
(2009) 03 RAJ CK 0015
In the Rajasthan High Court

Chel Singh

APPELLANT

Vs

M.G.B. Gramin Bank and Others

RESPONDENT

Date of Decision : 31-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 2 RLW 1312 : (2009) 7 SLR 162

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Govind Mathur, J.—The petitioner, a Lower Division Clerk, working with the respondent Bank was served with a memorandum dated 5.10.1991 seeking explanation for certain charges of misconduct. The memorandum was supported by a statement of allegations, according to that:

(1) a contravention of regulation 17 of the Marwar Gramin Bank (Staff) Service Regulations, 1980 (hereinafter referred to as "the Regulations of 1980") occurred as the petitioner intentionally failed to observe, comply with and obey orders and directions given to him time to time;

(2) the petitioner violated regulation 22(1) of the Regulations of 1980 by remaining absent from duties from 11.12.1989 to 24.10.1990 without having sanction from the competent authority;

(3) a violation of regulation 22(2) of the Regulations of 1980 occurred as the petitioner remained absent from duties without having any reason beyond his control;

(4) a violation of regulation 52(1) of the Regulations of 1980 occurred as the petitioner claimed for extraordinary leave for a period of more than 12 months in his service career; and

(5) the petitioner submitted false informations/facts to the bank.

2. As per statement of allegations, the charge No. 1 was based on the fact that the petitioner remained absent from duties from 11.12.1989 to 24.10.1990 without having sanction from competent authority and that violated regulation 22(1) of the Regulations of 1980. The charge N6.1 was bifurcated in three parts and those are that:

(1) the petitioner from 11.12.1989 to 24.10.1990 remained absent from duties on medical grounds without applying for the same as per rules;

(2) an explanation was sought from the petitioner for remaining absent, but no response to the same was given; and

(3) the medical certificate submitted by the petitioner was not of any such disease that would have prevented him even to inform the bank regarding absence from duties.

3. The charge No. 2 too was bifurcated in the statement of allegations in two parts and those are that:

(1) while remaining absent from duties from 11.12.1989 to 24.10.1990 the petitioner was instructed under a letter dated 23.8.1990 to report on duties within a period of seven days or to submit an explanation for remaining absent from duties, but no response to the same was given. Subsequent thereto, by communication dated 22.9.1990 and 5.10.1990 the petitioner was directed to join the duties or to submit explanation for remaining absent, however, no response was given to the letters aforesaid; and

(2) the petitioner subsequently explained that he remained absent because of some serious ailment but the medical certificate submitted by him nowhere refers such serious ailment that would have prevented him from giving necessary information to the bank, as such the petitioner submitted a false information to the bank.

4. The charge No. 3 too was also bifurcated in two parts as follows:

(1) as per the medical certificate submitted by the petitioner he was required to undergo rest from 13.8.1990 to 24.10.1990 but during this period he made journeys in view of the fact that the certificate was issued by Dr. S.S. Purohit, Navdeep Hospital, Palanpur whereas the petitioner was at his permanent residence in village Chitalwana on 22.9.1990 and 11.10.1990; and

(2) by letter dated 11.10.1990 (he petitioner was instructed to join the duties upto 22.10.1990 and he resumed duties on 25.10.1990 by showing himself fit. This fact clearly establishes that he was not really ill.

5. While mentioning details relating to charge No. 4, it was stated that by circular dated 22.6.1978 instructions were issued that after availing medical leave an employee is required to submit a fitness certificate on joining the duties, however, no such certificate was submitted by the petitioner while reporting on duties on 25.10.1990. Such certificate was submitted by him on 20.11.1990.

6. With regard to charge No. 5, it was stated in the statement of allegations that as per regulation 52 (1) of the Regulations read with circular No. 53/84 dated 14.5.1984 no officer or employee of the bank shall be given extraordinary leave beyond a period of three months in one stretch and for a period of more than 12 months in entire service career, but the petitioner remained absent from duties from 11.12.1989 to 24.10.1990 i.e. for a period of 318 days and again from 31.8.1991, in total for a period of 633 days.

