribunal has categorically recorded that the departmental proceedings held against the concerned workman was fair, valid and proper, after observing principle of natural justice and it does not find and hold that there is any perversity I the 'findings of the inquiry officer in its report and so inquiry is to vitiated". Such a finding is misplaced in wake of the fact that no inquiry officer report was on record.

In absence of the findings of the inquiry officer's report, the Tribunal could not have recorded a specific finding with regard to the findings of the inquiry officer in its report, which was not on record and the learned Single Judge has also committed the same error. The leaner Single Judge should have remanded the matter to the Tribunal for appreciating the findings of the inquiry officer in his report.

In light of the aforesaid undisputed facts, this Court has opined to the lean red advocate appearing for the respective parties that this is a fit case, where the matter has to be remained to the Tribunal so that the findings of the enquiry officer can be examined, after the inquiry officer's report dated 11.03.2009 is brough on record.

**Counsel for the Petitioner:** Ms. Megha Jani and Arjun Joshi.

**Counsel for the Respondents:** Anal S.Shah

## JUDGMENT

**A.S.SUPEHHIA, J** —The present Letters Patent Appeals filed under Clause 15 of the Letters Patent, 1865, are directed against the common judgment and order dated 26.12.2016 passed by the learned Single Judge, wherein and whereby, the learned Single Judge has allowed the writ petition being Special Civil Application No.13344 of 2015 filed by the employer - Western Railways and rejected the writ petition being Special Civil Application No.20726 of 2015 filed by the employee of the Western Railways. In the captioned writ petitions filed by the railways and the employee of the railways had assailed the judgment and award dated 08.12.2014 passed by the Central Government, Industrial Tribunal cum Labour Court, Ahmedabad (in short, "the Tribunal") in Reference (CGITA) No.142 of 2012.

2. As recorded by the learned Single Judge, the employer has challenged the part of award whereby the punishment imposed upon the workman came to be reduced after holding that the charge Nos.(ii) and (iii) were not established and the workman assailed the impugned judgment and award on the ground that the Tribunal ought to have exonerated him having regard to the nature of evidence adduced during the inquiry.

3. The writ petitions were entirely premised on the findings of the inquiry officer and the nature of the evidence adduced during the departmental proceedings.

4. On a query being raised to the learned advocates appearing for the respective parties to point out the findings of the inquiry officer,



which are the part of the inquiry officer's report, it is candidly accepted by both the learned advocates appearing for the respective parties that the report of the inquiry officer was not on record before the Tribunal.

5. At this stage, we may refer to the issues framed by the Tribunal in Reference (CGITA) No.142 of 2012 :-

> "(i) Is the reference maintainable?
>
> (ii) Has the 2nd party any valid cause of action?
>
> (iii) Whether the departmental inquiry conducted against the concerned workman Shri Rajkumar Keshwani is fair, valid and proper observing the principles of natural justice? Yes
>
> (iv) Whether the finding of the inquiry officer in its report dated 11.03.2009 is perversed? No.
>
> (v) Whether the punishment awarded to the concerned workman Shri Rajkumar Keshwani by N.I.P dated 31.03.2010 is legal, proper and justified or it is disproportionate to the gravity of misconduct under standard form 5 chargesheet?
>
> (vi) Whether the 2nd party/workman is entitled to relief as claimed vide para 11 of S/c?"

6. The issue Nos.(iii) and (iv), as noted hereinabove, will disclose that the Tribunal has categorically framed the issues on the departmental inquiry conducted against the workman and whether the findings recorded by the inquiry officer in its report dated 11.03.2009 is perversed. Such issues could have been delved into and answered, only after the examination of the inquiry officer's report dated 11.03.2009. We failed to understand, how the Tribunal could have recorded any findings on such issues in absence of the inquiry officer's report dated 11.03.2009. The Tribunal ultimately has recorded thus: -

> "12. Thus, considering the oral and documentary evidence discussed above, I am of the considered view that the punishment imposed upon the concerned workman Shri

Rajkumar Keshwani is disproportionate to the gravity of Charge no.1 whereas charge no. 2 and 3 have gone as not proved, so the action of the management of western Railway in imposing the penalty of reduction in the same time scale of pay by five stages below for a period of five years without future effect upon Shri Rajkumar Keshwani FCRC vide order dated 31.03.2010 is not at all legal and justified. So this court is competent to invoke the power u/s. 11-A of the I.D. Act to alter, modify the punishment order so imposed on the concerned workman by the D.A. This issue is answered accordingly.

13. ISSUE NO. I, ii & vi:- In view of the findings to issue no. iii, iv and v in the foregoing, I further find and hold that the reference is maintainable and the Union/2nd party have got valid cause of action to raise this industrial dispute. I, further, find and hold that the delinquent Shri Rajkumar is entitled for part relief as to modification in his punishment order as reduction in the same time scale of pay by two stages below for a period of one year without future effect. Accordingly, the penalty imposed upon Shri Rajkumar Keshwani is altered/ modified to the extent indicated above."

7. The Tribunal has, thus, examined the oral and documentary evidence as mentioned and noted in the judgment and award with regard to the alleged misconduct by the employee. Before arriving at such conclusion in paragraph No.7 of the judgment, the Tribunal has recorded thus: -

> "7. On consideration of the materials as discussed above, I find and hold that the departmental inquiry held against concerned workman Shri Rajkumar Keshwani is fair, valid and proper observing the principle of natural justice. I further find and hold that there is no perversity in the findings of the inquiry officer in its report and so inquiry has not vitiated. Issue No. iii is answered in affirmative and issue no iv in negative."

8. The Tribunal has categorically recorded that the departmental proceedings held against the concerned workman was fair, valid and



proper, after observing principle of natural justice and it does not find and hold that there is any perversity in the "findings of the inquiry officer in its report and so inquiry is not vitiated." Such a finding is misplaced in wake of the fact that no inquiry officer report was on record.

9. The learned Single Judge has allowed the writ petition filed by the Western Railways assailing the judgment and award passed by the Tribunal, whereas the writ petition filed by the appellant - workman has been rejected by holding as under: -

> "10. Looking to the overall facts and circumstances discussed above, more particularly, when no illegality, perversity or any other infirmity was found by the judicial forums, in the procedure adopted during the inquiry against the workman and in view of positive finding that full opportunity was given to the workman during the inquiry, it was not open for them to reappraise and re-appreciate the evidence on record either for reducing the punishment or reversing the findings of fact recorded during the inquiry on all the three charges."

10. It is also pertinent to note that the learned Single Judge, in paragraph No.8.4, has in fact held thus: -

> "8.4 Assuming that the scope for interference in the findings rendered in the departmental inquiry as also the punishment was made, this Court fails to understand as to how in absence of the findings of the Inquiry Officer, the judicial forum could have found fault with such factual findings without looking at the inquiry report."

