

(2004) 04 GUJ CK 0041

In the Gujarat High Court

Case No : Special Civil Application No. 7603 of 1999

Abdulkadar Gulammohmed Mulla

APPELLANT

Vs

Chief Manager and Disciplinary Authority

RESPONDENT

Date of Decision : 01-04-2004

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 8(1), 8(2)

Citation : (2004) 24 GLH 770

Hon'ble Judges : Akshay H. Mehta, J

Bench : Single Bench

Advocate : I.S. Supehia and N.M. Kapadia, for the Appellant; K.M. Patel, for Respondent No. 1-2, for the Respondent

Final Decision : Dismissed

Judgement

Akshay H. Mehta, J.—In this petition the petitioner has challenged the order of dismissal from Bank's service without notice with immediate effect dated 5th December, 1997 passed against him by respondent no. 1 and the order-in-appeal dated 30th April, 1998 passed by respondent no. 2 confirming the order of dismissal.

2. The facts of the case in nutshell can be stated as under :-

2.1. The petitioner joined service of the Dena Bank (hereinafter referred to as "the Bank") as Clerk on 12th May, 1972. At the relevant time he was working as Cashier-cum-Clerk in the Surat Branch of the Bank. In the year 1996 certain acts of misconduct of serious nature came to the notice of the Bank and, therefore, it decided to hold disciplinary inquiry against the petitioner. He was, therefore, served with charge-sheet dated 23rd September, 1996. The charge-sheet contained six charges against him. Briefly stated the charges were - (1) that the petitioner was arrested by the Enforcement Directorate u/S. 35 of the Foreign Exchange Regulation Act, 1973 (hereinafter referred to as "the FERA") for violation of section 8(1) and 8(2) thereof and when he was produced before the

Chief Judicial Magistrate at Surat, he had admitted recovery of foreign currency from his residence on 23rd July, 1987, which was purchased by him illegally for the purpose of selling, (2) that he was detained under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (hereinafter referred to as "COFEPOSA") in the district jail at Surat on 31st December, 1987 and he was released by the Advisory Board on 25th February, 1988, (3) in the adjudication proceedings held against him for violation of section 8(1) and (2), section 14 and section 9(1) of FERA, the Assistant Director of Enforcement had imposed upon him the total amount of penalty of Rs.86,000/- vide order dated 18th May, 1995, (4) that his residential premises were again searched on 25th March, 1995 as follow up action and various currencies were seized from his house and he was again arrested by Officers of Directorate of Revenue Intelligence on 20th May, 1996, but subsequently released on bail of Rs.,50,000/-, (5) his activities were widely published in the newspaper and so also his association with the Bank, which damaged the image of the Bank and further that he violated the laws of the land and lastly (6) that the aforesaid acts constituted gross misconduct in terms of para. 19.5 (a) and 19.5 (j) of the bipartite settlement dated 19th October, 1966, for which he was liable for appropriate punishment. Para. 19.5 (a) relates to a person engaged in any trade or business outside the scope of duties without written permission of the Bank and/or para. 19.5 (j) doing any act prejudicial to the interest of the Bank. He was called upon to furnish his reply within 7 days from the receipt of the same. Vide order dated 14th October, 1996 respondent no. 1 while exercising power conferred upon him by para. 19.5 (a) of the settlement placed him under suspension from Bank service with immediate effect pending the inquiry. The petitioner made a detailed representation dated 30th November, 1996 against the order of suspension, which according to respondent no. 1, was received by the Bank on 20th December, 1996. The petitioner was thereafter intimated by letter dated 10th January, 1997 by respondent no. 1 that since his explanation in relation to the charges levelled against him was not received within stipulated time, the Bank had appointed one Mr. B.M. Chauhan, the Branch Manager, Bhestan Branch as the Inquiry Officer, but due to the administrative reasons inquiry could not be commenced. His explanation which was received on 12th December, 1996 was not found satisfactory and, therefore, another officer to act as Inquiry Officer, namely Mr. W.P. Parmar in place of Mr. B.M. Chauhan was appointed. Vide said communication the petitioner was also intimated to attend the inquiry proceedings before him and he was also intimated that he could avail the service of the representative of the registered union of the workers of the Bank to defend him at the inquiry.

