THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

Writ Petition No.14344/2009

Jai Kumar Bajpai (Dead) through Lrs. Smt. Chandrakanta Bajpai, W/o. Late Jai Kumar Bajpai, Aged about 65 years, Occupation Housewife, R/o.1342/38, Shahi Naka Road, Garha Talab, Garha, Jabalpur (M.P.)

..... Petitioner

Versus

1. Chairman-cum-Managing Director, Madhya Pradesh State Electrical Board, Rampur, Jabalpur.

2. Superintending Engineer (City Circle) (Disciplinary Authority), M.P. Poorva Kshyetra Vidyut Vitran Co. Ltd., MPSEB, Mission Compound, Jabalpur.

3. Chief Engineer (Personnel), Jabalpur Zone & Appellate Authority, M.P. Poorva Kshyetra Vidyut Vitran Co. Ltd., MPSEB, Rampur, Jabalpur.

..... Respondents

Date of Order	**27.04.2022**
Bench Constituted	Single Bench
Order delivered by	Hon'ble Mr. Justice Sanjay Dwivedi,
Whether approved for reporting	**Yes**
Name of counsel for parties	For petitioner: Mr. D.K. Dixit, Advocate. For Respondents: Ms. Ritika Chouhan, Advocate

Law laid down:	1. Non-consideration of defence of delinquent by the Disciplinary Authority as well as the Appellate Authority, would amount to violation of principles of natural justice. 2. Based on available material in a petition under Article 226, when it emerges that the employee had unblemished service career, however, at the verge of retirement, has been inflicted punishment of dismissal on the allegation of misappropriation of meager amount, the conscience of the Court is shaken. 3. It is indispensable component of decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies to record reasons so as to ascertain that the relevant factors have been objectively considered and it is important for sustaining the litigants' faith in the justice delivery system. The reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process as it amounts to violation of principles of natural justice.
Significant paras	31, 33 & 34.

Reserved on : 24.02.2022
Delivered on : 27.04.2022

(O R D E R)

By the instant petition filed under Article 226

of the Constitution of India, the petitioner is challenging the order dated 05.10.2006 (Annexure-P/4) passed by the respondent no.2 in a regular departmental enquiry initiated against him as after receiving the enquiry report submitted by the Enquiry Officer, the Disciplinary Authority (respondent no.2) inflicted punishment of dismissal of service vide order dated 10.11.2008 (Annexure-P/18). Thereafter, an appeal was preferred by the petitioner against the order passed by the Disciplinary Authority but the Appellate Authority has also dismissed the appeal vide order dated 06.10.2009 (Annexure-P/22), affirming the finding given by the Disciplinary authority. Both the orders are under challenge in this petition on various grounds and the relief for quashing these orders has been claimed.

2. The respondents have filed its reply and denied the submissions made by learned counsel for the petitioner and stated that petitioner has been inflicted the punishment of dismissal from service as charges levelled against him have been found proved. It is also stated in the reply that considering the charges, i.e. irregularity and financial embezzlement, punishment of dismissal from service is proper and adequate. As per the respondents, in the matter of disciplinary proceedings, the scope of interference or judicial review in the order of Disciplinary authority is very limited. The proceedings of departmental

enquiry can be interfered with on the ground of violation of principles of natural justice in a decision making process or the punishment is interfered with, when it is not in consonance with the charges levelled. Here, in this case, according to the respondents, there is no violation of principles of natural justice in the decision making process and punishment of dismissal is also an adequate punishment as charges of irregularity and financial embezzlement have been proved and, thus, the petition deserves to be dismissed.

3. Before deciding the controversy involved in the matter, the necessary facts in brief are required to be mentioned which are as under:-

4. That, the petitioner was an employee of the respondent/Department, initially appointed on the post of Security Guard. Later on, he was promoted as a Lower Division Clerk and was posted in the office of Executive Engineer, City Division (West), M.P. Poorva Kshyetra Vidyut Vitran Co. Ltd., Mission Compound, Jabalpur, where he was directed to work as Electric Bill Collection Clerk through online computer.

