(2007) 05 AHC CK 0267

In the Allahabad High Court

Vinayak Prasad Awasthi APPELLANT

Vs

Syndicate Bank RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2008) 5 AWC 4565

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Anjani Kumar and Sudhir Agarwal,JJ.

1. Aggrieved by the order of punishment dated 30th January 1999 placing the petitioner in next lower grade scale, appellate order dated 6th May 1999 and revisional order dated 8th April 2000 affirming punishment, the petitioner, Vinayak Prasad Awasihi. has filed this writ petition under Article 226 of the Constitution of India seeking a writ of certiorari quashing the said orders. He has also sought a writ of mandamus (sic) the respondents to grant him promotion in Middle Management Grade Scale-III (hereinafter referred to as MMGS-III) with effect from 1.4.1997.

2. The facts in brief as stated in the writ petition arc that Syndicate Bank (hereinafter referred to as the banks is a nationalized bank and as such is ''State'' within the meaning of (sic) of the Constitution of India. The petitioner was appealed as clerk on 23rd August 1973 and confirmed on 28th February 1974. He was promoted to officer''s cadre vide order dated 28th September 1977, known as Junior Management Grade Scale-I (hereinafter referred to as JMGS-I) and further promoted to promoted to Middle Management Grade Scale-II (hereinafter referred to as MMGS-II) vide order dated 5th May 1984. The hierarchy of the officers of the bank is as under:

i. Scale - I : Rs. 4250-230-4940-350-529-230-8050

ii. Scale - II : Rs. 6210-230-8740

iii. Scale - III : Rs. 8050-230-9200-250-9700

3. In order to remove stagnation, the petitioner was granted higher grade i.e. MMGS.-III with effect from 1st May 1995 vide order dated 24th December 1997. In the year 1996 the petitioner was posted as Assistant Manager, Syndicate Bank, Naripura Branch. Agra. The Deputy General Manager, Zonal Office of the Bank, issued an order dated 6th May 1996 placing him under suspension in a contemplated disciplinary enquiry. A charge sheet was issued on 10.6.1996 and after holding departmental enquiry, the disciplinary authority imposed punishment of reduction to next lower grade i.e. JMGS-I. It also provided that the period of suspension shall not be treated on duty and the petitioner shall not be entitled to any wages for the period of suspension except the subsistence allowance already paid. Aggrieved by the order of punishment the petitioner preferred an appeal which has been dismissed by the appellate authority vide order dated 6th May 1999 and his review petition has been dismissed by the reviewing authority by order dated 8th April 2000.

4. Learned Counsel for the petitioner has assailed the aforesaid orders on the following grounds:

(1)The charges levelled against him do not constitute any misconduct. Even otherwise the charges are vague and therefore on the said allegations the petitioner could not have been punished.

(2) Regulation 6 of Syndicate Bank Officers, Employees (Discipline & Appeal) Regulation, 1976 (hereinafter referred to as the Regulation) contemplates a detailed oral enquiry but no such enquiry has been conducted by the enquiry officer. Neither any evidence was adduced nor material was produced before enquiry officer and, therefore, the entire proceeding is vitiated in law.

(3) Regulation 4(g) of the Regulation provides reduction to a lower grade or post but the disciplinary authority has imposed three punishment upon the petitioner, namely, reduction to JMGS-I from MMGS-III; which has the effect of reducing pay scale by two grades; his period of suspension has been declared as not to be treated on duty for any purpose and full salary for the period of suspension has been denied.

(4)The amount of salary of the petitioner which was debited for recovery on the ground of alleged unauthorised absence of 136 days was passed in violation of principle of natural justice. Moreover it was subsequently regularised by order dated 7th April 1997 rendering entire act of debiting the said amount illegal. Thus it cannot be said that the petitioner committed any misconduct. In support of the aforesaid submission he placed reliance upon the decisions State Bank of Patiala and others Vs. S.K. Sharma, Nawabkhan Abbaskhan Vs. The State of Gujarat, State of West Bengal and Ors. v. Sanjib Roy and Anr. JT 2001 (Supp 1) 118 and State of Punjab and Ors. v. Bakshish Singh 1998 (8) S 128. This makes the entire basis of proceedings including charge sheet a nullity.