11. Despite the aforenoted observations, the learned Single Judge has rejected the writ petition filed by the appellant-workman. In our opinion, in absence of the findings of the inquiry officer's report, the Tribunal could not have recorded a specific finding with regard to the findings of the inquiry officer in its report, which was not on record and the learned Single Judge has also committed the same error. The learned Single Judge should have remanded the matter to the Tribunal for appreciating the findings of the inquiry officer in his report.

12. In light of the aforesaid undisputed facts, this Court had opined to the learned advocates appearing for the respective parties that this is a fit case, where the matter has to be remanded to the Tribunal so that the findings of the inquiry officer can be examined, after the inquiry officer's report dated 11.03.2009 is brought on record.

13. Learned advocate Ms. Megha Jani, on instructions, has submitted that in case, the Court is desirous of remanding the matter, then some time limit may be fixed since the alleged misconduct pertains to the year 2005 and the appellant- employee would be retiring in February, 2025.

14. On the substratum of the aforesaid analysis and in light of the undisputed fact that the inquiry officer's report was not on record before the Tribunal, and also having noticed such fact, the learned Single Judge ought to have remanded the matter to the Tribunal.

15. Under the circumstances, both the Letters Patent Appeals stand disposed of. The impugned common judgment and order passed by the learned Single Judge is quashed and set aside.

The matter is ordered to be remanded to the Tribunal. Reference (CGITA) No.142 of 2012 is ordered to be listed to its original file.

16. It will be open for the appellant(s) and for the respondent(s) to bring the report dated 11.03.2006 on the record of the reference proceedings. All the contentions of the respective parties are left open and it will be open for them to raise their submissions with regard to the findings of the inquiry officer's report.

17. It is clarified that this Court has not examined the merits of the case and the matter is solely remanded on the ground of absence of inquiry officer's report. The Tribunal shall examine the contentions of the respective parties on merits and pass appropriate reasoned order. Since the dispute pertains to the year 2005 and the appellant-employee is retiring in February, 2025, we request the Tribunal to dispose of Reference (CGITA) 142 of 2012, preferably within a period of four months.

18. All the connected applications stand disposed of accordingly.■

***Appeals disposed Of***



**[2025 (185) FLR 1002]**
**(SUPREME COURT)**
**ABHAY S. OKA and AUGUSTINE GEORGE MASIH, JJ.**
**Civil Appeal No. 10590 of 2004**
**April 1, 2025**
**Between**
**AMRESH SHRIVASTAVA**
**And**
**STATE OF M.P. and others**

***Disciplinary Proceedings-Allegation of negligence and carelessness in duty-Appellant being Tehsildar had been alleged to settle the land in favour of ineligible persons-Charge-sheet issued after 13 years-Learned single Judge quashed the charge-sheet on the ground of delay-In appeal order was reversed-Hence, instant appeal-Held, appellant passed the order while exercising quasi-judicial power which could not be considered to be of a nature that would warrant disciplinary proceedings against him-No explanation of inordinate delay in initiating proceeding-Appeal allowed.*** [Para 16 to 19]

The charges alleged against the Appellant in the charge-sheet fall under the category of a wrongful order, which does not appear to have ben influenced by extraneous factors or ay form of gratification. It appears that the order has been passed in good faith, without any indication of dishonesty.

The power exercised by the Appellant in his capacity as a Tehsildar, while passing the order of Land settlement Order, cannot be considered of a nature that would warrant disciplinary proceedings against him. The decision relied upon by the counsel or Appellant as mentioned above, supports this view. Consequently, the first question is answered I favour of the Appellant.

In the instant case where there is unexplained inordinate delay in initiation departmental proceedings despite the alleged misconduct being within the knowledge of the department, but still no departmental proceedings are initiated, the answer must go in favour of the employee.

Disciplinary Proceedings-Delay in initiation of disciplinary proceeding-Depends upon the awareness of the Department about irregularity or misconduct. [ Para 17]

**AUGUSTINE GEORGE MASIH, J.** This appeal challenges the judgment dated 30.04.2019 passed by the Division Bench of the High Court of Madhya Pradesh Bench at Gwalior (hereinafter referred to as "Impugned Judgment") whereby the High Court allowed the Writ Appeal filed by the Respondents, reversing the Order of the learned Single Judge dated 26.04.2017, which quashed the chargesheet dated 29.04.2011 issued to the Appellant. As a result, the disciplinary proceedings and the chargesheet were revived.

2. Facts in instant case are that the Appellant was appointed as Naib Tehsildar on 15.06.1981 and was promoted to Tehsildar on 31.12.1991. Between July 1993 and September 1998, he was posted as Tehsildar in Gwalior district, where he performed various functions, including quasi-judicial duties. An application filed by Kuber Singh and Madho Singh, sons of Suraj Singh for settlement of land measuring 1.500 Hect. of survey no. 1123/Min-3 situated in Village Barua. After issuing notice, no objections were received. The gram panchayat was consulted and passed a resolution stating that the applicants were cultivating the land and had no objections to the settlement in their favour. Following the procedure as prescribed under the rules as also the statement of the Patwari, the said application was allowed subject to certain conditions. Appellant as a quasi-judicial authority passed a land settlement order dated 26.06.1997. The said order was not challenged and the same attained finality.

3. After a significant delay, a Show Cause Notice dated 21.09.2009 was issued to the Appellant by the Collector of District Gwalior. The notice alleged that the land settlement was granted to ineligible persons in an illegal manner, contrary to the rules. It further stated that the mutation order led to the land being sold, which originally vested in the State Government, causing undue benefit to the parties due to negligence and carelessness in duty.

3.1 Subsequently, Chargesheet dated 29.04.2011 was issued to the Appellant by the Commissioner, Gwalior stating that he had



executed the land settlement in Survey No. 1123/min-3 illegally, which was indicative of dishonesty.

4. When the chargesheet was issued to him after 13 years, the Appellant challenged it by filing Writ Petition No. 7114/2011 before the High Court of Madhya Pradesh on 19.10.2011, seeking protection under the provisions of the Judges Protection Act, 1985 (hereinafter referred to as "JPA 1985"). He asserted that he had exercised his powers under Section 57(2) of the Madhya Pradesh Land Revenue Code, 1959. He argued that the Orders were issued in exercise of quasi-judicial functions. He further contended that inordinate delay, without any conclusion of extraneous influence or misconduct, should bar departmental proceedings.