5. That, on 29.08.2006 while working as Electric Bill Collection Clerk, an electric bill of one Shri Naveen Kumar Malhotra to the tune of Rs. 1397/- was received for collection. The petitioner received the said amount and

issued receipt of the same but the computer refused to accept it. When the petitioner failed to enter the same in the computer, he enquired from his colleagues and then he came to know that the said bill is negative (minus one), therefore, the computer is not accepting the same. He was advised that it is better to return the said amount to the customer concerned and take the receipt back. The petitioner was not computer friendly, therefore, he could not handle the computer and make proper entry of such minus bill.

6. An application was submitted by Shri Naveen Kumar Malhotra on 30.08.2006 (Annexure-P/1) informing the respondent/Department that he had wrongly deposited an amount of Rs.1397/-, though the bill was negative (minus one) and requested the respondent/Department to adjust the said amount in his future bills.

7. On 04.09.2006, an order of suspension was issued to the petitioner by the respondent/authority after coming to know about the said irregularity that he took an amount of Rs.1397/- and did not deposit the same in the account of the respondent/Department and kept the same with him or was utilized by him.

8. The petitioner, thereafter on 06.09.2006 made an application for depositing the said amount mentioning therein that accepting the minus bill was his mistake and

instead of depositing the said amount in the account of the said customer or to the account of the respondent/Department, he kept it with him and, therefore, he be permitted to deposit the amount.

9. A charge-sheet was issued to the petitioner levelling two charges against him, first of irregularity and second of financial embezzlement with the customer amount and as such, defamed the image of the Department, making him liable for initiation of disciplinary action and as such, departmental enquiry was proposed.

10. The petitioner submitted reply to the charge-sheet and denied the charges levelled against him and stated that he had already deposited the amount.

11. The respondents instead of accepting the explanation given by the petitioner decided to initiate departmental enquiry and appointed Enquiry Officer and the Presenting Officer vide order dated 22.11.2006 although on an objection raised by the petitioner, the Presenting Officer was later on changed and the departmental enquiry was initiated giving full opportunity of hearing to the petitioner to participate in the same and put his defence. Thereafter, the enquiry report was prepared by the Enquiry Officer and it was submitted on 11.09.2008 approving both the charges levelled against the

petitioner and finding him guilty. The report was also supplied to the petitioner.

12. The petitioner submitted reply to the enquiry report but the Disciplinary authority finally passed an order on 10.11.2008 relying upon the findings given by the Enquiry Officer holding the petitioner guilty and inflicted punishment of dismissal from service.

13. An appeal was preferred against the order of the Disciplinary authority and the appellate Authority vide its order dated 06.10.2009 dismissed the appeal, approving the order of the Disciplinary authority. Hence, this petition.

14. The petitioner in this petition has raised the ground that he has neither committed any embezzlement nor caused any loss to the Department because the amount was deposited by the customer against the minus bill and that amount would ultimately go in the account of the customer who has not made any complaint against the petitioner. However, non-deposit of the said amount in the account of the customer was a technical irregularity committed by the petitioner as he was not familiar with the process in which the said minus bill is handled as despite several attempts, the computer did not accept the said amount.

15. Learned counsel for the petitioner has

contended that the petitioner has finally deposited the amount with the respondent/Department as he made attempts to refund the said amount to the customer but despite that, he could not contact him as the customer was not residing in the address available in the record of the respondent/Department. It is also contended that the respondent/Department has accepted this fact that the petitioner was not performing the duties of bill collecting clerk and was not sitting on the respective computer table from where this function was being performed and had also not undergone the training and, therefore, he was not familiar with the process in which the entry used to be made in the computer, which clearly indicates that if any irregularity alleged to have been committed, that was *bona fide* on the part of the petitioner and the same was not deliberate and intentional and nothing has been proved by the respondent/Department that the petitioner had any intention to embezzle the amount so as to put the Department in loss. He further submits that the image of the Department did not get any dent or not damaged among the people because the customer who deposited the said amount has never raised voice against such irregularity but, on the contrary, he has informed the superiors of the petitioner that petitioner has not committed any mistake and, therefore, he should not be punished.

16. An affidavit of the customer has also been produced by the petitioner during the course of enquiry in which the customer has very categorically stated that petitioner was frequently visiting his house for refunding the said amount of negative (minus) bill; but, in his absence, it could not be returned to him. He has also stated that petitioner was not guilty and was trying to refund the said amount but due to his non-availability, it could not be refunded however later on, it was deposited in the account of the respondent-Department. Thus, according to the petitioner, it is clear that the charges levelled against him has no relevance. In fact, the petitioner cannot be punished with the punishment of dismissal from service, that too, after performing unblemished service for 28 years. He submits that only 20 days, before his retirement, an order of dismissal was passed which was shocking and the said punishment may conscience to the mind of any normal person or of this Court.