(5) The appellate authority and the revisional authority have passed non-speaking orders though they were required to consider various grounds raised by him and therefore the orders being non-speaking are illegal. Reliance is placed on Ram Chander Vs. Union of India (UOI) and Others, and The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others,

(6) The petitioner sought time from enquiry officer vide letter dated 14th January 1999 but the same was ignored and therefore he was denied adequate opportunity of hearing.

(7) His promotion to higher post in the year 1997 was denied due to disciplinary proceedings and there fore after quashing the order of punishment the petitioner is entitled for promotion from due date and all consequential matters.

5. The respondent-bank has filed a counter affidavit stating that the petitioner while working as Assistant Manager at Agra Main Branch remained unauthorisedly absent without prior permission and did not report for duty despite several letters and reminders. His period of absence was treated unauthorised resulting in recovery of salary from his pay and allowances which lie has already received. Further he had availed sundry advance against T.A. bills resulting in recovery of sundry advance from the petitioner. For the aforesaid recovery his savings bank STF Account No. 43, which was opened at Main Bran h Agra on 15th May 1995, was debited with the said amount When the petitioner was transferred from Main Branch to Naripura Branch there was a debit balance of Rs. 34,547.84 in SB STF Account No. 43 but the at Main Branch which was transferred to Naripura Branch on 16th August 1995. In order to avoid recovery of debit balance from the aforesaid account the petitioner opened another savings bank account SB STF 9983 without bringing this fact to die knowledge of Branch Manager. The Manager ordered debit of Rs. 34,547.84 to SB STF Account No. 43 but the petitioner acted in violation of said instructions and unauthorisedly debited the said amount to SB STF 9983 and started drawing salary and other credits from SB STF 43 account without the knowledge of the Branch Manager. When the Branch Manager came to know of this fact on 28th October 1995 he got debited the balance of Rs. 35,723.84 outstanding in Account No. 9983 to petitioner''s Account No. SB STF 43. The petitioner thereafter made subsequent credit of salary and other related transactions to his SB Account No. 9983 to thus prevented adjustment of debit balance outstanding in his Account No. SB STF 43 and enjoyed benefits of such credits. In this way the petitioner availed for self undue and unlawful advantages at the cost of bank. Further while working at Naripura Branch he obtained sundry advance of Rs. 5,000/- in various denominations for the purpose of substituting some defective notes in connection with cash remittance of Rs. 14,12,000/- on 20Ul April 1995. Though he returned to the branch on the same date but retained balance amount of sundry advance and after several reminders of the Branch Manager, finally paid it on 24.4.1995. Thus he misused temporarily the sundry advance of Rs.

5,000/-. For the aforesaid acts and omissions constituting misconduct, he was place under suspension on 11.5.1996. A charge sheet was issued on 10.6.1996. Detailed oral enquiry was conducted. During the course of oral enquiry the management examined one witness and 41 documents were produced before the enquiry Officer while in defence the petitioner examined one witness and 21 documents were exhibited. The Enquiry Officer submitted report dated 12.12.1998 holding him guilty of charges. A copy of enquiry report was given to the petitioner and thereafter the order of punishment impugned in this writ petition was passed. The appeal and review have been rejected. It is said that the petitioner was never promoted from MMGS-II to MMGS-III but since he had reached the maximum scale of MMGS-II he was allowed stagnation increment of next higher grade which did not result in promotion in MMGS-III but the petitioner continued to function in MMGS-II. During the pendency of enquiry he was consul red for promotion but his matter was kept in sealed cover in accordance with para 11.5.4 of Promotion Policy dated 28th April 1993. Since he was ultimately punished, he was thus not promoted m higher grade. It is also submitted that the punishment awarded to the petitioner is in accordance with the Rules. Effective opportunity was afforded to the petitioner. Therefore, no interference is called for under Article 226 of the Constitution of India. Learned Counsel for the respondents, opposing the writ petition, supported the orders impugned in the writ petition as per the stand taken in the counter affidavit.