5. The learned Single Judge decided the Writ in favour of the Appellant, quashing the chargesheet and setting aside the disciplinary proceedings initiated solely on the ground of delay, with their being no explanation thereto for such delay.

6. Assailing the order passed by learned Single Judge. The Respondent No.1 (hereinafter referred to as "respondent-State") preferred a Writ Appeal, which was allowed. The Division Bench while allowing the appeal, held that an officer who exercise judicial or quasi-judicial powers exercising negligently or recklessly, or in order to confer undue favour on a person, is not acting as a judge. In situations where a government officer acts negligently or fails to meet the prescribed conditions essential for exercising statutory powers, thereby conferring undue favor on a party and compromising their reputation for integrity, good faith, or devotion to duty, departmental proceedings can be initiated if disciplinary action is not taken for violating the conduct rules.

6.1 The Division Bench relied on the decision of this Court in Union of India and others vs. K.K. Dhawan1. Consequently, the Order of the Single Judge was set aside, reviving the chargesheet, while also directing for the completion of the departmental inquiry expeditiously.

7. Learned Senior Advocate and Counsels for the Appellant assailed the Impugned Judgment on the ground that the chargesheet issued against the Appellant would not fall within the ambit and scope of

the decision in K.K. Dhawan (supra) which was relied on by the Division Bench for setting aside the order passed by the learned Single Judge. He contended that the Respondent-State's allegations in the Show Cause Notice and Chargesheet merely suggested that the order was wrong and not in accordance with law. There were no allegations (1993) 2 SCC 56 of extraneous influence, bribery, or gratification.

8. To substantiate his argument, the Appellant relied upon the decision of this Court in Virendra Kumar Singh vs. State of Madhya Pradesh & Others, wherein a revenue officer in similar facts and circumstances from the State of Madhya Pradesh was made to face departmental proceedings after an inordinate delay against an order passed by him in exercise of his powers as a Tehsildar.

8.1 This Court had ruled that in absence of allegations of extraneous influence, departmental proceedings should not be initiated merely because a quasi-judicial order was incorrect.

8.2 The Appellant on this basis, submits that the charges against the said officer were similar to those made against the Appellant and also the stand taken by the Respondents before the High Court, the judgment of this Court would apply in full force.

9. Further reliance was also placed upon the judgment of this Court in Zunjarrao Bhikaji Nagarkar vs. Union of India and Others2, where this Court had held the quasi-judicial officer's error in judgment does not automatically imply misconduct or favouritism. Disciplinary action requires clear evidence of extraneous influence beyond mere legal mistakes to avoid undermining judicial independence. Similarly, in case of Krishna Prasad Verma through Lrs. vs. State of Bihar and Others3, this Court clarified that while wrong orders by judicial officers should not automatically lead to disciplinary action unless there are allegations of misconduct based on extraneous influences. The remedy under such circumstances would be available to the parties concerned to avail all the remedies available under law. It was further reiterated that unless there are clear cut allegations of misconduct, extraneous influences,



gratification of any kind etc., disciplinary proceedings should not be initiated merely on the basis that a wrong order has (1999) 7 SCC 409 (2019) 10 SCC 640 been passed by the judicial officer or merely on the ground that the judicial order is incorrect.

10. Counsel for the Appellant argues that the 14 -year delay in issuing the chargesheet is excessive and unexplained. This significant delay supports the claim that the departmental inquiry should not continue at such a late stage.

11. Accordingly, employee should not be made to suffer, which means that prompt action must be taken by the department. At the very outset, counsel states that in cases where an order has been passed in exercise of quasi- judicial functions, the statutory remedy available against that order should be pursued unless it was passed under extraneous considerations and there is reasonable justification or material to support such a conclusion. He accordingly prayed for the present appeal to be allowed.

12. Counsel for the Respondent-State, on the other hand, has vehemently opposed the present appeal and supported the Impugned Order passed by the Division Bench of the High Court of Madhya Pradesh. It is their contention that the Appellant while exercising his powers as a Tehsildar, is a Revenue Officer, and therefore a quasi-judicial officer is bound by the statute. The mandate of the statute, therefore, need to be followed and given effect, which has not been done by the Appellant. What is expected from him is to at least determine the eligibility of the person for the grant of settlement. A licence was not given to the officer to pass illegal orders in contravention to provisions of law which would indicate dishonesty. Counsel for the Respondent-State is unable to address the delay in the issuance of the chargesheet. However, he has submitted that time should not be considered a factor in such matters where departmental proceedings are initiated against an employee. He was unable to provide any material evidence suggesting extraneous considerations or influences that would place this case outside the protection afforded by the law as settled by this Court. Counsel based on the above prayed for dismissal of the appeal.

13. We have considered the submissions made by the counsels for both the parties.

14. The facts as have been narrated above are not in dispute. Two aspects which need to be considered are:

(1) Whether the chargesheet issued to the Appellant by the Respondent-State would fall within the scope of observations that have been carved out by this Court in K.K. Dhawan case (supra)?

(2) Whether inordinate unexplained delay in issuance of the chargesheet (in this case 14 years) would in itself be a ground for quashing the chargesheet issued to the appellant?

15. As regards the first question in K.K. Dhawan case (supra), this Court carved out the following situations where the government is not precluded from taking disciplinary actions for violation of the Code of Conduct: -

"(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) If there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a Government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great." After carving out the above exceptions, this Court proceeded to further



observe that mere technical violations or the fact that an order is wrong, if not falling under the above enumerated instances, does not warrant disciplinary actions. It was further reiterated that each case depends on its facts, and absolute rules cannot be postulated. The above instances as referred and reproduced hereinabove, are thus only a guide and not meant to be mandatorily adhere to without exception.

16. In the present case, we are of the considered view that the charges alleged against the Appellant in the chargesheet fall under the category of a wrongful order, which does not appear to have been influenced by extraneous factors or any form of gratification. It appears that the order has been passed in good faith, without any indication of dishonesty. Furthermore, the facts outlined in the Show Cause Notice do not suggest any such impropriety. The power exercised by the Appellant in his capacity as a Tehsildar, while passing the order of Land Settlement Order, cannot be considered of a nature that would warrant disciplinary proceedings against him. The decision relied upon by the Counsel for the Appellant as mentioned above, supports this view. Consequently, the first question is answered in favor of the Appellant.

17. As to the second question, regarding whether delay is a ground for stopping the departmental proceedings at the stage of the chargesheet itself, suffice it to say that this varies from case to case. However, in the instant case where there is unexplained inordinate delay in initiating departmental proceedings despite the alleged misconduct being within the knowledge of the department, but still no departmental proceedings are initiated, the answer must go in favour of the employee. However, there may be cases where the department was not even aware of such irregularities or the misconduct, which is of such a nature that it is indicative, based on material considerations of factors other than merit, such as extraneous influences and gratifications. In such cases, such a delay, by itself would not be a valid ground to scuttle the initiation of the process of departmental proceedings.