17. Learned counsel for the petitioner has also contended that the Appellate Authority has not applied its mind but reiterated the same thing which was opined by the Disciplinary Authority and in other words, the Appellate Authority has failed to discharge its obligation as has been cast upon him under Rule 27 of the Madhya Pradesh Civil Services (CCA) Rules, 1966 (for short, Rules, 1966). Accordingly, the petitioner is claiming that

the orders of the Disciplinary Authority and the Appellate Authority are contrary to law and are liable to be set aside because charges of irregularity and embezzlement are not made out against the petitioner and in fact, the same has not been proved by the respondent/Department.

18. The respondents have filed their reply and denied the stand taken by the petitioner saying that petitioner could have deposited the said amount in the account of the Department immediately after making an attempt to deposit the same against the minus bill of the customer but by not doing so, clearly indicates that intention of the petitioner was not pious and he wanted to utilize the said amount for his personal use. It is also stated by the respondents that the application for depositing the said amount was made by the petitioner after almost one month of the incident and that too, after placing him under suspension which clearly indicates that by depositing the amount, the petitioner was trying to show that he did not commit any mistake and has not embezzled any amount. As stated by the respondents, the charges levelled against the petitioner have been found proved by the Enquiry Officer and the same was also approved by the Disciplinary Authority and thereafter by the Appellate Authority and looking to the nature of charges, except dismissal from service, no other punishment was available to the petitioner and it has

rightly been passed against him.

19. Ms. Ritika Chouhan, learned counsel for the respondents submits that in a matter of disciplinary proceeding, scope of interference by this Court in a petition under Article 226 of the Constitution of India is very limited. The judicial review is permissible only under the circumstance when it is established that during the course of decision making process, principle of natural justice has not been followed or punishment inflicted upon the delinquent does not commensurate with the charges levelled. She further submits that there is no perversity in the finding given by the Disciplinary Authority and as such, the order of dismissal is proper and no interference is called for and the petition, therefore, deserves to be dismissed.

20. Learned counsel for the petitioner has placed reliance upon a decision passed by this Court in **W.P. No.23569/2017 (Smt. Jyoti Dubey Vs. State of M.P. and Others)** wherein this Court after relying upon several decisions of the Supreme Court as well of the High Court, has set aside the order of punishment passed by the Disciplinary authority and approved by the Appellate Authority on the ground that the charges of corruption levelled against the delinquent employee has not been found proved in proper manner but the authority went with

presumption that not depositing the amount in the account of the respondents indicates the intention of the petitioner/employee to embezzle the amount. In the said case, this Court has also observed that though the scope of judicial review in a matter of disciplinary proceeding is very limited but if the punishment inflicted upon the delinquent appears to be arbitrary and based upon the evidence which is not sufficient to constitute the charges levelled, the same can be set aside and judicial review in such a stage is permissible.

21. Learned counsel for the petitioner has also placed reliance on a decision passed by this Court in **W.P. No.18904/2012 (Sanjay Singh Vs. The Director General of Police Headquarters Jail Road, Jabalpur)** in which also, the Court has observed that if punishment shocks the conscience of the court or it is wholly impermissible, interference can be made and punishment inflicted by the authority has been set aside because the Court was of the opinion that negligence without any ulterior motive cannot result into imposition of punishment of dismissal from service.

22. Shri D.K. Dixit, learned counsel for the petitioner has also placed reliance upon an order passed by the Supreme Court reported in **AIR 2022 SC 667- Brijesh Chandra Dwivedi (Dead) thr. Lrs. Vs. Sanya Sahayak**

and Others wherein the Supreme Court after considering the fact that in the departmental proceeding, the punishment of dismissal inflicted against an employee who has completed 25 years of long service as a driver and met with a minor accident with a jeep, that too under the influence of liquor has finally observed that the punishment was too harsh and could be converted into compulsory retirement of the employee. The counsel for the petitioner has submitted that in the present case also, the petitioner was at the verge of retirement and the punishment of dismissal inflicted upon him is too harsh.