2.2. The petitioner was represented by one Mr. S.K. Trivedi, a Cashier-cum-Clerk working at Rampura Branch of the Bank. The initial introductory sitting took place on 13th February, 1997 and thereafter the regular hearing commenced. At the end of the recording of the evidence and upon conclusion of the arguments, the inquiry was declared concluded. Both the Presenting Officer and the

representative of the petitioner were given opportunity to submit written submissions. The petitioner submitted on 16th May, 1997 what was termed as reply to the charge-sheet wherein he had made certain submissions challenging the charge-sheet and the inquiry based on it and also thereby demanded certain documents and requested the Inquiry Officer to afford to him an opportunity of cross-examining certain persons with whom it was alleged that he had done illegal transactions with regard to foreign exchange and the persons who had acted as Panchas during the seizure Panchnama and the officer who recorded the statements of Jayesh Shah and Suresh Ahuja i.e. the persons with whom he had such dealings. Again on the same day he addressed another communication to the Inquiry Officer raising preliminary objection in respect of the said charge-sheet. Subsequently the Inquiry Officer recorded his findings on the basis of the material placed before it and forwarded report dated 10th September, 1997 to respondent no. 1. The Inquiry Officer had found that all the charges levelled against the petitioner were duly proved. Alongwith the report all the relevant record was also forwarded by the Inquiry Officer to respondent no. 1.

2.3. The petitioner vide letter dated 13th September, 1997 was called upon by respondent no. 1 to make a representation against the findings recorded by the Inquiry officer in respect of the aforesaid charges. He submitted a detailed representation dated 6th October, 1997 challenging the findings of the Inquiry Officer on factual as well as procedural grounds. On receipt of the material from the Inquiry Officer and also the representation submitted by the petitioner and after granting personal hearing to the petitioner on 5th December, 1997, vide order of the same date, respondent no. 1 imposed upon the petitioner the punishment of dismissal from Bank's service without notice with immediate effect. Since the main challenge of the petitioner to this order is on the ground of it being non-speaking order, it is required to be reproduced here in toto :-

"Ref: No. SRO/HRD/4678/1997 Dece. 5, 1997 M E M O R A N D U M

(1) Shri A.G. Mulla, Cashier-cum-clerk, SG Surat Branch was suspended vide Suspension Order No. SRO/HRD/4726/96 dated 14/10/1996. Subsequently, he was issued chargesheet No. SRO/HRD/4643/96 dated 23/09/1996. It was alleged against him that he was arrested by the enforcement Directorate u/s 35 of FERA Act, 1973 on 24/07/1987 for contravention of Section 8(1) and Section 8(2) of FERA 1973. It was also alleged against him that after finalisation of investigation of the case, he was found guilty for contravention of Section 9(1) and 8(2) Section 14, Section 9(1) of FERA Act, 1973 and on adjudication proceedings held against him by the Assistant Director of Enforcement imposed a total amount of penalty of Rs.86,000=00 vide order dated 18/05/1995.

(2) Following charges of gross misconduct in terms of para 19.5 (d) 19.5. (j) of bipartite settlement dated 19.10.1986 as amended to :-

19.5. (d) Engaging in any trade or business outside the scope duties without written permission of Bank and/or

19.5. (j) Doing any act prejudicial to the interest of the Bank.

(3) Shri W.P. Parmar, Manager was appointed as Inquiry Officer vide Memo No. SRO/HRD/3255/97 dated 9/1/97. Shri H.J. Bhatt was appointed Presenting Officer vide Memo No. SRO/HRD/4920/96 dated 3/12/96. Inquiry was started in 14/2/97 and completed on 16/05/97. After taking into account written argument of Presenting Officer and Defence Representative, Inquiry Officer submitted his findings on 10/09/1997. It's report sent to Shri A.G. Mulla on 13/08/1997 for his submission if any upto 26/09/1997. His submission to inquiry officer report received on 10/10/1997. He was called for personal hearing on 5.12.1997.

I have carefully gone through all the inquiry proceedings , Management Exhibits and Defence Exhibits, arguments of Presenting Officer and Defence Representative and Inquiry Officers" report and his submission to IO's report, I find that charges levelled against Shri Mulla proved.