7. The petitioner on 23.11.1991 submitted a detailed explanation to the charges alleged. As per the explanation given, the petitioner was seriously ill from 11.12.1989 to 24.10.1990. He stated that on receiving a telephonic information on 9.12.1989 he proceeded for his village by availing two days casual leave with permission to leave headquarter, however, on 10.12.1989 he felt seriously ill and, therefore, he was taken to Dhanera for treatment. He availed treatment at Shah Ramchandra Swarajbhai General Hospital, Dhanera from 11.12.1989 to 1.5.1990. On 1.5.1990, though there was no improvement in his health, he was brought to his village Chitalwana via Sanchoe. He seriously felt ill at Sanchoe and, therefore, necessary examination of his health was made at Community Health Centre, Sanchoe. Necessary treatment was also given to him at Sanchoe from 1.5.1990 to 12.8.1990. On 12.8.1990 he was referred to Navdeep Hospital, Palanpur and availed treatment there from 13.8.1990 onwards. It was reiterated by the petitioner that he remained absent from duties for the reasons beyond his control and he never intended to contravene any provision those are required to be adhered by an employee of the bank. The petitioner as such denied all the charges levelled against him.

8. The disciplinary authority considered it appropriate to inquire into the charges framed against the petitioner, therefore, by a letter dated 13.3.1992 Shri P.R. Agrawal, officer, was appointed as inquiry authority to inquire into the charges framed against the petitioner. The petitioner availed services of one Shri Daya Ram Jat as his defence assistant. The inquiry commenced from 30.4.1992 and the same was concluded on 20.10.1993.

9. During the course of inquiry, the petitioner on 25.8.1993 submitted a list of documents and also named seven persons to be called for as witnesses in defence. Out of seven persons named by the petitioner five were bank employees. On the same day prosecution witness Shri G.N. Thakkar deposed before the inquiry officer and stated that he was working as Manager of the Bank at its Khimel Branch from 13.7.1988 to 18.7.1991. Casual leave for 11.12.1989 and 12.12.1989 was sanctioned to the delinquent employee. It was also stated that the delinquent employee submitted a medical certificate on 20.11.1990 but he never applied for extension of leave after proceeding on casual leave. In cross examination it was stated by Shri G.N. Thakkar that the delinquent discharged his duties with all efficiency and commitment.

10. On 29.9.1993, the inquiry officer recorded statements of defence witnesses Shri Kalyan Singh and Shri Ganpat Singh. Shri Kalyan Singh stated that he is a

Taxi Driver and on 10.12.1989 he carried the delinquent employee to Dhanera (Gujarat) for his treatment. The condition of the delinquent employee at that time was quite serious and he was not in position even to utter a word. He also stated that Shri Chel Singh Rathore (delinquent employee) was unconscious and was not even accepting drinking water. Shri Kalyan Singh was cross examined by the bank nominee wherein too he stated about serious ailment suffered by the delinquent employee.

11. The another defence witness Shri Ganpat Singh stated that in the evening of 9.12.1989 the delinquent employee reached to his native place and at that time he was not feeling well. In morning some treatment was taken by a local compounder, however, at about 03.00 p.m. his condition deteriorated and he was under semi unconscious state. Looking to serious condition of delinquent employee a Jeep Taxi was called from Sanchoe and at about 09.00 p.m. he was taken to Dhanera (Gujarat) for necessary treatment. At Dhanera the delinquent employee admitted to hospital and necessary treatment was immediately given. Shri Ganpat Singh also stated that the delinquent employee remained under unconsciousness for about 20-22 days as a consequent to that he suffered lot of weakness. As per the statement of Shri Ganpat Singh the delinquent employee was suffering from a disease of liver and also from some intestinal problem. On 1.5.1990 the delinquent employee was relieved from Dhanera hospital and he was taken to his village, however, while on way his condition again deteriorated and, therefore, he was taken to Sanchoe hospital. Looking to no improvement in his serious condition on 13.8.1990 the delinquent employee was admitted at Navdeep Hospital, Palanpur (Gujarat). He also stated that during the same period his nephew Jalam Singh died and, therefore, it was quite difficult to look after the petitioner at Navdeep Hospital, Palanpur. In such circumstances, the delinquent employee was brought to village Chitalwana. The defence witness Ganpat Singh was subjected to cross examination by the bank nominee wherein too he reiterated whatever he said about ailment and deteriorating condition of the petitioner. Shri Ganpat Singh in cross examination also stated that first priority for him was to save life of the petitioner and then to think over to remit necessary information to the bank regarding petitioner's ailment. Shri Ganpat Singh also stated that the documents relating to the treatment prescribed to the petitioner and the bills relating to purchase of medicines were not kept secured with him.