23. Learned counsel for the respondents has placed reliance upon the decision reported in **(2005) 3 SCC 254 (Divisional Controller, KSRTC (NWKRTC) vs. A.T. Mane, (2006) 7 SCC 212 (State Bank of India and Others Vs. Ramesh Dinkar Punde), (2007) 7SCC 236 (Bank of India and Others Vs. T. Jogram), (2009) 8 SCC 310 (State of Uttar Pradesh and another Vs. Man Mohan Nath Sinha and another), 2006 SCC Online AP 445 (T. Premachandra Rao Vs. B. Pramod and Others)**.

24. After hearing the rival submissions of learned counsel for the parties and perusal of the record available, I am of the opinion that it is a trite law that scope of interference in the disciplinary proceedings by this Court in a petition under Article 226 of the Constitution of India

is very limited. Interference can be made if decision making process is defective or contrary to the principles of natural justice which has caused serious prejudice to the delinquent employee. The scope of interference on the ultimate punishment is also very limited. If the punishment shocks the conscience of the court or it is wholly impermissible, interference can be made. Here in this case, from the charges levelled against the petitioner as contained in the charge-sheet (Annexure-P/4), it is clear that two charges have been levelled. As per the first charge, the petitioner is said to be responsible for committing the irregularity and embezzlement, putting the respondent/Department in loss because of the bill deposited by one of the customer namely Naveen Kumar Malhotra, who under misconception deposited an amount of Rs.1397/- against his negative (minus) bill and receipt of the same was also given by the petitioner to him but the said amount was neither deposited in the account of the customer nor in the account of the respondent/Department and as such, that amount was with the petitioner only unauthorizedly. As per the second charge, committing such an irregularity by not depositing the amount received from the customer against his minus bill and keeping the same with him knowingly and unauthorizedly is nothing but an attempt to damage the image of the respondent/ Department and to exploit the customer.

25. As per undisputed facts, the petitioner was not performing the duties regularly as a bill collecting clerk for which he was also not given any training and this fact has been accepted by the Enquiry Officer in his enquiry report and observed that merely because petitioner was not a trained bill collecting clerk, he cannot be absolved from the alleged irregularity. It is also not in dispute that as per the statement of the customer that he was not residing on the address available with the respondent/Department at the relevant point of time and he has been informed by his wife that petitioner was regularly visiting the house to refund the amount of Rs.1397/- which has been wrongly accepted by the petitioner. There is nothing available on record or produced by the respondent/Department during the course of enquiry that the fact with regard to not accepting the amount against the minus bill by the computer, the colleagues have advised the petitioner to refund the said amount to the customer itself. There is no reason as to why the said stand taken by the petitioner was not accepted by the authority when there is no contrary material available on record. The amount which was deposited by the customer, in other words was not the amount of the Department because it was deposited under misconception against the minus bill though in a situation existing in the present case, it could have been deposited by the petitioner in the account of the Department or could

be returned to the customer himself. The petitioner tried to refund the same to the customer as he was not much familiar about the process in which such situation could be handled and as per the advice of his colleagues, he was trying to refund the said amount and repeatedly approaching the customer. The *bona fide* of the petitioner has been doubted by the respondents without there being any contrary evidence. At this stage, the fact cannot be ignored that the amount is very meager and the petitioner has rendered his whole service and was very near to this retirement. At the same time, the customer has not made any complaint against the petitioner and has also not criticized his conduct but asked the Department to adjust the said amount in his future bills and the amount of customer has been deposited by the petitioner at later point of time and the same was also accepted by the Department.

26. The overall circumstances existing and dealt with by the Enquiry Officer and from the enquiry report, it can be seen that the Presenting Officer and the witnesses adduced by the prosecution have admitted that the petitioner has not taken any training of accepting online electric bill and he has not been trained for that purpose and have also accepted that previously the petitioner has not committed any such irregularity and not shown any carelessness. The respective part of the finding of the