Taking into account gravity of allegations and charges levelled against Shri Mulla, which are proved, I in exercise of powers conferred on me pass following order imposing punishment of :-

O R D E R

"DISMISSAL FROM THE BANK'S SERVICE WITHOUT NOTICE WITH IMMEDIATE EFFECT."

sd/- CHIEF MANAGER AND DISCIPLINARY AUTHORITY

To,

Shri A. G. Mulla, 5/1883, Hathupura, Parsiwad Saiyedpura, Surat."

2.4. The petitioner preferred appeal against the order of penalty dated 5th December, 1997 under para. 19.14 of the settlement on 19th January, 1998. Though in the memorandum of appeal several grounds in detail have been taken by the petitioner to challenge the impugned order, it appears that no challenge has been based on the ground that the impugned order is not a speaking order.

2.5. The Appellate Authority i.e. respondent no. 2 by its detailed order dated 30th April, 1998 drew the conclusions that the inquiry was held in accordance with the prescribed procedure; the findings given by the Inquiry officer holding that the charges levelled against the petitioner were proved were just and proper; that the acts of misconduct were of serious nature and no leniency could be shown to the petitioner. The respondent no. 2 also found that the punishment imposed upon the petitioner was justified and commensurate with the gravity of the proved misconduct. He, therefore, dismissed the appeal.

2.6. Now it is these orders of punishment and dismissal of the appeal are challenged by the petitioner in this petition.

3. Mr. I.S. Suphia, learned advocate appearing for the petitioner has submitted that the order of dismissal from the service passed by respondent no. 1 is a non-

speaking order in as much as respondent no. 1 has not given any findings in respect of the contentions raised by the petitioner against the findings of the Inquiry officer and that he has not recorded his reasons for imposing the punishment of dismissal from the service. Such order is not tenable in law and it is required to be quashed and set aside on this ground alone. He has further submitted that since respondent no. 1 while passing the impugned order of punishment has neither assigned reasons nor recorded his findings, that has deprived the petitioner of the opportunity to make effective appeal against it before respondent no. 2 and that would amount to violation of principles of natural justice. According to Mr. Supehia, when the petitioner had challenged the inquiry on the grounds of non-compliance of the procedure as well as for not giving adequate opportunity to defend his interest by not calling upon the Bank to furnish necessary documents demanded by the petitioner and to cross-examine the persons named in his application, his valuable right to adequately defend himself was frustrated. He has further submitted that the inquiry was not at all valid because it was in respect of stale instance and even for the instances wherein the petitioner was released on bail and/or his order of detention was revoked by the Advisory Board. He has further submitted that in respect of the incident where penalty of Rs. 85,000/- was imposed upon the petitioner, the appeal preferred by him is pending before the Appellate Authority and the Inquiry Officer had taken the said charge into account prematurely. Lastly he has submitted that the impugned order be quashed and the Bank be directed to reinstate the petitioner.

3.1. As against that, Mr. K.M. Patel, learned advocate appearing for the respondents had submitted that merely because no findings have been given by the respondent no. 1 on the submissions made in the representation by the petitioner, it cannot be said that the order of punishment was bad in law. He has further submitted that the said order makes it very clear what material has been taken into consideration by respondent no. 1 before passing the impugned order. Not only that but the petitioner has also been granted a personal hearing before the punishment was imposed upon him. In such event there was no violation of any principles of natural justice. He has further submitted that unless a serious prejudice is caused to the petitioner on account of respondent not giving its findings, it cannot be interfered with. According to him, neither in the memorandum of appeal nor in the petition any complaint of such nature has been made. He has further submitted that when the Disciplinary Authority is in the total agreement with the findings given by the Inquiry Officer, there is no necessity for him to give his own findings on the strength of the material placed before it. He has also submitted that demand for the documents and the cross-examination of the persons named above has been made by the petitioner after hearing of the inquiry was concluded and it was at a stage when he was only called upon to furnish his written submissions. According to him, neither the said documents were with the Bank nor the said persons were under the control of the Bank. If the petitioner so desired, he himself could obtain copies of the said

documents since they were public documents. He has also submitted that during the course of inquiry, except seeking adjournments the petitioner has not done anything and, therefore, at a belated stage also his request could not have been granted. According to Mr. Patel, even if respondent no. 1 has not recorded its findings, the same contentions have been raised in appeal by the petitioner and that have been exhaustively dealt with by the Appellate Authority i.e. respondent no. 2 and, therefore, also there is no prejudice caused to the petitioner. Lastly he has submitted that the petitioner had indulged into serious acts of misconduct, which tarnished the image of the Bank and the punishment that was imposed upon him was just and proper requiring no interference by this Court.