18. Reference in this regard can be made to the decision of this court in State of Madhya Pradesh vs. Bani Singh and Another4,

wherein the court noted that there was no reason to interfere with the quashing as the disciplinary proceedings were initiated after 12 years of delay. A reference should also be made to the decision of this Court in P.V. Mahadevan vs. MD, T.N. Housing Board5, where it has been reiterated that continuing the departmental proceedings after an undue delay would be unjust, causing unnecessary mental distress and damaging the reputation 1990 (Suppl.) SCC 738 2005 (6) SCC 636 of the employee for the mistakes committed by the department in initiating disciplinary proceedings.

19. In view of the above, the present appeal is allowed and the Impugned Judgment dated 30.04.2019 passed by the Division Bench of the High Court is set aside and consequently the order dated 26.04.2017 passed by the learned Single Judge stands restored.

20. There shall be no order as to costs.

21. Pending application(s), if any, stand disposed of.■

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**[2024 (182) FLR 147]**

**(UTTARAKHAND HIGH COURT)**

**Ms. RITU BAHRI, C.J. and RAKESH THAPLIYAL, J.**

**W.P. (M/B) No. 75 of 2023 (1) and 26 Connected Cases**

**April 29, 2024**

**Between**

**BABU RAM KASHYAP**

**and**

**CANARA BANK (ERSTWHILE SYNDICATE BANK)**

***Payment of Gratuity Act, 1972-Section 7-Claim for grant of gratuity-Gratuity was awarded but the claim of petitioner for additional sum of 45 days for each completed year after completion of service of 30 years was not allowed-Gratuity was calculated for a period of 33 years only against service of 36 years rendered by petitioner-Controlling Authority and***



***Appellate Authority did not give the benefit of service claimed by petitioner-Hence, present petition- Held, Canara Bank was bound by its Regulations-Any Officer who had completed more than thirty years of his service was entitled to get gratuity amount for an additional amount at the rate of 45 days for each completed year of service beyond thirty years -Writ petitions of employees allowed and all writ petitions of Bank dismissed-All writ petitions decided accordingly.*** [Paras 20 to 34]

The judgment of Rajasthan High Court is applicable to the facts of the present case, which made it clear that for the purpose of calculation of gratuity beyond thirty years, which is an exception, the additional amount at the rate of one half month's pay for each completed year of service beyond 30 years has to be calculated. The Rajasthan High Court has held that the officers, who have completed more than thirty years of service, shall be eligible by way of gratuity for the additional amount @ one half month's pay for each completed service beyond thirty years. Thus, once the statute is very clear, there is no question of expanding the meaning.

In the present case as well, as per the proviso to Regulation 46(2) of the SBOSR, if an officer has completed more than thirty years he is eligible by way of gratuity for an additional amount at the rate of one half month's salary for each completed year of service beyond thirty years. Hence, for the purpose of calculation of gratuity, the salary of 45 days has to be taken into account for each completed year beyond thirty years.

The second ground taken by the writ petitioner is that the payment of interest could not be reduced from 10% to 5%. Even on this aspect, the Hon'ble Supreme Court in Y.K. Sigla v. Punjab National Bank and others (Civil Appeal No. 9087 of 2012, decided on 14.12.2012) and D.D. Tiwari v. Uttar Haryana Bizli Vitran Nigam Ltd. (Civil Appeal No. 7113 of 2014) and Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota v. Shukla & Brothers , 1 has consistently held that the rate of interest cannot be reduced once it was granted by the prevalent rules of banking. Hence, in the present case, the

petitioners (employees) are entitled for interest at the rate of 7%.

**Counsel for the Petitioner :** Vipul Gupta, A.M. Saklani, and Siddharth Sah.

**Counsel for the Respondent :** Ashish Joshi and Shashank Upadhyay.

## JUDGMENT

**Ms. RITU BAHRI, C.J.**- Since a common issue is involved in this bunch of writ petitions, it is being disposed of by a common judgment.

2. For the sake of brevity, the facts of WPMB No. 75 of 2023, Babu Ram Kashyap v. Canara Bank (Erstwhile Syndicate Bank) are being taken-up for consideration.

3. The petitioner has challenged the order dated 29.11.2021 passed by the Appellate Authority / Deputy Chief Labour Commissioner (Central), Dehradun under Payment of Gratuity Act, 1972 (hereinafter referred to as the PG Act).

4. The petitioner preferred a claim for grant of Service Gratuity after seeking VRS on 10.11.2014 in terms of the Bank after completing active service of 36 years 3 months and 12 days, but his claim for gratuity was not decided and he approached the Controlling Authority for issuing appropriate direction to the Bank for deciding the claim. The Bank decided the claim vide order dated 06.05.2019 (Annexure PA-1) and an amount of ₹ 11,87,100.00 (₹ Eleven Lacs Eighty Seven Thousand One Hundred Only) was granted as the Service Gratuity. It was stated that it has been calculated as per Syndicate Bank Officers Service Regulations, 1979 (for short "SBOSR"). The calculation of the gratuity has been done by observing in the order dated 06.05.2019 as under:-

> " For purpose of calculating Gratuity as per Syndicate Bank Officers Service Regulation, the eligible component of pay are: Basic Pay + Stagnation Pay + Basic components of EPP + PQP + other allowances (ranking for PF only) shall be considered.
>
> Further we wish to inform you that "The Regulation 46(2) of Syndicate Bank (Officers) Service Regulation, 1979, read as the amount of gratuity payable to Officer shall be one month "pay" for every completed year of service subject to maximum of 15 months of pay. Provided that where an officer has completed more than 30 years of service, he shall be eligible by way of gratuity for additional amount @ on half of months pay for each completed year of service beyond 30 years. Therefore, it is relevant to peruse the definition of "Pay" and "salary" which defines "Pay" as basic pay including stagnation increment and "Salary" means the aggregate of the pay and DA."

5. The Bank has, vide impugned order dated 06.05.2019, declined the claim of 45 days additional amount of pension for each completed year of service after completion of 30 years' service and has allowed only 15 days additional amount for each completed year of service after completion of 30 years' service by the officer. Against the impugned order dated 06.05.2019 (Annexure P-1), the petitioner approached the Controlling Authority after registration. The registered case number is Case No. D-36(32)/2019- ALC.