enquiry report of the Enquiry Officer is apt to be reproduced hereinabelow:-

> "प्रस्तुतकर्ता अभिकारी द्वारा प्रस्तुत गवाहों ने अपने बयानों में यह उल्लेख किया है कि श्री जे.के.बाजपेयी, अति. कार्यालय सहायक ग्रेड–दो (नि) को ऑन लाइन कम्प्यूटर पर राजस्व संग्रहण लेने हेतु कोई प्रशिक्षण नहीं दिया गया तथा पूर्व में उनके द्वारा कभी भी बिल की राशि जमा करने में अनियमितता एवं लापरवाही नहीं की गयी। यह सही है कि श्री जे.के. बाजपेयी, अति. कार्यालय सहायक श्रेणी–दो (नि) को ऑन लाइन कम्प्यूटर पर राजस्व संग्रहण लेने हेतु कोई प्रशिक्षण प्राप्त नहीं था परन्तु दिनांक 20.07.2006 को जारी पी–8 से स्पष्ट है कि श्री जे.के. बाजपेयी, अति. कार्यालय सहायक श्रेणी–दो (नि) दिनांक 20.07.2006 से ही मदनमहल काउंटर पर ऑन लाइन राजस्व संग्रहण का कार्य कर रहे थे और उनके द्वारा आरोप क्रमांक–एक में उल्लेखित अनियमितता दिनांक 29.08.2008 को की गयी है। अतः प्रशिक्षण नहीं होने से इस प्रकार की गल्तियां हो, यह बचाव सही नहीं है।"

27. Likewise, in the statement of the complainant/customer which has been filed by him on an affidavit, he has also admitted as such:-

> "3. That, in the month of August, 2006, a negative bill of Rs. 1397/- was received to my neighbour. As usual, the same was paid in the office of Madan Mahal cash counter of MPSEB and its receipt was sent to me at Chachai by courier for information; which was received to me on next day. But on noticing that the Bill was negative & ought not have been paid, I wrote a letter on 30.08.2006 to adjust the same in my future bills, without complaining against anybody which was received to the office of MPSEB on 02.09.06. It was assured that the same would be materialized in future.
>
> 4. That, thereafter, my wife Smt. Renu Malhotra visited Jabalpur to clear off the amount & to look after my residential house, then she was informed that one J.K. Bajpai

was making frequent visits to my house from 29.08.06 to 02.09.06 continuously to refund the amount of negative bill to the tune of Rs. 1397/- which was wrongly deposited. Thereafter, he made a phone call to me which was attended by my wife Smt. Renu Malhotra. She visited Jabalpur on 9.9.06 & received the whole information but paid no attention to it & returned to Chachai.

5. That, thereafter I visited Jabalpur & met to the then Superintending Engineer, M.P.S.E.B. in connection with some personal work, then only I came to know that one Mr. J.K. Bajpai has been suspended from service and a departmental enquiry has been initiated against him on the basis of my alleged complaint letter dated 30.08.06, which was in fact never made. I became stunned to receive such information.

6. That, I once again make it clear that the mistake was committed in depositing the amount of negative bill of Rs. 1,397/- by my neighbour Ater Singh Rana & by nobody else. There was no mistake or any malafide intention of J.K. Bajpai in receiving the same, as on detecting the mistake, he immediately visited my house to refund the amount but due to my non availability, it could not be refunded to me. Later on, the same was deposited in MPSEB Office as per due procedure.

7. That, no complaint of any nature has ever been lodged by me against Mr. J.K. Bajpai, employee of MPSEB, Jabalpur nor I intended or told anybody to take any action against J.K. Bajpai."

28. Not only this, from perusal of the order of the Disciplinary Authority dated 10.11.2008 (Annexure P/18), it is clear that the Disciplinary Authority has not applied

its mind for considering the stand taken by the delinquent employee and has reproduced the observation of the Enquiry Officer and relied upon the same, inflicted the punishment of dismissal from service. The Appellate Authority further did not meet out any of the grounds raised by the petitioner and approved the order of the Disciplinary Authority. It can be otherwise considered that defence of the petitioner, in fact has not taken note of by any of the authority. In view of the existing situation as has been discussed hereinabove, in my opinion, the charges levelled against the petitioner do not fit in the situation and in fact, it is evident that the authority acted arbitrarily and imposed punishment of dismissal from service. The Supreme Court in the case of **Rajendra Yadav Vs. State of M.P. and Others (2013) 3 SCC-73** and **Lucknow Kshetriya Gramin Bank and another Vs. Rajendra Singh (2013) 12 SCC 372** has considered and observed that the Disciplinary Authority has to apply its mind in the light of the principle laid down in the case of **Dev Singh Vs. Punjab Tourism Development Corporation Ltd. and another (2003) 8 SCC 9** that negligence without any ulterior motive cannot result into imposition of punishment of dismissal from service. Here in this case, though some irregularity has been committed by the petitioner but with the material evidence produced during the course of enquiry, as has been discussed

hereinabove, it is clear that there was no ulterior motive of the petitioner and there was no intention that he was intending to embezzle the amount of the customer. The Disciplinary Authority and the Appellate Authority both have not discussed this aspect and without applying its mind and answered as to why that stand of the petitioner is not sufficient to hold him innocent, proceeded with an assumption that the said irregularity was committed by the petitioner for financial embezzlement. But the record and the material produced during the course of enquiry was otherwise.