3.2. Both the learned advocates have placed reliance on the decisions of this Court as well as of the Apex Court in support of their submissions and they have also placed reliance on the Regulations, namely Dena Bank Officer Employees (Discipline and Appeal) Regulations, 1976 (hereinafter referred to as "the Regulations").

4. Having carefully gone through the record of petition and also having carefully considered the submissions of both the learned advocates, it is clear that there is no dispute that the petitioner at the relevant time worked as Cashier-cum-Clerk with the Bank at its Surat Branch, that charges stated above were levelled against him for which the inquiry was held, that he was placed under suspension during the pendency of the said inquiry, that the inquiry was set up by respondent no. 1 under the provisions of the Regulations and due intimation thereof was given. The petitioner was also given adequate opportunity of submitting his written defence against the charges that were levelled against him. Further it also appears that in the first instance the Inquiry Officer came to be appointed because the reply of the petitioner to the charge-sheet was not received within the stipulated time, but due to some administrative reasons inquiry could not commence. In the meanwhile the petitioner's explanation/representation was received which was taken into consideration, but having found it not satisfactory, another Inquiry Officer was appointed, who commenced the inquiry. It also clearly appears that the petitioner well in advance was intimated that if he so desired he could avail the services of the representative of the registered union of the employee of the Bank and in fact one Mr. S.K. Trivedi, Cashier-cum-Clerk working in Rampura Branch of the Bank remained present all throughout the inquiry on behalf of the petitioner. It also appears that before the commencement of the inquiry or at the stage of adducing the evidence, no request for supply of documents or examination or cross-examination of any person has been made by the petitioner. At the conclusion of the oral submissions made by the Presenting Officer and the defence representative, the Inquiry Officer declared the inquiry to be concluded and it was at that stage such request was made. He, however, gave further chance of filing written submissions to the Presenting Officer as well as the defence representative. On receiving the same, he in detail, appreciated the material placed before him and gave findings on the strength of such material in connection with each of the

charges contained in the charge-sheet and ultimately he came to the conclusion that the charges levelled against the petitioner were duly proved. The Inquiry Officer, upon conclusion prepared the report and submitted it to respondent no. 1 for taking appropriate action thereon alongwith all the relevant material.

4.1. Regulation 6 of the Regulations deals with procedure for imposing major penalty. The said regulation is at page 21 of the Regulations prescribing different stages of the inquiry, which is required to be held before imposing major punishment on a delinquent. The entire procedure prescribed therein appears to have been scrupulously followed by the Inquiry Officer in this case and no lapse is committed by him. This fact is necessary to be stated here because some attempt has been made by the petitioner to challenge the inquiry on the ground of defective procedure.

5. The question that is now required to be considered is whether respondent no. 1 i.e. the Disciplinary Authority was under any legal obligation to reach to his own conclusions/findings on the representation that had been made by the petitioner against the inquiry report after reappreciating the entire material placed before him and to record them in the order of penalty passed by him. Regulation 7 of the Regulations deals with action on the inquiry report. It is as under :-

"7. Action on the inquiry report :

(1) The Disciplinary Authority, if it is not itself the inquiring authority, may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for fresh or further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of regulation 6 as far as may be.

(2) The Disciplinary Authority shall, if it disagrees with the findings of the inquiring authority on any article or charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in regulation 8, make an order imposing such penalty.

(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned."