12. On 19.10.1993 the defence nominee made a request to call remaining defence witnesses, however, the presenting officer stated that whatever questions are required to be asked from remaining witnesses those may be asked to him and he will answer all such questions. The defence nominee and the petitioner reiterated their request to call all the witnesses named, however, the inquiry officer ruled that ? summoning of those witnesses is not relevant in view of the fact that the presenting officer was ready to answer the questions sought to be asked from the witnesses desired to be called for. The petitioner and his representative specifically stated that not to call higher officers of the

bank in witness box is nothing but violation of principles of natural justice.

13. In the factual background above, the inquiry officer without calling defence witnesses except Kalyan Singh and Ganpat Singh decided to proceed with the arguments in the matter. The inquiry officer on 20.10.1993 submitted his report to the disciplinary authority. The disciplinary authority while relying upon the findings given by the inquiry officer instructed the petitioner to submit his explanation regarding proposed penalty i.e. of removal from bank service. A copy of the inquiry report too was supplied to the petitioner alongwith notice dated 2.2.1994. It appears from examination of report of inquiry officer that the inquiry officer while holding the petitioner guilty for all the charges did not found the defence witnesses trustworthy. The total discussion regarding statements given by the defence witnesses reads as follows:

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14. In the inquiry report the inquiry officer first reproduced the charges levelled against the petitioner and then gave his findings by relying upon the prosecution evidence. No analysis at all is made by the inquiry officer relating to the evidence on which he relied while holding the petitioner guilty. A detailed explanation was submitted by the petitioner to notice to show cause dated 2.2.1994, however, it appears that the same was not received by the disciplinary authority within the stipulated time. Be that as it may, the disciplinary authority allowed an opportunity of personal hearing to the petitioner on 28.3.1994.

15. By an order dated 17.10.1994 the disciplinary authority while exercising powers as per regulation 30 (1)(d) of the Regulations of 1980 inflicted a penalty i.e. of removal from bank- service upon the petitioner. An appeal preferred by the petitioner giving challenge to order of the disciplinary authority also came to be rejected on 26.12.1994. To challenge the orders passed by the disciplinary authority, appellate authority and also the entire process of inquiry, this petition for writ is preferred.

16. The argument advanced by counsel for the petitioner are that the entire inquiry stands vitiated being in violation of the doctrine of reasonable opportunity and principles of natural justice. It is asserted that the inquiry authority without having any justifiable reason disallowed calling of five important defence witnesses. It is asserted that those persons were not called in witness box solely on the count that they are important bank officers. It is also urged by counsel for the petitioner that the report of inquiry officer itself suffers from the vice of violation of principles of natural justice being absolutely a non speaking and unreasoned document of facts. To substantiate the contention aforesaid and to

illustrate the manner in which the inquiry report is required to be constituted, counsel for the petitioner has placed reliance upon judgment of Hon''ble Supreme Court in Anil Kumar Vs. Presiding Officer and Others, . It is also emphasised by counsel for the petitioner that the regulation 30 of the Regulations of 1980 prescribes six different penalties those may be imposed upon an employee of the respondent bank on being held guilty for breach of discipline or any other misconduct. A broad discretion vests with the disciplinary authority to select an appropriate penalty commensurating with the delinquency established. Such discretion is always required to be exercised judiciously. However, in the instant matter, as per counsel for the petitioner, no good and sufficient reason was available with the employer to impose the severe penalty i.e. of removal from bank service.

17. As per the respondents, the inquiry against the delinquent employee was conducted by adhering principles of natural justice and by affording adequate opportunity for defence to him. The delinquent employee though named seven persons to be summoned as defence witnesses, however, out of those four were not permitted to be examined by the inquiry officer being totally not related to the charges levelled. An opportunity was given to the delinquent employee to ask questions from the presenting officer but that was not availed by him. As per counsel for the respondents the inquiry officer has given specific and definite findings against the charges levelled against the petitioner and as such the report of inquiry does not suffer from any error. It is emphasised that the delinquent employee remained absent from duties for quite a long time without any just and valid reason, therefore, the penalty of removal from service is adequate. It is also stated that the disciplinary authority could have Imposed even the penalty of dismissal from service but a lenient view was taken and the penalty of removal from service was imposed and this fact itself shows the application of mind on part of the disciplinary authority.