29. The Division Bench of this Court in case of **Ganesh Kumar Sharma Vs. State of M.P.- 2013(2) MPLJ-402** has held that dismissal is a punishment of last resort and should ordinarily not to be inflicted until all other means of corrections have failed. This principle was further followed in the case of **Purushottam Ivne Vs. State of M.P. -2014(3) MPLJ-704**.

30. I do not dispute that the departmental enquiry does not mean the strict rule of evidence as is required to prove the criminal charge against the accused, but the punishment in a disciplinary proceeding is based upon preponderance of probabilities. The Supreme Court says that a serious charge of corruption requires to be proved to the hilt as it being civil and criminal consequences upon

the employee concerned. The charge of corruption requires to be proved beyond the shadow of doubt and to the hilt and it cannot be proved on mere probabilities. In the case reported in **(2009) 12 SCC 78 [Union of India and others Vs. Gyan Chand Chattar]**, the Supreme Court has observed as under:-

> "21. Such a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the employee concerned. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge of quasi-criminal nature was required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities."

Further in the case reported in **(2006) 5 SCC 88 [M.V. Bijlani Vs. Union of India and others]**, the Supreme Court while dealing with the power of judicial review of the High Court and has observed as under:-

> "25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a

> criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasijudicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts….."

In view of aforesaid, I have no hesitation to say that the minimum requirement for the Authorities in a matter of disciplinary proceeding was to consider the defence taken by the delinquent and meet out the same atleast by giving reasons why the said defence is not acceptable.

31. In the existing circumstances, the Disciplinary Authority and the Appellate Authority have to take into account that the defence taken by the petitioner/employee was not sufficient but nobody has discussed this aspect as to what defence has been taken by the employee. Therefore, in my opinion, merely because opportunity has been granted to the petitioner and he was allowed to contest in the departmental enquiry but not considering his defence, would amount to violation of principles of natural justice.

32. The respondents basically relied upon the

decisions dealing with particular legal position that the scope of interference in a matter of departmental enquiry is very limited but at the same time, the Court cannot shut its eyes if the Disciplinary Authority and the Appellate Authority have failed to discharge their obligation and acted arbitrarily showing total perversity in their attitude while passing the order in a disciplinary proceeding. If the Appellate Authority does not meet out the grounds raised in appeal and without referring those grounds, rejected the appeal putting seal of confirmation upon the order of the Disciplinary Authority, then it is clear that the said authority has failed in its duty and has not discharged its obligation in a proper manner. Rule 27 of the Rules, 1966 prescribed as to in what manner the appeal has to be decided and further indicates the obligation cast upon the Appellate Authority. But, here in this case, if the order of the Appellate Authority is seen, then it would clearly indicate that the Appellate Authority nowhere has discharged its obligation nor decided the appeal in the manner in which it has to be decided and the requirement as has been prescribed under Rule 27 has not been fulfilled. It is apt to mention Rule 27 of the Rules.1966 which reads as under:-

> "**27. Consideration of appeal.** - [(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the

provisions of Rule 9 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.]

[(2)] In the case of an appeal against an order imposing any of the penalties specified in Rule 10 or enhancing any penalty imposed under the said rule, the appellate authority shall consider :-

(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the records; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe, and pass orders-

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case:

Provided that-

> (i) the Commission shall be consulted in all cases where such consultation is necessary;
> [(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 10 and an inquiry under Rule 14 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 14 and thereafter on consideration of the proceedings of such inquiry, make such orders as it may deem fit.
> (iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 10 and an inquiry under Rule 14 has already been held in the case the appellate authority shall, after giving the appellant a reasonable opportunity of making representation against the penalty proposed, make such order as it may deem fit].
> (iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 16, of making a representation against such enhanced penalty."