6. We have heard Sri Yogesh Agarwal learned Counsel for the petitioner and Sri P.K. Singhal for the respondents.

7. Sri Yogesh Agarwal sought to place the charge sheet filed as Annexure-7 to the writ petition to show that on the face of it he charge levelled against him is extremely vague, does not make out any sense at all and submitted that it is for this very reason that the writ petition was entertained by this Court on 4th July 2000 and an interim order was passed to the following effect:

In the meantime effect shall not be given to the order dated 30.1.99 Annexure No. X to the writ petition. This interim order will operate till 30th of September 2000 unless the order is vacated or modified earlier.

8. Learned Counsel for the respondent, however, pointed out that the petitioner has not come with clean hands before this Court and a manipulated document has been filed as charge sheet inasmuch as certain relevant allegations from the charge sheet have been omitted and the alleged true copy of the charge sheet flied a, Annexure-7 is not a true copy of the original charge sheet. Instead the correct copy of charge sheet has been filed as Annexure-2 to the counter affidavit which would show difference. He submitted that it is for this reason when the matter came up before the Division Bench subsequently, the interim order was vacated.

9. The charge sheet filed as Annexure-7 to die writ petition which was placed before us by the petitioner and the correct version of the charge sheet placed on

the record as C.A. 3 is reproduced as under:

Annexure-7 C.A. 3

ARTICLES OF CHARGE ARTICLES OF CHARGE

That you were functioning as That you were functioning as Asst. Manager at our Naripura Asst. Manager at our Naripura branch. Agra from March 1995 branch, Agra from March 1995 till you were placed under till you were placed under suspension vide proceedings suspension vide proceedings No. ZOL/IRC : SUS : 174/96 No. ZOL/IRC : SUS : 174/96 dated 6.5.96 of the DGM (O), dated 6.5.96 of the DGM (O), ZO : Lueknow. That in your ZO : Lueknow. That in your position as such, you opened in position as such, you opened in your name at the branch, your name at the branch, SB/STF 43 on 15.5.1995 SB/STF 43 on 15.5.1995 on on your transfer from DO : Agra your transfer from DO : Agra for routing your salary and for routing your salary and other related transactions: other related transactions;

and and

You also opened in your name You also opened in your name at the it branch, another SB at the branch, another SB Account 9983 on 2.8.95 Account 9983 on 2.8.95 without the knowledge of the without the knowledge of the Manager of the branch. That Manager of the branch. That when our Agra main branch when our Agra main branch vide their Dr. IBA dtd, 16.8.95 vide their Dr. IBA dtd, 16.8.95 for Rs. 34.547.84 transferred the for Rs. 34,547.84 transferred the debit balance outstanding in debit balance outstanding in your SB A/c 275 with them to your SB A/c 275 with them to our Naripura branch, you our Naripura branch, you accounted it under your SB A/c accounted it under your SB A/c No. 99S3: No. 9983:

a) unauthorisedly; a) unauthorisedly; b) in spite of the written b) inspite of the written instructions of the Manager of instructions of the Manager of branch on the relevant debit the branch on the relevant debit voucher to account the same voucher to account the same under under your salary SB Account your salary SB Account STF. 43. STF. 43. c) without the knowledge of he c) without the knowledge of he Branch Manager and thus, Branch Manager and thus, prevented adjustment of your prevented adjustment of your salary/other related credits salary/other related credits towards the said debit balance, towards the said debit balance, in a dubious manner. in a dubious manner. (That when the Branch i) unauthorisedly; Manager came to know the ii) without the knowledge of factual position and the Branch Manager. transferred the debit balance iii) in a dubious manner. of Rs. 35723.84 outstanding in your SB A/c No. 983 to your saw to it that the subsequent SB A/c STF 43 during credits by way of salary/other October'' 95, you: related transactions were made to your SB A/c No. 9983 so that i) unauthorisedly; these credits are not adjusted ii) without the knowledge of towards the debit balance the Branch Manager. outstanding in the SB A/c. iii) in a dubious manner. and thus enjoyed the benefits of saw to it that the subsequent such credits made to the credits by way of salary/other account/s. related transactions were made That you also prevented to your SB A/c No. 9983 so that adjustment of your salary these credits are not adjusted incurs received during the towards the debit balance month August, 1995 and outstanding in the SB A/c. also, the salary advance of and Rs. 7,000/- availed by you thus enjoyed the benefits of during November 1995 towards such credits made to the the debit balance in question. account/s. That you also sanctioned for That you also prevented self and availed, a Festival adjustment of your salary Advance of Rs. 11,900/- on incurs received during the 15.1.1996 in the absence of the month August, 1995 and Manager of the Branch: also, the salary advance of Rs. 7,000/- availed by you a) unauthorisedly/without during November 1995 towards authority; the debit balance in question. b) inspite of the fact that you That you also sanctioned for were informed vide Branch self and availed, a Festival letter dtd. 5.1.96 that you are Advance of Rs. 11,900/- on not eligible to avail Festival 15.1.1996 in the absence of the Advance in view of the Manager of the Branch: continuing debit balance in a) unauthorisedly/without your SB Account. authority; You did not adjust the Festival b) inspite of the fact that you Advance amount towards the were informed vide Branch Debit balance continuing in your letter dtd. 5.1.96 that you are SB A/c. not eligible to avail Festival By resorting to unauthorised/ Advance in view of the fraudulent/dubious practices as continuing debit balance in said above, you availed for your SB Account. self/undue/unlawful financial By resorting to unauthorised/ accommodation at the cost of fraudulent/ dubious practices as the Bank continuously, from said above, you availed for November, 1994 onwards self/undue/unlawful financial (when debit) balance first arose at Agra Main Branch). Your SB A/c STF 43 was showing a debit balance of Rs. 35,609.35 as of 23.12.1995. That on 20.4.95, Naripura Agra accommodation at the cost of Banch had sent a cash the Bank continuously, from remittance Rs. 14,12,000/- to November 1994 onwards Current Chest, Mathura (when debit balance first arose through you and other staff of at Agra Main Branch). the branch. You took sundry SB A/c STF 43 was showing a advance of Rs. 5,000/- (through debit balance of Rs. 35,609.35 OG 74. did 20.04.95) in various as on 28.12.1995. denominations for the purpose That on 20.4.95, Naripura Agra of substituting some defective Branch had sent a cash notes if found in any of the remittance of Rs. 14,12.000/- to bundles so that said bundles Current Chest, Mathura need not be returned by the through you and other staff of Currency Chest for the the branch. You took sundry presence of one or two such advance of Rs. 5,000/- (through notes in the bundles. Though G-74 dtd 20.04.95) in various you returned from Mathura in denominations for the purpose the evening of 20.04.95 with of substituting some defective Rs.2.48.000/- returned by the notes if found in any of the Currency Chest, you did not bundles so that said bundles recredit/clear the sundry need not be returned by the advance on the same date. Currency Chest for the Despite Manager''s presence of one or two such advice/instructions to close the notes in the bundles Though sundry advance on the you returned from Mathura in following day, you chose to the evening of 20.04.95 with keep the said sundry advance Rs. 2.48,000/- returned by the amount with you till 24.04.95. Currency Chest, you did not By your above acts, you had recredit/clear the sundry misused/temporarily mis- advance on the same date. appropriated the sundry Despite Manager''s advance of Rs. 5000/- advice/instructions to close the sanctioned to you for cash sundry advance on the remittance purpose. following days, you chose to The full/more/exact details keep the said sundry advance pertaining to the above matters amount with you till 24.04.95. are furnished in the statement By your above acts, you had of imputations of Misconduct misused/temporarily mis- on your part appended appropriated the sundry herebelow. advance of Rs. 5000/- By your above acts, you failed sanctioned to you for cash to discharge our duties with remittance purpose. outmost integrity and honesty The full/more/exact details and exhibited conduct pertaining to the above matters unbecoming of the status of a are furnished in the statement bank officer and thus of imputations of Misconduct coutravened Regulation 3(1) on your pan appended read with Regulation 24 of herebelow. Syndicate Bank Officer By your above acts, you failed Employee (Conduct) to discharge your duties with Regulations. 1976. utmost integrity and honesty and exhibited conduct unbecoming of the status of a bank officer and thus contravened Regulation 3(1) read with Regulation 24 of Syndicate Bank Officer Employee (conduct) Regulations, 1976. (Emphasis added)

