



**COMMON BOND
JANUARY - 2013**



The logo for the 'Editorial' section, featuring the word 'Editorial' in a stylized, cursive font on a light-colored, textured background that resembles a scroll or parchment.

COMMENCEMENT OF BIPARTITE NEGOTIATIONS

The Confederation and other Officers' organizations have submitted comprehensive Charter of Demands covering various issues that are required to be negotiated with the Indian Banks' Association similar is the position as regards the workmen organization. The 9th Bipartite settlement expired on 31st October 2012 and the workforce in the Banking Industry is eligible for the revision in their pay scales and other allowances with effect from 1.11.2012. It is well established convention during the last 3 settlements that the unions and associations would submit their charter of demands well before the expiry of the previous settlements so that the Indian Banks' Association could commence negotiations with the respective organizations on the Charter of Demands submitted by them symbolically before the expiry of the previous bipartite settlement.

The IBA invited the Confederation and other organizations during the 9th bipartite negotiations before the expiry of the 8th bipartite settlement to demonstrate their sincerity and eagerness to settle the salary revision in good time. The negotiations no doubt prolonged and were hampered due to the casual approach of the Indian Banks' Association and the Government in regard to the resolution on the 2nd option on Pension which consumed a considerable time during

the last bipartite negotiations. In the current scenario, the IBA is in a comfortable position to conclude the negotiations in good time and pass on the benefits of revision to the workforce at the earliest possible time.

There are no contentious issues at present. The only major issue is a reasonable salary scales comparable with the similarly placed organizations in particular the Government and other Public Sector undertakings who had the benefit of the 6th Pay Commission. We could not make much headway in matching the salary scales given by the Government to their employees and the present revision should not only take care of this aspect and must look beyond these limitations keeping in view the world wide compensation system that is prevailing in the financial sector.

The Confederation has been tapping the doors of the IBA for the commencement of the negotiations without loss of further time. The IBA after the receipt of the Charter of Demands on 30th October, 2012 has so far not come back to the Confederation and other organizations as to the commencement of the negotiations on the Charter of Demands. The IBA also required to complete certain formalities such as obtaining of the Mandate from the respective member banks managements and also the data required for working out the future salary scales etc. We have

VANDE MATHARAM

also independently on our own initiative approached the Managements through our affiliates to impress upon them the urgency of the commencement of negotiations and also complete the formalities that are required for the purpose of beginning the negotiations by the IBA with the Confederation and other organizations.

The political atmosphere is also such that the delay would adversely affect the interest of the

workforce in the banking industry. The IBA should realize these practical positions and should be prepared to sit on a continuous basis and complete the negotiations much before the country goes for the General Elections and avoid unnecessary delay in finalising the 10th Bipartite Settlement. Let us hope that the IBA will act swiftly in the interest of the employees in the banking industry, commence and complete the 10th Bipartite Negotiations in all seriousness. ■



**COM.S.D.BALI, GENERAL SECRETARY,
ABOA UNIT: STATE BANK OF BIKANER AND JAIPUR AND
COM.HARSHAVARDHAN MADABHUSHI, GENERAL SECRETARY,
ABOA UNIT: STATE BANK OF HYDERABAD,
ELECTED AS PRESIDENT AND GENERAL SECRETARY OF
ASSOCIATE BANK'S OFFICERS' ASSOCIATION RESPECTIVELY**

Associate Bank's Officers' Association, held their 8th Triennial Conference at Hyderabad on 24th November, 2012 in a grand manner. The Conference was inaugurated by Com.S.Sudhakar Reddy, General Secretary, Communist Party of India. Sri.M.Bhagawanth Rao, Managing Director, State Bank of Hyderabad was the Chief Guest. Sri.A.K.Deb, General Manager, Associate Banks' Department, Corporate Centre, State Bank of India, Com.M.Manaiah, General Secretary, SBIOA, Hyderabad Circle, Com.Franco Rajender Dev, General Secretary, SBIOA, Chennai Circle, Sri.K.Nageshwar, MLC, Andhra Pradesh Legislative Council, Dr. V.Suresh Babu, Chief General Manager (HR) State Bank of Hyderabad were the Guests of Honour.