33. In view of the above discussion and the stand taken by the respondents confining their arguments to the

extent and scope of interference in a matter of departmental enquiry, I am of the opinion that the Court cannot ignore this fact that the delinquent has produced evidence in his favour but the authority has failed to consider it and, therefore, the Court has no option but to consider the same to draw a conclusion as to whether the punishment inflicted upon the delinquent can be allowed to be sustained or not. Looking to the facts and circumstances of the case, the order of dismissal from service, in my opinion is not sustainable and, therefore, the same is set aside. The order of the Appellate Authority is also accordingly set aside. Since the petitioner was at the verge of retirement and as per the discussion made hereinabove, the authorities have failed to discharge their obligation properly and not considered the defence taken by the petitioner and as such, the decision making process amounts to violation of principles of natural justice. Since the petitioner had retired during the pendency of this petition, it is not proper to remit the matter to the Disciplinary Authority to pass an appropriate order after considering the defence taken by the petitioner.

34. The Supreme Court in case of **Kranti Associates Private Limited and another Vs. Masood Ahmed Khan and Others reported in (2010) 9 SCC 496** has considered the obligation cast upon the Disciplinary Authority as well as the Appellate Authority while dealing

with the matter of disciplinary proceeding and also observed that recording reasons by the Authority in exercise of their power is a material aspect and is requirement of law. The Supreme Court has also laid down the principles for recording the reasons in the following manner:-

> "(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
>
> (b) A quasi-judicial authority must record reasons in support of its conclusions.
>
> (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
>
> (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
>
> (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
>
> (f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
>
> (g) Reasons facilitate the process of judicial review by superior courts.
>
> (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.
>
> (i) Judicial or even quasi-judicial opinions

these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reasons that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

35. Considering the law laid down by the Supreme Court and the order passed by the Disciplinary Authority, it is clear that the Disciplinary Authority has not laid down any specific reason for discarding the stand taken by the

delinquent (petitioner). The manner in which the Disciplinary Authority has concluded its order and applied its mind makes it clear that in fact, no reason has been assigned. The relevant part of the order of Disciplinary Authority is as under:-

> ''जैसा कि श्री बाजपेई द्वारा उक्त फाइडिंग्स के संबंध में दिनांक 1.11.2008 को अभ्यावेदन प्रस्तुत किया गया जो संतोषजनक नहीं पाया गया।
>
> और जैसा कि, उक्त विभागीय जॉच से संबंधित समस्त अभिलेखों, आरोपी कर्मचारी द्वारा प्रस्तुत अभ्यावेदन एवं जॉच अधिकारी द्वारा प्रस्तुत फाइडिंग्स के अवलोकन उपरांत यह पाया गया है कि जॉच अधिकारी द्वारा श्री जय कुमार बाजपेई के विरूद्ध की गई जॉच विधिसंगत है तथा अधोहस्ताक्षरकर्ता उससे पूर्ण सहमत है। विभागीय जॉच में उन्हें बचाव हेतु युक्तियुक्त अवसर प्रदान किया गया है। चुंकि श्री बाजपेयी द्वारा कंपनी के राजस्व का गबन किया गया है जो गंभीर कदाचरण है। अतः इसको दृष्टिगत रखते हुए अधोहस्ताक्षरकर्ता इस निष्कर्ष पर पहुंचा है कि श्री जयकुमार बाजपेई को म.प्र.रा.वि.मं. की सेवाओं से बर्खास्त (डिसमिस) करना प्रकरण में न्यायसंगत होगा।
>
> अतः श्री जय कुमार बाजपेई, अति0कार्या0सहा0श्रेणी–दो (निलं0) को मंडल की सेवाओं से एतद द्वारा तत्काल प्रभाव से बर्खास्त (डिसमिस) किया जाता है।''

Further, if the order of the Appellate Authority and the reason assigned therein is examined then it is also clear that even the Appellate Authority did not care to assign any reason or to meet out the grounds raised in the appeal. The order of the Appellate Authority is nothing but a reproduction of the reasons assigned by the Disciplinary Authority. It is something surprising that when the authority is dealing with a major punishment of dismissal from service of an employee and is not showing their

concern, considering the defence taken by the delinquent. The operative part of the order passed by the Appellate Authority is reproduced hereunder:-