Mr. Supehia has specifically referred to clause (3) thereof and has laid stress on his submission by stating that even in accordance with this clause the Disciplinary Authority while taking action on inquiry report was required to record his findings. Though at first glance the submission of Mr. Supehia vis-a-vis this clause appears to be attractive, it cannot be accepted because a conjoint reading

of clause (2) and clause (3) and even clause (4) of regulation 7 makes it clear that it is mandatory for the Disciplinary Authority to record his own findings on any charge only when it disagrees with the findings of the inquiring authority on any article of the charge and not otherwise. There is no Regulation which makes it obligatory upon him to record his findings as even when he is in total agreement with findings of the Inquiry Officer. When the Disciplinary Authority taking action on the inquiry report is in total agreement with the findings/ conclusions arrived at by the inquiring authority, there is no requirement that it should record its own finding and then impose the punishment in accordance with it. The requirement of clause (3) of regulation 7, therefore, does not envisage that in each and every case the Disciplinary Authority is bound to give its findings. The first limb of this submission of Mr. Supehia, therefore, cannot be accepted.

5.1. Mr. Supehia has submitted that even otherwise the Disciplinary Authority is supposed to give its findings on the strength of the material placed before it including the representation made by the petitioner pursuant to the show cause notice given to him by the Disciplinary Authority on the question of imposition of punishment. He has in support of his contention placed reliance on the decision of the learned Single Judge of this Court [Coram : H.K. Rathod, J.] dated 10th September, 2003 rendered in Special Civil Application No. 499 of 1999. In the said decision the learned Single Judge has held as under :-

"5. After considering and perusing the entire record, the only question remained to be examined by this Court is as to whether the reply filed by the petitioner has been considered by the Respondent authority before passing the punishment order or not. No doubt, it is made clear in the order itself that reply dated 12/9/1998 was received by the Respondent authority and it is made clear in the order that reply of the petitioner is not accepted by the Respondent authority. The said averment is made on page 139, internal page 3 of the punishment order. No reasons have been given by the Respondent authority in respect to not accepting the reply of the petitioner and, why the reply of the petitioner is not accepted, for that also no discussion in the order. It is a duty of the Respondent authority to apply its mind while calling the explanation from the petitioner and while supplying the report of the Inquiry Officer and consider the same with application of mind. Merely "considering" and saying, "it is not accepted" is not enough, they should have to give reason in support of the conclusion of not accepting the reply submitted by the petitioner. In absence of the same, the order suffers from non-application of mind. It is also necessary to note that in absence of the reason as to on what basis the authority has rejected the reply submitted by the petitioner, it is also not even known to the Court. Therefore, in such circumstances, it is very difficult to challenge the order of punishment in absence of the reasons passed by the Respondent authority."

Again in para. 7 it has been observed as under :-

"7. I have considered the observations made by the Apex Court in respect of the

Inquiry Report. The same applies to the facts of the present case. When the show cause notice has been served with the Report of the Inquiry Officer to the petitioner calling the explanation from the petitioner as to why the punishment proposed in the show cause notice should not be imposed, against which a detailed reply has been filed by the employee/present petitioner on 12.09.1998. That reply was received by the respondent authority but same has not been discussed or no reasons have been given as to why the said reply is not accepted by the respondent authority and on what ground it has been rejected by the respondent authority. Therefore, that itself is contrary to the principle of natural justice. In view of this fact, on limited ground the order suffers from non application of mind and contrary to the principle of natural justice as it being an unreasoned order. Therefore, this order is required to be set aside."

It is true that in this decision the learned Single Judge has held that merely "considering" and saying "it is not accepted" is not enough, but reasons should have been assigned by the Disciplinary Authority for not accepting the reply of the delinquent before passing any order of punishment. However, another learned Single Judge of this Court [Coram : R.K. Abichandani, J.] in a decision dated 15th September, 2000 rendered in Special Civil Application No. 5303 of 1987 [S.M. Pandya v/s. General Manager (Personnel)] has laid down as under :-

"13. The contention that the appellate order is a non-speaking order cannot be accepted because the Appellate Authority has in terms recorded that it had gone through the proceedings of the enquiry, findings of the Enquiry Officer, order passed by the Disciplinary Authority, the appeal memo filed by the delinquent and all other connected papers and on perusal of the same it did not find any reason to interfere with the order of the Disciplinary Authority. The Disciplinary Authority in turn had agreed with the reasoning and findings of the Enquiry Officer and, therefore, it was unnecessary for it to reproduce in the dismissal order all the reasons given by the Enquiry Officer for reaching the findings in the order of dismissal. The Disciplinary Authority had in terms stated that after going through the enquiry proceedings, the report, the exhibits and all connected papers, the said authority concurred with the view of the enquiring authority and looking to the nature and gravity of the misconduct, he was of the opinion that the ends of justice will met by imposing the penalty of dismissal."