2. In the delegate session held on 25th and 26th November, 2012 many issues confronting the

Associate Banks and the Officers working in the Banks were discussed in a threadbare manner. Many Resolutions on various important issues were discussed in a threadbare manner and unanimously adopted by the House.

3. On 26th November, 2012 elections for the posts of Office bearers were held and we are happy to inform you that Com.S.D.Bali, General Secretary, ABOA Unit: State Bank of Bikaner & Jaipur, and Com.Harshavardhan Madabhushi, General Secretary, ABOA Unit: State Bank of Hyderabad were unanimously elected as President and General Secretary respectively of ABOA.

4. "**Common Bond**" heartily congratulates both the office bearers on their election as President and General Secretary and we wish them all success in all their endeavours during their tenure. ■

WORK IS WORSHIP, DO YOUR DUTY

COM. K.S.SINGH AND COM.G.V.MANIMARAN CO-OPTED AS PRESIDENT AND GENERAL SECRETARY OF CBOA

Consequent upon the retirements of Com.K.R.S.Murthy, President and Com.R.K.Awasthi, General Secretary, CBOA, Com.S.K.Singh, co-opted as President and Com.G.V.Manimaran, as General Secretary of Canara Bank Officers' Association in their Central

Committee meeting held at Patna on 17.11.2012.

"**Common Bond**" wishes the newly elected member all the very best in their endeavours to serve the membership.■

THE FIRST GENERAL BODY CONFERENCE OF ALL INDIA BANK PENSIONERS AND RETIREES CONFEDERATION HELD AT NEW DELHI: A WONDERFUL DISPLAY OF UNITY AND SOLIDARITY

25th November, 2012 will be remembered in the history of Bank Pensioners and Retirees' movement, as on this day the First General Body Conference of All India Bank Pensioners and Retirees Confederation was held at Ramjas School Auditorium, Chitragupta Road, New Delhi.

2. Hundreds of delegates and observers from every nook and corner of the country thronged the Auditorium, braving the winter cold. The delegates and observers were given a warm welcome at the entrance of the Auditorium by the enthusiastic and ever smiling volunteers from AIBOC Delhi State Unit under the able and charismatic leadership of the their State Secretary, Sri Harvinder Singh, who had toiled relentlessly to make the first General Body of AIBPARC a memorable one. The tastefully decorated Auditorium was jampacked with more than 500 delegates and observers, representing the affiliates of AIBPARC.

3. The dais was adorned by Mrs. Krishna Tirath, the Union Minister for Women and Child Development, Com. D. Raja, general Secretary Communist Party of India, Com. P. Shankar Narayana Murthy, General Secretary, SBI Pensioners Federation, Com. P.K. Sarkar, President, AIBOC and Convener, UFBU, Com. Harvinder Singh, General Secretary, AINBOF and Senior Vice President, AIBOC, Com. S. R. Sengupta, Joint Convener, AIBPARC and Com. P.S. Pataki, Bank of India Pensioners' Association. The Inaugural lamp was lit by all the dignitaries on the dais to herald the Inaugural session.

4. Com. Harvinder Singh, delivered the welcome speech and told the house that Mrs. Krishna Tirath, had been an ardent supporter of the movement of Bank officers and

employees and she is the most apt person to be our guest to inaugurate the first General Body of the Confederation, as she is aware of the hopes and aspirations of the Pensioners, Senior citizens, Com. D. Raja, a veteran trade unionist of the country was also accorded a warm welcome and solicited his support for all the activities of the Confederation. He extended a hearty welcome to all the delegates, observes, general secretaries and members of affiliates of AIBOC.

5. Com. D. Raja, eulogizing the important role played by AIBOC in the Bank Officers' movement said, it augurs well that AIBOC is the driving force behind the Pensioners' Confederation. Though there are differences on ideological front all of us have to Move together and strike together to achieve our goals and objectives. While supporting the Charter of demands submitted by the UFBU, he called upon the audience to oppose the Financial Reforms Bill introduced in the Parliament. He expressed his genuine concern for the Senior citizens and felt that they deserve a better reward during their twilight years.