> "जॉच अधिकारी श्री आर.एस. आणेकर, अति. अधीक्षण यंत्री द्वारा श्री जय कुमार बाजपेयी, की विभागीय जॉच से संबंधित जॉच रिपोर्ट (फाइडिंग्स) उनके पत्र क्रमांक 137 दिनांक 29.8.2008 के द्वारा अति. अधीक्षण अभियंता, शहर पश्चिम संभाग, जबलपुर को प्रस्तुत की गई जिसमें उनके विरूद्ध लगाये गये आरोप सिद्ध पाये गये। श्री बाजपेयी द्वारा उक्त फाइडिंग्स के संबंध में दिनांक 1.11.2008 को अभ्यावेदन प्रस्तुत किया गया जो संतोषजनक नहीं पाया गया।
>
> और जैसा कि जॉचकर्ता अधिकारी द्वारा प्रस्तुत जॉच निष्कर्ष में उल्लेखित उक्त टीप को ध्यान में रखते हुए अधीक्षण अभियत्रा (शहर) वृत्त, जबलपुर ने श्री जय कुमार बाजपेयी, अति. कार्यालय सहायक श्रेणी–दो को कम्पनी के राजस्ब का गबन जैसे गेभीर कदाचरण के आधार पर अधीक्षण अभियंता (शहरवृत्त) जबलपुर ने अपने आदेश क्रमांक 927–28 दिनांक 10.11.2008 के तहत म.प्र. राज्य विद्युत मण्डल/कंपनी की सेवाओं से बर्खास्त (डिसमिस) का आदेश जारी किया गया।
>
> और जैसा कि अक्त आदेश के विरूद्ध श्री जय कुमार बाजपेयी, अतिरिक्त कार्यालय सहायक श्रेणी–दो द्वारा की गई अपील पर अधिक्षण यंत्री शहरवृत्त जबलपुर द्वारा भेजे गये अभिमत एवं प्रकरण का सूक्ष्म परीक्षण करने के उपरान्त अधोहस्ताक्षरकर्ता इस अंतिम निष्कर्ष पर पहुचा है कि, श्री जय कुमार बाजपेयी, अतिरिक्त कार्यालय सहायक श्रेणी–दो (बर्खास्त) के द्वारा दण्डादेश के विरूद्ध की गई अपील को निरस्त किया जाना न्यायोचित होगा।
>
> अतः में अधोहस्ताक्षरकर्ता श्री जय कुमार बाजपेयी, अतिरिकत कार्यालय सहायक श्रेणी–दो (बर्खास्त) द्वारा दण्डादेश के विरूद्ध की गई अपील निरस्त करने का आदेश प्रसारित करता हूॅ।"

36. In view of the aforesaid, it is clear that neither the Disciplinary Authority nor the Appellate Authority have discharged their obligation assigning proper reasons or apply their mind to deal with the situation as to why the defence taken by the delinquent is not sufficient to hold

him innocent. Here in this case, the statements of customer namely Naveen Kumar Malhotra and his wife Smt. Renu Malhotra were produced before the authority in which they have very categorically stated that the delinquent was visiting their house continuously to refund the said amount, i.e. Rs. 1397/- but due to non availability of Shri Malhotra, the same could not be handed over to them.

37. Thus, this Court has no hesitation to hold that it is a clear case in which the Disciplinary Authority and the Appellate Authority acted arbitrarily without applying their mind, passed the order of dismissal and not taken note of the defence taken by the employee during course of disciplinary proceeding. It is also not out of question and is settled principle of law that not considering the reply submitted would amount to violation of principles of natural justice. Thus, in a decision making process, violation of principles of natural justice is apparent and, therefore, the order impugned dated 10.11.2008 (Annexure P/18) passed by the Disciplinary Authority as well as the order dated 06.10.2009 (Annexure P/22) passed by the Appellate Authority are not sustainable in the eyes of law and, therefore, are set aside.

38. It is also pertinent to mention here that during the pendency of the petition, the petitioner had died. Therefore, his wife, being the legal heir is entitled to get

all the consequential benefits and retiral dues as if petitioner was in service till the date of his retirement. The same be calculated and paid accordingly to the wife of the deceased petitioner, being his legal heir.

39. The aforesaid exercise be carried out within a period of three months from the date of receipt of copy of this order, otherwise the delay will carry interest @8% over the delayed payment.

40. The petition is accordingly **allowed** without there being any order of back wages.

(SANJAY DWIVEDI)
JUDGE

rao

SATYA SAI RAO
Digitally signed by SATYA SAI RAO
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