5.2. At this juncture it will be worthwhile to refer to the impugned order of dismissal. In the 1st para. thereof gist of the charges levelled against the petitioner has been reproduced. In para. 2 provisions of the settlement, which are violated by the petitioner while committing aforesaid acts, have been stated. In para. 3 he has referred to the dates on which the appointment of Inquiry Officers was made and the dates of commencement and conclusion of the inquiry. In the said para. it is also stated that the Inquiry Officer submitted its findings on 10th September, 1997 and copy of the said report was made available to the petitioner on 13th September, 1997. He (the petitioner) was given two weeks" time to make submissions thereon which were made on 10th

October, 1997 and thereafter the petitioner was called for personal hearing on 5th December, 1997. In the second part of para. 3 the details with regard to the documents which have been read and taken into consideration by respondent no. 1 are stated and also his own conclusion that he found the charges levelled against the petitioner proved. In the 3rd part of the said para. 3 he has stated that taking into account the gravity of the allegations and charges levelled against the petitioner which were proved, he passed the following order of punishment, namely dismissal from Bank's service without notice with immediate effect. Thus, this order is divided into aforesaid three parts i.e. in paras. 1 to 3 and again para. 3 is further divided into three sub-paras., details whereof have been narrated above. The entire text of the order shows that respondent no. 1 has not only taken into consideration the various charges that have been levelled against the petitioner, but also setting up of inquiry and the findings given by the Inquiry Officer and also the opportunity that was afforded to the petitioner for filing his representation against the findings of the Inquiry Officer and had also granted personal hearing to him. He also appears to have taken into consideration the inquiry report and other material placed before it. Thereafter he has come to the conclusion that the charges levelled against the petitioner were proved. Not only that but before imposing the punishment of dismissal from service, he has also taken into consideration the gravity of the acts of misconduct proved against the petitioner. When this exercise has been done by the Disciplinary Authority, the decision in the case of S.M. Pandya (supra) will squarely apply to the present case. It may be stated here that the text of the impugned order clearly shows that respondent no. 1 is in complete agreement with the inquiring authority on all counts and it further shows that before agreeing with the findings, he has taken into consideration the entire relevant record placed before him including the submissions made by the petitioner and also what was orally represented to him by the petitioner during personal hearing that was granted on 5th December, 1998. As already stated above, the entire process of imposing major punishment is governed by the Regulations and in particular regulations nos. 6 and 7. I have also opined that it is only in the case where Disciplinary Authority differs with the findings given by the inquiring authority, he has to record his reasons for the same and also to give his findings in respect of the charges where he has differed with the inquiring authority. If he is in the agreement, the regulations do not require findings to be given by the Disciplinary Authority. The learned Single Judge in the case of S.M. Pandya (supra) has placed reliance on the decision of the Apex Court rendered in the case of State Bank of Bikaner and Jaipur and others Vs. Prabhu Dayal Grover, , wherein it has held as under :-

"Under Regulation 68(3), only in those cases where the disciplinary authority considers it necessary to direct fresh or further enquiry or disagrees with the findings of the Inquiry Officer, it has to record the reasons for its such directions, but there is no such obligation if it agrees with the findings of the Inquiry Officer. It can, therefore, be legitimately inferred that when express provisions have

been made in the Regulations for recording reasons in only the first two of the three fact situations - not the other - there is no implied obligation also to record the reasons in case of concurrence with the findings of the Inquiry Officer. Even assuming that such an obligation is implicit, still the order of the disciplinary authority cannot be held to be bad as before concurring with the findings of the Inquiry Officer it has gone through the entire proceedings and applied its mind thereto."

When such is the situation, in my opinion, the order of respondent no. 1 imposing punishment of dismissal on the petitioner will not get vitiated on the ground of it being a non-speaking order. In other words, it cannot be quashed because respondent no. 1 has not recorded his own conclusions in respect of the charges vis-a-vis the findings given by the inquiring authority and the submissions made by the delinquent i.e. petitioner against the findings of the inquiry.