6. As per the order, the gratuity was awarded to the tune of ₹ 15,22,042/-. The claim of the petitioner for additional sum of 45 days for each completed year after completion of service of 30 years was not allowed and a final order was passed by the Controlling Authority, which is as under :

**"Final Order"**

In view of the above mentioned legal points, I am of considered opinion that the appellant Sh. Babu Ram Kashyap is entitled to receive total gratuity of ₹15,22,042/- (Rupees Fifteen Lakhs Twenty Two Thousand & Forty Two Only) as the higher amount of

gratuity as per the service Regulations of the bank. As the applicant has already received ₹ 11,87,100/-, he need to be paid further amount of gratuity equivalent to ₹ 3,34,942/- (Rupees Three Lakhs Thirty Four Thousand Thirty & Nine Hundred & Forty Two Only), by the Respondent (The General Manager, Syndicate Bank, Head Office, Manipal) within 30 days from receipt of this order along with simple interest @ 7% p.a. from 12.10.2014."

7. With respect to length of service, the gratuity was calculated for a period of three years beyond 30 years i.e. till 33 years. The petitioner, in the present case, has put in service of 36 years, three months and twelve days. The petitioner is also aggrieved that the benefit of six of years of service beyond thirty years has been wrongly denied.

8. The petitioner was communicated the claim order vide order dated 28 th February, 2020 (Annexure PA-2). Against the order dated 28.02.2020, the petitioner filed an Appeal under Section 7(7) of PG Act (Annexure P-3). The Bank also filed an Appeal against the order dated 28.02.2020 passed by the Controlling Authority. Both the Appeals were decided by the Appellate Authority by a common order dated 29.11.2021 (Annexure P-4).

9. In the impugned order, while interpreting Clause-46 of SBOSR, the Appellate Authority held as under :

> "Now after noting the above findings, I conclude that the respondent is entitled to be paid additional amount of gratuity over and above what has already been paid to him but not as per calculation arrived at by the CA. The CA should include the component of DA only with Basic Pay and calculate the amount of payable gratuity accordingly. The CA should further calculate interest @ 5% only upon the difference of amount of gratuity paid and payable."

10. The Appellate Authority has not given the benefit of calculation of gratuity beyond thirty years of service i.e. 36 years three months and twelve days, which was given by the Controlling Authority as per Regulation 46 of Syndicate Bank (Officers') Service



Regulations, 1979. Hence, this writ petition has been filed now. The challenge has been made on two grounds:-

(I) The CA reduced the interest from 7% p.a. to 5% p.a. which is against the Circular of the Reserve Bank of India dated 6 th March, 2020 (Annexure No. 5 to the writ petition), which prescribes payment of interest at the rate of 10% till the date of making payment.

(II) Clause 46 of SBOSR has been misread and misinterpreted by only including Dearness Allowance as part of pay and not including Emoluments as part of pay.

**INTEREST :**

11. Counsel for the petitioner has referred to the judgments of the Hon'ble Supreme Court in Y.K. Sigla v. Punjab National Bank and others (Civil Appeal No. 9087 of 2012, decided on 14.12.2012) and D.D. Tiwari v. Uttar Haryana Bizli Vitran Nigam Ltd. (Civil Appeal No. 7113 of 2014), wherein the Hon'ble Supreme Court has held that Controlling Authorities (CA) have no discretion to award interest on delayed payment other than the rate of interest as is provided under the statute in terms of sub-section (3-A) of Section 7 of Payment of Gratuity Act, 1972.

12. In another judgment of the Hon'ble Supreme Court in Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota v. Shukla & Brothers , 2 it has been held that the rate of interest cannot be reduced by the Controlling Authority once it was granted as per the prevalent rules of banking.

**DEFINITION OF WORD 'PAY' :**

13. The Hon'ble Supreme Court in the case of The Regional Provident Fund Commissioner (II), W.B. v. Vivekanand Vidhya Mandir and others , (Civil Appeal No. 6221 of 2011, decided on 28.02.2019) held that the basic principle is where the wage is universally, necessarily and ordinarily paid to all employees across the board, such emoluments are basic wages. It is not

denied by the respondent-Bank that Special Allowance is being paid to all the officers working in the Bank at the rate based on their scale of pay. Therefore, exclusion of Special Allowance from the component of Basic Pay is not permissible for the purpose of calculating gratuity. Therefore, the same shall be taken as part of basic pay for calculating the gratuity payable to the officers of the respondent-Bank but no reason has been assigned by the learned AA with regard to exclusion of Special Allowance. In the said judgment with regard to addition of Dearness Allowance, the Hon'ble Supreme Court has observed as under :

> "9. Basic wage, under the Act, has been defined as all emoluments paid in cash to an employee in accordance with the terms of his contract of employment. But it carves out certain exceptions which would not fall within the definition of basic wage and which includes dearness allowance apart from other allowances mentioned therein. But this exclusion of dearness allowance finds inclusion in Section 6. The test adopted to determine if any payment was to be excluded from basic wage is that the payment under the scheme must have a direct access and linkage to the payment of such special allowance as not being common to all. The crucial test is one of universality. The employer, under the Act, has a statutory obligation to deduct the specified percentage of the contribution from the employee's salary and make matching contribution. The entire amount is then required to be deposited in the fund within 15 days from the date of such collection. The aforesaid provisions fell for detailed consideration by this Court in Bridge & Roof (supra) when it was observed as follows:-
>
> "7. The main question therefore that falls for decision is as to which of these two rival contentions is in consonance with section 2(b). There is no doubt that "basic wages" as defined therein means all emoluments which are earned by an employee while on duty or on leave with wages in accordance with the terms of the contract of employment and which are paid or payable in cash. If there were no exceptions to this definition, there would have



been no difficulty in holding that production bonus whatever be its nature would be included within these terms. The difficulty, however, arises because the definition also provides that certain things will not be included in the term ***"basic wages",*** and these are contained in three clauses. The first clause mentions the cash value of any food concession while the third clause mentions that presents made by the employer. The fact that the exceptions contain even presents made by the employer shows that though the definition mentions all emoluments which are earned in accordance with the terms of the contract of employment, care was taken to exclude presents which would ordinarily not be earned in accordance with the terms of the contract of employment. Similarly, though the definition includes "all emoluments" which are paid or payable in cash, the exception excludes the cash value of any food concession, which in any case was not payable in cash. The exceptions therefore do not seem to follow any logical pattern which would be in consonance with the main definition.