10. We have compared the two charge-sheets filed by the petitioner and the bank and found that a relevant part of the charge-sheet has been omitted from being mentioned in Annexure-7 to the writ petition. Therefore Annexure-7 cannot be said to be a true copy. Learned Counsel for the petitioner could not explain any reason for non mention of the said part. Evidently due to tins omission the charge appears to be vague. In the absence of any explanation we are inclined to infer that the omission is deliberate and intentional. The petitioner intention to gain advantage from this omission is evident inasmuch as he was successful in obtaining ex parte interim order but when the correct position brought to notice of the Court, stay order was vacated. Before us also the learned Counsel was very emphatic in his arguments to show vagueness of the charge sheet but when the omission was pointed out, he could not say anything further except of leaving his argument at that stage. This leads to the conclusion that omission was with a view to obtain a favourable order and not a mere inadvertent mistake. A petitioner who has not come before this Court with clean hands, itself disentitles him from any relief under Article 226 of the Constitution of India and the writ petition is liable to be dismissed on this ground alone.

11. In Naraindas Vs. The Government of Madhya Pradesh and Others, a Constitution Bench of the Apex Court held that it a wrong and misleading statement is deliberately and wilfully made in a party to a litigation with a view to obtain a favourable order, n would prejudice or interfere with the due course of judicial proceeding and thus amount to contempt of court. But it must be established satisfactorily that any deliberate and wrong statement was made and there was a favourable order in consequence of the statement.

12. In B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees'' Association and Others, it was held that it is the duty of the employee who approaches the Court for a relief 10 come and disclose full and correct facts and if he fails to do so and suppresses material facts, the application is liable to be dismissed. It was also held that the person who comes to the Court with uncleaned hands cannot get discretionary relief under Article 226 of the Constitution of India and his petition is liable to be thrown out on this single fact.

13. Since much arguments were advanced by referring to page 40 of die writ petition where the portion of charge sheet contained in Annexure-CA-3 which we have pointed out above was not typed and it was canvassed that the charge sheet is ex-facie vague, hence cannot be the basis for punishment though we find that after adding the portion which has been taken away in Annexure-7, the alleged vagueness of the charge disappeared. Ex-facie we are, therefore, satisfied that the petitioner is guilty of filing an incorrect document and advancing arguments based on such omission which also amounts to forgery of the document. This ground alone is sufficient for dismissal of the writ petition.

14. However, on merits also we have considered the matter and do not find any substance.

15. Regulation 3 of Syndicate Bank Officer Employees'' (Conduct) Regulations, 1976 (hereinafter referred to a Conduct Regulations) provides general conduct required to be maintained by an officer employee of the bank which reads as under:

3. General:

1) Every Officer Employee shall, at all times take all possible steps to ensure and protect the interests of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a Bank Officer.

2) Every Officer Employee shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations.

3) No Officer Employee shall, in all performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior.

4) Every Officer Employee shall take all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control and authority.

16. The procedure of disciplinary enquiry and the punishment which can be imposed upon Officer Employee is specified in 1976 Regulation. The penalties which can be imposed are provided under Regulation 4 and reads as under:

4. Penalties:

The following are the penalties which may be imposed on an Officer Employee for acts of misconduct or for any other good and sufficient reasons.