5.3. It may be also noted here that if the petitioner was at all adversely affected by the impugned order on account of it being non-speaking one, he would have made this grievance, at the very first instance i.e. before the Appellate Authority. No such grievance has been made by the petitioner in the appeal that was preferred by him. Not only that but even in this petition before this Court such ground has not been taken by the petitioner. Mr. K.M. Patel has drawn my attention to ground no. 19 in the petition which is literally lifted from the memorandum of appeal that was filed before the Appellate Authority and has stated that except that no other ground has been taken on this line. This statement has not been controverted by Mr. Suphia nor has he shown any such definite ground raised either in the appeal memo or in the petition. Easy inference that can be drawn is that the petitioner had never suffered any prejudice on account of the Disciplinary Authority not recording its findings/reasons in the order of dismissal. When no such grievance is made before the Appellate Authority and no such contention has been raised in the petition, such submission raised only at the time of hearing of the petition clearly shows that it did not hurt the petitioner as acutely as it is now sought to be argued.

5.4. There is another aspect of this submission and that is, the impugned order has been challenged by the petitioner in appeal as stated above. In the appeal all the averments that have been raised in the representation have been incorporated. This appeal has been decided by respondent no. 2 vide order dated 30th April, 1998. The order shows that each and every contention raised in appeal has been adequately considered and dealt with by the Appellate Authority and thereafter it has found that the conclusions/findings given by the Inquiry Officer are just and proper and the decision of the Disciplinary Authority imposing punishment of dismissal is also just and commensurate to the gravity of the charges levelled against the petitioner and the appeal deserved to be dismissed and, therefore, the appeal is dismissed. Thus, the findings which have been agreed to by the Disciplinary Authority have also been confirmed by the

Appellate Authority. When adequate reasons have been made known to the petitioner, no useful purpose now will be served by quashing the impugned order of dismissal only on the ground that it is a non-speaking order. As already stated above, that in the facts and circumstances and also keeping in view the decisions of this Court in the case of S.M. Pandya (supra) and the Apex Court in the case of State Bank of Bikaner and Jaipur (supra) and also keeping in view the regulations nos. 6 and 7, it is clear that respondent no. 1 is not at all required to record his findings or reasons for accepting the conclusions drawn by the Inquiry Officers and thereby turning down the petitioner's representation before imposing the punishment.

6. This brings me to consider the other submissions made by Mr. Supehia and replied to by Mr. Patel. Mr. Supehia has submitted that the inquiry is against the principles of natural justice because relevant documents were not furnished nor the petitioner was afforded any opportunity to cross-examine certain important persons though demanded. Record of the petition shows that the Inquiry Officer has recorded the proceedings of each date in detail and upon completion of the final arguments of both the sides, it has declared inquiry as concluded and thereafter it has also afforded opportunity to both the sides to submit written submissions. It is at this stage, the demand for documents and cross-examining the aforesaid persons is made. At one juncture, while recording the proceedings the Inquiry Officer has clearly stated that the petitioner has done nothing except seeking adjournments during the course of hearing. A detailed charge-sheet was submitted to the petitioner well in advance. In the charge-sheet all the events in which the petitioner was involved and which constituted acts of misconduct, had been described in detail. Meaning thereby the petitioner very well knew the details of the charges even before the commencement of actual hearing at the inquiry. He was also permitted services of defence representative i.e. Mr. S.K. Trivedi. Such demand, therefore, ought to have been made at proper stage. The inquiry was declared concluded and thereafter such demand was made. Obviously, it was done with the purpose of delaying the proceedings. Mr. Supehia has placed reliance on clause (13) of regulation 6, which reads as under :-

"(13) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses produced by the Presenting Officer shall be examined by the Presenting Officer and may be cross-examined by or on behalf of the officer employee. The Presenting Officer shall be entitled to re-examine his witnesses on any points on which they have been cross-examined, but not on a new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit."