8. Then we come to clause (ii). It excludes dearness allowance, house rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment. This exception suggests that even though the main part of the definition includes all emoluments which are earned in accordance with the terms of the contract of employment, certain payments which are in fact the price of labour and earned in accordance with the terms of the contract of employment are excluded from the main part of the definition of ***"basic wages"***. It is undeniable that the exceptions contained in clause (ii) refer to payments which are earned by an employee in accordance with the terms of his contract of employment. It was admitted by counsel on both sides before us that it was difficult to find any one basis for the exceptions contained in the three clauses. It is clear however from clause (ii) that from the definition of the word "basic wages" certain earnings were excluded,

though they must be earned by employees in accordance with the terms of the contract of employment. Having excluded "dearness allowance" from the definition of "basic wages", section 6 then provides for inclusion of dearness allowance for purposes of contribution. But that is clearly the result of the specific provision in section 6 which lays down that contribution shall be 6-1/4 per centum of the basic wages, dearness allowance and retaining allowance (if any). We must therefore try to discover some basis for the exclusion in clause (ii) as also the inclusion of dearness allowance and retaining allowance (for any) in section 6. It seems that the basis of inclusion in section 6 and exclusion in clause (ii) is that whatever is payable in all concerns and is earned by all permanent employees is included for the purpose, of contribution under section 6, but whatever is not payable by all concerns or may not be earned by all employees of a concern is excluded for the purpose of contribution. Dearness allowance (for examples is payable in all concerns either as an addition to basic wages or as a part of consolidated wages where a concern does not have separate dearness allowance and basic wages. Similarly, retaining allowance is payable to all permanent employees in all seasonal factories like sugar factories and is therefore included in section 6; but house rent allowance is not paid in many concerns and sometimes in the same concern it is paid to some employees but not to others, for the theory is that house rent is included in the payment of basic wages plus dearness allowance or consolidated wages. Therefore, house rent allowance which may not be payable to all employees of a concern and which is certainly not paid by all concern is taken out of the definition of **"basic wages",** even though the basis of payment of house rent allowance where it is paid is the contract of employment. Similarly, overtime allowance though it is generally in force in all concerns is not earned by all employees of a concern. It is also earned in accordance with the terms of the contract of employment; but because it may not be earned by all employees of a concern it is excluded from "basic wages". Similarly,



commission or any other similar allowance is excluded from the definition of "basic wages" for commission and other allowances are not necessarily to be found in all concerns; nor are they necessarily earned by all employees of the same concern, though where they exist they are earned in accordance with the terms of the contract of employment. It seems therefore that the basis for the exclusion in clause (ii) of the exceptions in section 2(b) is that all that is not earned in all concerns or by all employees of concern is excluded from basic wages. To this the exclusion of dearness allowance in clause (ii) is an exception. But that exception has been corrected by including dearness allowance in section 6 for the purpose of contribution. Dearness allowance which is an exception in the definition of "basic wages", is included for the propose of contribution by section 6 and the real exceptions therefore in clause (ii) are the other exceptions beside dearness allowance, which has been included through section 6."

14. Original Pension Regulation of 1995 is still in force and no amendment has yet been made in such Regulation regarding exclusion of Special Allowance. The definition of **'Pay'** as defined in Reg. 3(k) is inclusive definition, which means that the basic pay not only includes stagnation increment, but also other component of basic pay as held by the Hon'ble Apex Court in Vivekanand Vidyamandir case (supra) and the Madhya Pradesh High Court in Madhyanchal Gramin Bank and others v. All India Gramin Bank Pensioners Organisation Unit (WA Nos. 1318 of 2018, 1316 of 2018 & 1317 of 2018, decided on 26.02.2019).

15. In a recent judgment rendered by the High Court of Kerala at Ernakulam in Muralee Mohanan K.T. and others v. Corporation Bank and others , W.P. (C) No. 32386 of 2015 (W), decided on 15.10.2019), the Kerala High Court condemned the exclusion of special allowance payable to bank employees / officers. For ready reference, the relevant Paragraphs 8 and 9 of the said judgment are reproduced herein below :

"8. However, in Bank of Baroda v. G. Palani and others,

the Apex Court drew a distinction where the aggrieved employees are officers who retired from the Bank in question. It was held that the provisions of the Industrial Disputes Act, 1947 are not applicable to such officers. It was held that the Pension Regulations framed under Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 are statutory in character. In the circumstances, in view of the definition of average emoluments at Regulation 2(d), Pay at Regulation 2(s) and the provision for calculating pension at Regulation 35, it was held that employees are to be paid pension as provided in the Regulations and no reduction from the same is possible, relying on the provisions of a Joint Note, which has no statutory force, unless the Regulations are appropriately amended. It was held in paragraph 28 of the judgment as follows:-

"28. Thus joint note/agreement could not have been in derogation of the existing statutory Regulations and regulation 2(s)(c) could not have been given retrospective effect. It is also apparent from the decisions of this Court in P. Sadagopan v. Food Corporation of India , 3 that executive instructions cannot be issued in derogation of the statutory Regulations. The settled position of law is that no Government Order, Notification or Circular can be a substitute of the statutory rules framed with the authority of law. In Dr. Rajinder Singh v. State of Punjab and others , 4 this Court had reiterated that the settled position of law is that no government order, notification or circular can be a substitute of the statutory rules framed with the authority of law. In K. Kuppuswamy and another v. State of Tamil Nadu , 5 this Court has observed that statutory rules cannot be overriden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules, does not mean that the rule stood obliterated. Till the rule is amended, the rule applies."

The amendment to Regulation 2(s) of the Pension Regulations was struck down as arbitrary and repugnant to Regulations 2(d), 35 and 38(1) and (2).



9. In the above view of the matter, I am of the opinion that the prayers sought for in the writ petition are liable to be allowed. The petitioners are entitled to pension in terms of the Pension Regulations especially Regulations 2(d) and 35 thereof. The respondents are directed to revise the basic pension of the petitioners in accordance with the provisions of the Corporation Bank (Employees) Pension Regulation, 1995 by taking into account the Special Allowances introduced in Exhibit P-6 as part of pay for the purpose of Basic Pension. There will be a direction to the 2nd respondent to recalculate the commutation pension of the petitioners on the basis of the revised basic pension by including the special allowance introduced vide Exhibit P-6 and to refund the pension arrears recovered from the petitioners as per Exhibits P-5. P-5(a), P-5(b) and P-5(c). The necessary shall be done within a period of three months from the date of receipt of a copy of this judgment."

16. So far as inclusion of DA is concerned in the definition of 'Pay', both the CA as well as AA categorically held in view of binding precedents that DA shall be part of basic pay. There appears no illegality in such finding.