18. Heard counsel for the parties.

19. The first contention of counsel for the petitioner is that non calling of five defence witnesses out of seven named by the petitioner is a serious violation of principles of natural justice and that vitiates entire process of inquiry.

20. I have examined the original record of inquiry where from it is evident that though the petitioner sought permission to examine seven witnesses in defence, but the inquiry officer did not choose to call defence witnesses except Shri Kalyan Singh and Shri Ganpat Singh on the count that the presenting officer was willing to answer all questions supposed to be asked from other remaining five witnesses. As per the proceedings drawn on 19.10.1993, the sole reason given by the inquiry officer for not calling five witnesses named by the delinquent employee was that he gave a rule that there was no relevance in calling the witnesses sought to be summoned as the bank nominee was ready to answer the questions sought to be asked from those witnesses. The proceedings to inquiry nowhere refers that the persons sought to be called for were not relevant to the

charges levelled against the petitioner. True it is that the witnesses sought to be produced were officer's of the bank but that could not be a reason to presume that the presenting officer was having knowledge to every fact that desired to be examined by the delinquent employee by producing those persons in witness box. The person, who could decide what evidence was to be adduced in his favour and what questions were to be asked from a witness, was the delinquent employee and not the presenting officer. The presenting officer could have raised objection about relevance of calling a witness, but in no case he could have put himself in witness box as a substitute to a person sought to be called as witness by the delinquent employee. An employee facing charges of misconduct has a right to prove his innocence and, therefore, may examine witnesses relevant to his case. The decision to call or refuse to call witness/witnesses is a quasi judicial process in a domestic inquiry, thus, when a charged employee makes a request to call a witness, that should be considered objectively. Where the charged employee does not satisfy the inquiry officer about relevance of any witness, he may for the reasons to be recorded in writing decline the employee's request, however, such discretion should always be exercised in judicious manner. While declining such request the inquiry officer must give cogent and sound reasons. In the instant case the reason given for not calling the witnesses named by the delinquent employee is absolutely vague and irrelevant. It does not and cannot appeal to the measures and standards of a quasi judicial inquiry that ultimately resulted into removal of the delinquent employee from service. The refusal to call defence witnesses in the manner existing in present case is apparent denial of reasonable opportunity to the charged employee for defending himself. A definite prejudice, therefore, is caused by not calling the witnesses named by the petitioner without examining their relevance and ultimately holding him guilty for the charges in defence of which he indicated his desire to examine those witnesses.

21. I am also in agreement with counsel for the petitioner that the report of inquiry officer on its face is not a speaking and reasoned one. Hon''ble Supreme Court in Anil Kumar's case (supra), while examining an issue as to how a report of inquiry is required to be constituted, held as follows:

5. We have extracted the charges framed against the appellant. We have also pointed out in clear terms the report of the Enquiry Officer. It is well-settled that a disciplinary enquiry has to be quasi-judicial enquiry held according to the principles of natural Justice and the Enquiry Officer has a duty to act judicially. The Enquiry Officer did not apply his mind to the evidence. Save setting out the names of the witnesses, he did not discuss the, evidence. He merely recorded his ipse dixit that the charges are proved. He did not assign a single reason why the evidence produced by the appellant did not appeal to him or was considered not credit-worthy. He, did not permit a peep into his mind as to why the evidence produced by the management appealed to him in preference to the evidence produced by the appellant. An enquiry report in a quasi-judicial enquiry must show the reasons for the conclusion. T cannot be an ipse dixit of the Enquiry

Officer. It has to be a speaking order in the sense that the conclusion is supported by reasons. This is too well-settled to be supported by a precedent. In *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, this Court observed that a speaking order will at best be a reasonable and at its worst be at least a plausible one. The public should not be, deprived of this only safeguard. Similarly in *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, this Court reiterated that satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appealed to the authority. It should all the more be so where the quasi-judicial enquiry may result in deprivation of livelihood or attach a stigma to the character. In this case the enquiry report is an order-sheet which merely produced the stage through which the enquiry passed. It clearly disclosed a total non-application of mind and it is this report on which the General Manager acted in terminating the service of the appellant. There could not have been a gross case of non application of mind and it is such an enquiry which has found favour with the Labour Court and the High Court.