Minor Penalties:

a) Censure;

b) Withholding of increments of pay with or without cumulative effect:

c) Withholding of promotion;

d) Recovery from pay or such other amount as may be due to him, of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of order;

e) Reduction to a lower stage in the time scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting officer''s pension.

Major Penalties:

f) Save as provided for in (e) above, reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not me officer will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;

g) Reduction to a lower grade or post;

h) Compulsory Retirement;

i) Removal from service which shall not be a disqualification for future employment;

j) Dismissal which shall ordinarily be a disqualification for future employment.

....

17. The procedure for holding departmental enquiry is provided in Regulation 6 of 1976 Regulations.

18. During the course of hearing learned Counsel for the petitioner could not point out any procedural error committed by the enquiry officer in conducting departmental enquiry winch is inconsistent to the procedure prescribed under Regulation 6 of 1970 Regulations. However, in the written arguments submitted by the learned Counsel for the petitioner, only a vague plea has been raised in paragraph 5 referring to paragraph 15 of the writ petition, without pointing out as to how and in what manner the procedure prescribed in Regulation 6 was not allowed. The argument raised in paragraph 5 of the written arguments is reproduced as under:

5. In imposing disciplinary action against an employee, enquiry has required by Regulation 6 of the Syndicate Bank Officers, Employees (Discipline & Appeal)

Regulation, 1976 is to he taken. Regulation 6 provides for a detailed enquiry and provisions of Regulation 6(13) required that oral and documentary evidence in support of articles of charge should be adduced before the Enquiry Officer. However, no enquiry was held, no evidence was adduced and no material produced before the Enquiry Officer (paragraph 58 of the Writ Petition).

19. In paragraph 15 of the writ petition also the averment is only that no evidence led by the management to pro ye charges and assessment of evidence by the enquiry officer and disciplinary authority is incorrect. On tie contrary it is evident from record that on 6.10.1997 a preliminary enquiry was conducted by the enquiry officer. The delinquent employee pleaded not guilty and stated that he would defend himself. Thereafter the enquiry officer held that regular enquiry is necessary and directed parties to give list of witnesses and documents which they rely. On 30th March 1998 the management produced 41 documents which were taken on record and some of the documents whose copy was required by the petitioner were supplied to him. He was also allowed to inspect original documents relied upon by the management. The enquiry officer also directed if there is any statement of witness that would also be supplied to the petitioner. On the next date of oral inquiry the petitioner confirmed that he received certified copies of documents as demanded by him. Besides, various documents were sought by the petitioner in defence. Those documents were allowed to be supplied by the enquiry officer and directions were issued to the management to provide them. The same were also made available to him subsequently. The management in support of the charges examined Sri Narain Rao who proved charges levelled against the petitioner. He was cross-examined by the petitioner by putting as many as 40 questions. After close of management''s evidence, the enquiry officer permitted petitioner to place his defence. The petitioner placed 60 documents in defence and recorded his own statement in defence. Thereafter oral enquiry was completed and enquiry officer, after considering all the material, submitted his report. It therefore cannot be said that the enquiry was not conducted in accordance with rules and the finding has been recorded by the enquiry officer and disciplinary authority without any evidence. Learned Counsel for the petitioner miserably failed to show any finding as perverse or based on no evidence. The contention thus is rejected.

20. Now coming to the question whether charges levelled against the petitioner constitute any conduct, we find that being an of an employee of the bank and working in the capacity of Assistant Manager, he was well aware that certain advances and salary amount was being recovered from him in respect whereof order was passed by the competent authority. Unless such order is set aside or stayed by any competent authority, it had to be given effect. The petitioner, therefore, could not have acted in a manner which would have caused a situation whereby the bank would not have been able to recover the said amount. By opening a new account and transferring debit amount from one account to another clandestinely the petitioner has acted in a manner which is ex-facie violative of the rules. It cannot be said that the petitioner discharged his duties

with utmost honesty and sincerity and had done nothing which is unbecoming of a bank officer. If the authorities have passed some wrong order it was open to the petitioner to approach the authorities or such forum as permissible in law but so long as orders were operative, the petitioner could not have resorted to such a method which would have created hindrance in recovery of the amount from him. In our view the charges levelled against him are neither vague nor it can be said that they do not constitute misconduct. Therefore this contention is also rejected.