How the gratuity is to be calculated after serving for a period beyond thirty years :

17. Recently, the High Court of Rajasthan in Rajasthan Marudhara Gramin Bank, Jodhpur v. The Appellate Authority (S.B. Civil Writ Petition No. 7359 of 2019, decided on 16.10.2020) has considered this aspect of the matter and in the light of the facts narrated in Paragraph 4 has made its observation in Paragraph 22. Relevant Paragraphs 4 and 22 read as under :

""4. The brief facts of the case as noticed by this Court are that all these writ petitions relate to the dispute of computation of gratuity of the retired Bank Officers. The petitioner bank is a Regional Rural Bank which has been constituted by amalgamation of Marudhara Gramin Bank

and Mewar Anchalik Gramin Bank on 01.04.2014. The retired Bank Officers-private respondents filed their respective applications before the Controlling Authority under the Payment of Gratuity Act, 1972 claiming the differential amount of gratuity with interest with effect from 01.12.2017 based on the basic + dearness allowance + PQP + FPP components of the last pay drawn for the calculation of amount of gratuity payable to such officers. The petitioner-Bank vehemently objected their applications but the same were allowed and the petitioner-Bank was directed to pay the additional amount of gratuity along with simple interest at the rate of 10% with effect from 01.12.2017 till the date of payment made by the petitioner-Bank. The petitioner being aggrieved by the order of the Controlling Authority filed appeals under Section 7 sub-section (7) of the Payment of Gratuity Act 1972, before the Appellate Authority under the Payment of Gratuity Act, 1972 and Deputy Chief Labour Commissioner (Central), Ajmer . The petitioner being under a legal obligation deposited the difference of the amount to the Government before filing the appeals. The Appellate Authority partly allowed the appeals with a direction to pay lesser amount along with simple (31 of 83) [CW-7359/2019] interest at the rate of 10% per month with effect from 01.12.2017 only on the ground of the ratio of the monthly addition of gratuity after completion of 30 years while upholding the broader issue laid down by the Controlling Authority. The bank officers have also made cross-objections against the Appellate Authority's order in certain writ petitions whereby the calculations as per Clause 72(3) of the regulation have been made and reduced by the Appellate Authority and seeking of counting 30 days + 15 days i.e. one and a half months' salary for the basic computation.

22. In view of the above, the writ petitions are allowed. The impugned orders passed by the Appellate Authority are quashed and set aside and the orders passed by the Controlling Authority in the case of the contesting respondents are restored. Accordingly, the petitioner Bank



is found not liable to pay any further amount towards gratuity to the contesting respondents as they admittedly received the amount of ₹ 10,00,000/- from the petitioner Bank immediately upon their superannuation." This Court is of the opinion that the judgment in Madhyanchal Gramin Bank (supra) rendered by the Hon'ble Madhya Pradesh High Court and upheld by the Hon'ble Apex Court is the correct view and also binding upon this Court on count of the same having been upheld by the Hon'ble Apex Court . Moreover, the Regulations of 2010 clearly define in Clause 2(1)(i) that emoluments means aggregate of salary and allowances and in Clause 2(1)(m) pay means basic pay drawn per month by the officer or employee in a pay scale including stagnation increments and any part of the emoluments which may specifically be classified as pay under these Regulations. As per the Clause 72(1) of the Regulations, for the purpose of gratuity, an officer or employee shall be eligible either as per the provision of Payment of Gratuity Act, 1972 or as per the Sub-Regulation (2), whichever is higher and thus, for the beneficial legislation of a welfare law, the benevolent connotation ought to have been accepted by this Court. There is no reason why this Court should take a different view than the one taken by the Hon'ble Madhya Pradesh High Court and affirmed by the Hon'ble Apex Court . The cross-objections made by the Officers do not warrant any interference by this Court because on a bare reading (82 of 83) [CW- 7359/2019] of Clause 72(3) of the Regulations, it is clear that the Statute required the petitioner to pay half month's pay for each completed year of service beyond 30 years. Clause 72(3) of the Regulations reads as follows :

"(3) The amount of gratuity payable to an officer or employee shall be one months pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay:

Provided that where an officer or employee has completed more than 30 years of service, he shall be eligible by way

of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years:

Provided that in respect of an officer the gratuity is payable based on the last pay drawn:

Provided also that in respect of an employee pay for the purposes of calculation of the gratuity shall be the average of the basic pay (100%), dearness allowance and special allowance and officiating allowance payable during the 12 months preceding death, disability, retirement, resignation or termination of service, as the case may be."

Regulation 72(3) has an optimum gratuity prescribed upto maximum of 15 months' pay and the concession given is only for the officers who have completed more than 30 years of service by making them entitled for an additional amount of one half of month's pay for each completed year of service beyond 30 years, which is an exception to the maximum of 15 months' pay gratuity rule and thus, the exception has to be read strictly. It is thus clear that the Appellate Authority has rightly arrived at a conclusion that the Officers who have completed more than 30 years of service shall be eligible by way of gratuity for the (83 of 83) [CW-7359/2019] additional amount at the rate of one half month's pay for each completed service beyond 30 years. Thus, once the statute is clear, there is no question of expanding the meaning. It is one thing to choose one of the beneficial conditions amongst two and it is another thing to expand the ambit of benefits which are strictly prescribed. Accordingly, the cross objections are dismissed. In light of the aforementioned observations, the legal issues, facts and grounds raised by the petitioners do not call for interference by this Court. Accordingly, all these writ petitions are dismissed and the orders of the Appellate Authority are upheld. The consequential benefits shall be released to the respondent officers within a period of three months



starting from 1st December, 2020. All pending applications stand dismissed accordingly. All the interim orders stand vacated."

18. The judgment of the Rajasthan High Court has been upheld by the Hon'ble Supreme Court.

19. In the facts of the present case, as per proviso to Regulation 46(2) of the SBOSR, the calculation of the gratuity is done. Regulation 46(2) of the SBOSR reads as under:-

**" Gratuity:**

20.46. (2) The amount of gratuity payable to an officer shall be one month's pay forevery completed year of service, subject to a maximum of 15 months' pay.

Provided that where an officer has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years.

Provided further that pay for the purpose of Gratuity for an officer who ceased to be in service during the period 1-7-1993 to 31-101994 shall be with regard to scale of pay as specified in sub-regulation (1) of Regulation 4.

Provided also that pay for the purpose of Gratuity of an Officer who ceased to be in service during the period 1-4-1998 to 31-101999 shall be with regard to scale of pay as specified in sub-regulation (2) of Regulation 4.

**Note :**

If the fraction of service beyond completed years of service is 6 months or more, gratuity will be paid pro-rata for the period."

20. The judgment of Rajasthan High Court is applicable to the facts of the present case, which made it clear that for the purpose of calculation of gratuity beyond thirty years, which is an exception,

the additional amount at the rate of one half month's pay for each completed year of service beyond 30 years has to be calculated. The Rajasthan High Court has held that the officers, who have completed more than thirty years of service, shall be eligible by way of gratuity for the additional amount @ one half month's pay for each completed service beyond thirty years. Thus, once the statute is very clear, there is no question of expanding the meaning.