6. Where a disciplinary enquiry affects the livelihood and is likely to cast a stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where the evidence is annexed to an order-sheet and no correlation is established between the two showing application of mind.

22. In the instant matter the inquiry officer simply mentioned that the defence witnesses Kalyan Singh and Ganpat Singh are not trustworthy. No reason is given by the inquiry officer to disbelieve those persons. Pertinent to note here that Ganpat Singh as well as Kalyan Singh extensively narrated facts about serious ailment of the petitioner. The inquiry officer while disbelieving those persons should have given definite reasons to justify his conclusion. Merely saying that the persons are not found trustworthy, is not at all sufficient. The basic principle is that every person coming forward as a witness in evidence states truth except proved otherwise, therefore, onus was upon the inquiry officer to establish by adequate discussion relating to conduct and character of Kalyan Singh and Ganpat Singh to disbelieve them or to say that they were not trustworthy.

23. The inquiry officer as a matter of fact even not discussed the prosecution evidence. He simply referred the evidence adduced and gave his finding relating to employee's guilt. In view of the law laid down by Hon'ble Supreme court in *Anil Kumar's* case (supra), I am having no hesitation in holding that the report of inquiry in present case is absolutely a nonspeaking and unreasoned one and as such the same is having no worth to lay foundation to hold the petitioner guilty and for imposing a severe penalty like removal from service.

24. The third contention of counsel for the petitioner is that regulation 30 of the Regulations of 1980 prescribes various penalties and for subjecting a delinquent employee from any of such penalty, the disciplinary authority should apply his

mind and there must be good and sufficient reasons to subject such employee with any specific penalty.

25. Hon"ble Gujarat High Court in H.P. Thakore Vs. State of Gujarat and Others, , in quite detail considered the issue as to how discretion is required to be exercised by the disciplinary authority to subject an employee with a specific penalty where number of penalties are prescribed. The discussion made by Hon"ble Gujarat High Court in the case aforesaid in this regard deserves to be quoted and that is:

A question of life-or-death-significance relating to service jurisprudence as to whether before imposing the economic death penalty of dismissal or removal from service a disciplinary authority is bound to apply his mind to the three vital considerations, namely, (1)as regards the nature and magnitude of the established charge, (2)as regards the desirability or other wise of retaining the Government servant in service in the context of the charges found proved against him and (3)as to whether a penalty lesser than the extreme penalty of dismissal or removal would prove adequate, and several other questions have surfaced in this petition under Article 226 of the Constitution of India instituted by a Talati-cum-Mantri who was dismissed from service at the conclusion of a departmental proceeding.

* * * * * 5. Be it administration of criminal Law or the exercise of disciplinary jurisdiction in departmental proceedings, punishment is not and cannot be the "end" in itself. Punishment for the sake of punishment cannot be the motto. Whilst deliberating upon the jurisprudential dimension the following factors must be considered:

(1) In a disciplinary proceeding for an alleged fault of an employee punishment is imposed not in order to seek retribution or to give vent to feeling of wrath.

(2) The main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out a warning to the other employees to be careful in the discharge of their duties so that they do not expose themselves to similar punishment.

(3) It is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get rid of him. It would be counter productive to do so for it would be futile to expect to recruit employees who are so perfect that they would never commit any fault. And citizens would be deterred from joining Government service if the principle of security of service is scuttled and every employee renders himself liable to lose his job, incur social stigma thereby, and exposes his entire family to misery if he commits a fault.

(4) In order not to attract the charge of arbitrariness it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Surely one cannot rationally or justly impose the same penalty for giving a slap as one

would impose for homicide.

(5) When different categories of penalties can be imposed in respect of the alleged fault one of which is dismissal from service, the disciplinary authority per force is required to consult himself for selecting the most appropriate penalty from out of the range of penalties available that can be imposed having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concerned it would be risky to retain him in Government service, the maximum penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without jeopardizing the interest of the administration the disciplinary authority cannot impose the maximum penalty of dismissal from service. He is bound to ask his inner voice and rational faculty whether the penalty lesser than the penalty sought to be imposed can be imposed without jeopardizing the interests of the service.