21. The judgment relied upon by learned Counsel for the petitioner in M.M. Melhotra (supra) and Ram Singh (supra) instead of giving any support to him, in our view, arc against him. In para 15 of the judgment in M.M. Melhotra (supra) the Apex Court has observed as under:

15. The range of activities which may amount to acts which are inconsistent with the interest of public service and not befitting the status, position and dignity of a public servant are so varied that it would be impossible for the employer to exhaustively enumerate such acts and treat the categories of misconduct as closed. It has, therefore, to be noted that the word "misconduct" is not capable of precise definition. But at the same time though incapable of precise definition, the word "misconduct" on reflection receives its connotation from the context, the delinquency in performance and its effect on the discipline and the nature of the duty. The act complained of must bear a forbidden quality or character and its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the statute and the public purpose it seeks to serve.

22. In the conduct regulations the general conduct which has to be observed by a bank employee has been stated in Regulation 3 and onwards and Regulation 24 provides that breach of any of the provisions of these Regulations shall be deemed to constitute a misconduct punishable under 1976 Regulations. Therefore, a conduct inconsistent with the various traits provided under Regulations 3 to 23 would be a misconduct for which punishment may be imposed upon the officer employee of the bank. The judgment in Ram Singh (supra) also reiterate the same thing.

23. Now coming to last submission that the appellate and reviewing authorities have not given a detailed reasoned order and therefore same are non-speaking orders and liable to be set aside, we find it appropriate to refer a Constitutional Bench judgment of the Apex Court in S.N. Mukherjee v. Union of India wherein it was held:

The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the the appellate or revisional authority agrees with the reasons contained in the order under challenge.

24. This Court has also taken the same view in Writ Petition No. 53173 of 2000

Rakesh Babu v. Central Administrative Tribunal, Allahabad and Ors., decided on 11th April 2007.

25. Therefore an appellate and review order of affirmance cannot be invalidated merely on the ground of non speaking.

26. Lastly the submission of the petitioner that punishment amounts to reduction by two grades also has no force inasmuch as the order dated 24.12.1997 (Annexure-4 to the writ petition) shows that it was a stagnation movement allowing an increment to the petitioner as evident from the following:

We take pleasure in informing you that competent authority has sanctioned stagnation movement to you to next higher scale in term of Regulation No. 5(1) b of Syndicate Bank Officers Service Regulations, 1979. Accordingly you have been granted increment as per details given below:

27. Respondents have also filed Syndicate Bank Officers Service Regulation, 1979 (hereinafter referred as 1979 Regulation) as Annexure-7 to the counter affidavit which deals with stagnation increment and note 1 thereof provides that grant of such increments in the higher scale shall not amount to promotion. Regulation 5(1)(b) and note 1 are reproduced as under:

5(1)(b). Officers in Scale I and Scale II. 1 year after reaching the maximum in their respective scales, shall be granted further increments including stagnation increment(s) in the next hither scale only as specified in (c) below subject to their crossing the efficiency bar as per guidelines of the Government. Note. 1). Grant of such increment in the next higher scale shall not amount to promotion. Officers even after receipt of such increments shall continue to get privileges, perquisites, duties, responsibilities or posts of their substantive Scale I or Scale II as the case may be.

28. Learned Counsel for the petitioner could not show anything to contradict the aforesaid and once it is clear that grant of stagnation increment in MMGS-III did not result promotion to the said grade, it means the petitioner continues to be substantively an employee of MMGS-II and by way of punishment has been reduced to Grade I which is reduction in next lower made and is in accordance with Regulations.

29. In view of the aforesaid discussions we do not find any error apparent on the face of record in the orders impugned in the writ petition requiring interference under Article 226 of the Constitution of India. The writ petition, therefor4e, lacks merit and is accordingly dismissed.