Simple reading of this regulation will show that the requirement thereof is to be complied with at the appropriate stage i.e. during the course of the inquiry. That stage had already gone and the inquiry was declared as concluded. The demand,

therefore, does not get covered under clause (13) of regulation 6. Mr. Supehia has, however, also submitted that it was only with a view to enable the petitioner to prepare his submissions such request was made which was denied to him. Chance to file written submissions was given by the Inquiry Officer only by way of grace as there is no such requirement in the Regulations. The submissions were to be made on the basis of the material that was brought on record upto the stage of conclusion of inquiry. It was not by way of affording one more opportunity to bring additional material on record. If the petitioner did not choose to build up his defence during the course of hearing and avail the opportunity at appropriate stage, he cannot make any grievance regarding depriving him of fair opportunity of hearing. At that stage i.e. after conclusion of the inquiry, such request could not have been entertained.

6.1. It may be also noted that the documents which have been demanded, some of them are in the nature of public documents, which could be obtained by the petitioner on his own. These documents normally cannot be available with the Bank since they form part of the investigation carried out by the Directorate of Revenue Intelligence and in respect of which Criminal Case was also pending in the Court of learned Chief Judicial Magistrate. These documents could have been available to the petitioner from the concerned Court, he being the accused of those cases. In fact the petitioner was in a better position than the Bank to get copies thereof. Secondly the persons who were sought to be cross-examined were never the employees of the Bank, the Bank had nothing to do with those persons. They were not under the control of the Bank and the Bank could not have summoned them as its own witnesses. In fact it appears that atleast with two persons, namely Jayesh and Ahuja, the petitioner had association and they would not have obliged the Bank to come and depose against the petitioner. In giving such application, which is certainly an afterthought, the petitioner has two purposes, namely that he wanted to create this as a ground of defence in further proceedings and secondly to show that he was not associated with those two persons. The petitioner is, therefore, not entitled to make such demand at belated stage. Further that the petitioner has not shown any prejudice that may have caused to him on account of his demand not having been acceded to. Mr. Patel has placed reliance on the decision of the Apex Court rendered in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , wherein it has been laid down that unless a definite prejudice is shown by the petitioner, such contention cannot be paid any countenance to. The Apex Court has also held as under :-

"The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report has to be considered on the facts and circumstances of each case."

As stated above, neither any contention nor any material is produced in this behalf to show that any prejudice is caused to him.

6.2. Mr. Supehia has also tried to advance certain submissions which are based on the facts of the case, but while exercising my writ jurisdiction under Article 226 of the Constitution of India, it is not possible for me to take into consideration the submissions made. He, however, has tried to submit that in the preventive detention under COFEPOSA the three Judges of the High Court of Delhi had considered this case and had thought it fit to revoke the same. He has further submitted that order regarding imposition of penalty of Rs.86,000/in the adjudication proceedings is challenged in appeal, which is not yet decided. In such circumstances, inquiry should not have been held against the petitioner or the Inquiry Officer ought to have waited till the appeal was decided. This submission cannot be accepted, firstly because in the first instance, upon adjudication by the competent authority, he has been found guilty and he has been adequately punished for the same. It is a well settled principle of law by now that merely because the decision arrived in the trial proceedings is challenged in appeal by the delinquent, it cannot be any ground for not holding the inquiry. Moreover, Mr. Patel has pointed out from the record of this petition that at certain places the petitioner has admitted before the competent authority his involvement in the illegal transactions and the find of illegal foreign currency from his residence. His statement u/S. 108 of the Customs Act was also recorded wherein these facts have been admitted by him. Section 108 statement is admissible in evidence. Thus, there is enough material available even otherwise on record, which forms part of the charges inquired into by the inquiring authority. Hence Mr. Supehia's submission has no merit and it is not accepted. It is clear from the statement of charges that all these acts of misconduct of the petitioner came to be published in the newspapers and it was also published that he was an employee of the Bank. In such event, there was all justification for the Inquiry Officer to reach to such finding and to hold that the petitioner had violated para. 19.5 (a) and 19.5(j) of the settlement. Last submission made by Mr. Supehia is that the alleged acts of misconduct had not connection with the duty that was performed by the petitioner. However, the allegations against him was that it contravened provisions of paras. 19.5(a) and 19.5(j) and when it is established that on both these counts the charges were proved, the authorities were within their bounds to accept such findings and impose punishment of dismissal from the service. Both these provisions have been incorporated in the settlement referred to above. This submission, therefore, cannot be accepted.

7. In view of the aforesaid, this petition has no merit and it deserves to be dismissed and it is hereby dismissed. Rule is discharged with no order as to costs.