(6) It cannot be overlooked that by and large it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the Court and avail of the costly and time consuming machinery to challenge in desperation the order passed by the disciplinary authority. If a lesser penalty was imposed, he might not have been obliged to make recourse to costly legal proceedings which result in loss of public time and also result in considerable hardship and misery to the employee concerned.

(7) When the disciplinary proceedings end in favour of the employee the State has often to pay back wages say for about 5 years without being able to take work from the employee concerned. The public exchequer suffers. On the other hand, the employee concerned would have had to suffer economic misery and mental torture for all these years. Even the misery of being obliged to remain idle without work would constitute an unbearable burden. And when the curtain drops everyone is left with a bitter taste in the mouth. All because extreme penalty of dismissal or removal is imposed instead of a lighter one.

Having regard to these considerations the disciplinary authority is bound to apply his mind carefully to this aspect. In the present case it is obvious that he has given no thought to the relevant considerations involved in imposing the penalty of dismissal. Under the circumstances, the impugned order deserves to be quashed also on the ground that it suffers from the vice of non-application of mind on the part of the disciplinary authority to a vital function entrusted to him. In the present case it does not appear that the disciplinary authority has applied his mind in respect of each proved charge in order to ascertain its magnitude with a view to inform himself whether the charge was so serious that the petitioner deserved to be dismissed from service. He has simply made a reference in a general and vague manner to the accusations which formed the subject-matter of the charge-sheet. Which particular charge is considered serious enough to merit the penalty of dismissal it is difficult to find out from the

impugned order. Nor is it possible to find out whether the disciplinary authority considered the charges to be of such a serious character as to merit an order of dismissal. It must be realised that it cannot be the ipse dixit of the disciplinary authority. It is not every charge that merits the extreme penalty of dismissal. In order to reach an intelligent decision as to whether or not the charge is serious enough, one has to consider the nature of the duties performed, the consequences of the fault attributed to the Government servant, the loss or damage sustained by the administration on account of the alleged fault, as also to consider whether the nature of the charge is such that the person concerned cannot be retained in Government service without detriment to the public interest or the interest of the administration.

26. I am in absolute agreement with whatever said by Hon''ble Gujarat High Court, as quoted above.

27. Counsel for the respondents made an effort to establish adequate application of mind by the disciplinary authority while imposing penalty on the ground that the disciplinary authority could have imposed a penalty of dismissal but after due application of mind decided to impose penalty of removal only.

28. In the present case the disciplinary authority imposed a penalty of removal and that is certainly a penalty lesser than dismissal, however, effect of that is also termination from service without having any service benefits. The application of mind as sought to be impressed upon does not reveal from reading of the order impugned dated 17.10.1994. The disciplinary authority after considering the findings given by the inquiry officer and also the evidence available on record held the petitioner guilty for all the charges, however, neither in the notice for proposed penalty nor in the order imposing penalty he has, given any justification for selecting the penalty of removal from service. The disciplinary authority is not required to go in minute details or to adopt a process of exclusion while choosing a penalty sought to be imposed upon the delinquent employee, however, the minimum requirement is that the vital considerations as pointed out by the Gujarat High Court in H.P. Thakore's case (supra) should be kept in mind while making consideration for choosing a penalty and such consideration should reflect in the order imposing penalty. As such the disciplinary authority should have taken into consideration the magnitude and nature of the charges established against the petitioner, the desirability or otherwise of retaining the petitioner in service in the context of the charges found proved against him and that a penalty lesser than extreme penalty of dismissal or removal would have not met the act of misconduct for which the delinquent employee was found guilty. A judicious application of mind is certainly required while selecting a penalty sought to be inflicted upon an employee. Such application of mind is conspicuously absent in present case.

29. For the reasons whatever stated above, I found that the inquiry conducted against the petitioner was in violation of principles of natural justice and that caused a serious prejudice to the petitioner. The report of the inquiry officer is

absolutely a non-speaking and unreasoned one and the disciplinary authority did not apply its mind while imposing serious penalty of removal from service upon the petitioner while holding him guilty for the charges alleged.

30. In result, this petition for writ succeeds and, therefore, the same is allowed. The order passed by the disciplinary authority dated 17.10.1994 and the order passed by the appellate authority dated 26.12.1994 are declared illegal and, therefore, the same are hereby quashed. The petitioner is declared entitled to be reinstated in service with all consequential benefits.

31. No order to costs.