21. In the present case as well, as per the proviso to Regulation 46(2) of the SBOSR, if an officer has completed more than thirty years he is eligible by way of gratuity for an additional amount at the rate of one half month's salary for each completed year of service beyond thirty years. Hence, for the purpose of calculation of gratuity, the salary of 45 days has to be taken into account for each completed year beyond thirty years.

22. In the writ petitions filed by the Canara Bank, counsel for the Bank has referred to the judgment of the Hon'ble Supreme Court in the case of Beed District Central Cooperative Bank Ltd. v. State of Maharashtra and others , 6 has been referred to on the preposition that when an Scheme of employer has been offered, the workman can opt for the best terms of Statute, and the nature of gratuity scheme and agreement of the parties cannot be changed subsequently to take better benefits under the Payment of Gratuity Act, 1972.

23. He has further referred to another judgment of the Calcutta High Court in Paschim Banga Gramin Bank and others v. Chinmay Majumdar & others (F.M.A. 657 of 2020, decided on 04.02.2021; wherein the Calcutta High Court has held that once the employee has accepted the terms and conditions of the Regulations for the purpose of definition of the word 'pay' and calculation of gratuity, then they are restrained from seeking modification of definition of the word 'pay' and mode of calculation of gratuity.

24. He further states that in this judgment, the respondents were



claiming the benefit of Dearness Pay to be treated as part of pay. However, the High Court allowed the appeal filed by the Bank and restricted the meaning of the words as per the Regulations of the Bank. The Regulation made a clear distinction between an officer and an employee and in the matter of calculation of gratuity. Regarding the employees, the 'basic pay' included only allowances and not 'dearness allowance' and the appeal of the Bank was allowed.

25. In the present case, as per the impugned order dated 17 th December, 2021 (Annexure-4), the Appellate Authority had partly allowed the Appeal of Shri Babu Ram Kashyap by including Basic Pay and DA for the purpose of calculation of gratuity and awarded 5% interest.

26. In the judgment of the Hon'ble Supreme Court in the Regional Provident Fund Commissioner (II) W.B. (supra), while dealing with the employees of the Bank, it has been held that the definition of 'pay' was an inclusive definition, which means that the Basic Pay not only includes stagnation increment but also other component of the Basic Pay, i.e. the Special Allowance. Similarly, the Madhya Pradesh High Court in Madhyanchal Gramin Bank and others (supra) and the Kerala High Court in Muralee Mohanan K.T. and others (supra) have held that exclusion of Special Allowances payable to the bank employees / officers for calculating gratuity was not correct, and the petitioners were held entitled to pension in terms of the Pension Regulations by taking into account the Special Allowances.

27. In the present case, as per the Regulations of the Bank, the definition of 'emoluments' is in Regulation 3(e), which reads as under :

> "(e) ***"Emoluments"*** means the aggregate of salary and allowances if any."

28. The definitions of words ***'pay'*** and ***'salary'*** are given in Regulation 3(k) and Regulation 3(l) of the Regulations of the Bank respectively, which read as under:-

"(k) "Pay' means basic pay including stagnation increment.

(l) "Salary" means the aggregate of the pay and dearness allowance."

29. Applying the ratio of the above said judgments, the definition of 'pay' is inclusive of special allowances, emoluments, dearness allowance and stagnation increments. Hence, the petitioners (employees) are entitled to include the Special Allowances as part of Pay for the purpose of calculation of gratuity by including Dearness Allowance as well.

30. The second ground taken by the writ petitioner is that the payment of interest could not be reduced from 10% to 5%. Even on this aspect, the Hon'ble Supreme Court in Y.K. Sigla v. Punjab National Bank and others (Civil Appeal No. 9087 of 2012, decided on 14.12.2012) and D.D. Tiwari v. Uttar Haryana Bizli Vitran Nig am Ltd. (Civil Appeal No. 7113 of 2014) and Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota v. Shukla & Brothers , 7 has consistently held that the rate of interest cannot be reduced once it was granted by the prevalent rules of banking. Hence, in the present case, the petitioners (employees) are entitled for interest at the rate of 7%.

31. The judgment, referred to by the counsel for the Canara Bank, which is Beed District Central Cooperative Bank Ltd. v. State of Maharashtra and others , 8 will not be applicable to the facts of the present case as in that case the Supreme Court was not examining the definitions of special allowances, emoluments, pay and salary of the Bank employees. It was examining the option exercised by an employee of the Bank. The Hon'ble Supreme Court was examining the provisions of the Banking Regulations, which had been opted by the employee at the time of joining the Co-operative Bank. It was held therein that the employees, thereafter, could not claim the benefit of calculation of gratuity under the Payment of Gratuity Act, 1972.



32. The Canara Bank, in the present case, is bound by their Regulations for the purpose of calculation of gratuity and that is not being disputed by the Bank employees.

33. The judgment of the Calcutta High Court in Paschim Banga Gramin Bank and others v. Chinmay Majumdar & others , F.M.A. 657 of 2020, decided on 04.02.2021) cannot be made applicable in the facts of the present case as the Calcutta High Court in that case was dealing with the definition of **'pay'** as per the Regulations with respect to officers and employees in the matter of calculation of gratuity and it was held that once the employee had accepted the entitlement under the Regulations, in that case, they could not claim the benefit of definition of 'pay' which was applicable to officers. Even this judgment is not applicable as in this judgment, the Calcutta High Court was not examining the definition of 'pay' for the purpose of calculation of gratuity and this aspect has been considered in detail in the judgment of the Hon'ble Supreme Court in The Regional Provident Fund Commissioner (II) W.B. v. Vivekanand Vidhya Mandir and others (Civil Appeal No. 6221 of 2011, decided on 28.02.2019), in the judgment of the Madhya Pradesh High Court in Madhyanchal Gramin Bank and others v. All India Gramin Bank Pensioners Organisation Unit (WA Nos. 1318 of 2018, 1316 of 2018 & 1317 of 2018, decided on 26.02.2019), the SLP against which was dismissed by the Supreme Court, and in the judgment of the Kerala High Court in Muralee Mohanan K.T. and others v. Corporation Bank and others (WP (C) No. 32386 of 2015 (W), decided on 15.10.2019).

34. All the writ petitions, filed by the employees, are being allowed, and a direction is given to the Bank to recalculate their gratuity after calculating the pay, including Dearness Allowance and emoluments, along with 7% interest. All the writ petitions filed by the Canara Bank are dismissed. ■

***Petitions Allowed.***

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