6. Com. P.K. Sarkar, in his speech narrated the series of events, commencing from the Triennial Conference of AIBOC at Bhubaneswar in January, 2011 where it was resolved to promote the Pensioners' Confederation as a wing of AIBOC, the Foundation Conference at Nagpur, the Meetings of Conveners at Kolkata, Chennai and ultimately reaching Delhi, the place sacrosanct with the foot prints of AIBOC formation in October 1985. He recalled the efforts of Com. G.D. Nadaf, in promoting the Pensioners' Confederation and today it has become a reality and it has emerged as a force to reckon with. He complimented the Confederation for preparing a

SELF HELP IS BEST HELP

comprehensive Charter of Demands for the Pensioners and Retirees. He explained in detail the efforts made by him to place before the Union Minister of State for Finance in a threadbare manner, all the anomalies, distortions, aberrations in payment of Pension to Bank retirees, which need corrections. He expressed the hope that the demands of the pensioners under the banner of AIBPARC will reach their logical conclusions at the earliest.

7. Com. PP. Shankar Narayana Murthy, General Secretary, Federation of SBI Pensioners' Associations, explained the distortions created by each settlement and how the group of pensioners covered by the previous settlement are denied a better pension, their rightful share. There is a need for the government of India to set right these aberrations to provide relief to the pensioners. He explained the position of pensioners in SBI and the struggle waged by the Pensioners' Federation to fight the deprivations to Pensioners. He assured the Confederation full co-operation and co-ordination in the days to come.

8. Mrs. Krishna Tirath, in her speech was all praise for some of the activities of retirees such as helping the poor students, free medical camps, protection of environment by planting trees etc. which has brought the retirees closer to the society. Narrating how the number of senior citizens is increasing rapidly and these people need to be treated with dignity and respect and in a humane way. Making a reference to the sufferings of senior citizens in the unorganized sector, we should contribute our mite for ameliorating the problems of this section of the society. She expressed her happiness over the formation of the Pensioners' Confederation and hoped that the hopes, aspirations of the Pensioners will be pursued to their logical end. She wished the Confederation all success, amidst thunderous applause of the audience.

9. Com. S. R. Sengupta, proposed vote of thanks and appealed to Mrs. Krishna Tirath, to have sympathy for the demands of Bank Pensioners / Retirees, who are the architects of the rural development of the country.

The Inaugural Session ended on a happy note of getting a flying start.

The BUSINESS SESSION

10. The Business Session started with Com. P.K. Sarkar President, AIBOC in the Chair. The dais was shared by Com. K.V. Acharya, Com. S.R. Sengupta, Com. T.T. Natarajan, Com. D. Punja, Com. J.D. Sharma, Com. Harvinder Singh.

11. Com. S.R. Sengupta, President presented a detailed report about the international and international scenario and the problems and issues of the pensioners and retirees. The report was placed before the house for discussion and more than 17 delegates participated in the debate and deliberated on various issues and grievances of pensioners, updation and up gradation of pension, improvements in family pension, improvement of pension of pre 01.01.1986 retirees and spouses of officers who expired prior to 01.01.1986, increased quantum of gratuity for retirees w.e.f.01.01.2006, implementation of government guidelines for pension option to VRS optees, need for a comprehensive and uniform medical benefit / hospitalization scheme for retirees, embarking on a larger share of welfare funds for retirees, need for achieving co-ordination among Pensioners' organizations and chalking our programmes for the future etc.

Com. Sengupta replied to the debate in an elaborate manner and to the satisfaction of the participants. The report was unanimously adopted amidst thunderous applause.

The amendments proposed to the Rules and Byelaws were adopted unanimously.

12. The Resolutions on the following issues were also adopted and passed unanimously.

1. The National issues, including development of the country, evolving a corruption free society, stability in politics.
2. On International issues
3. On issues related to our Economy
4. On Labour Laws.
5. On health of the Banks
6. On the agitation ushered in by UFBU
7. On the Financial demands of the retirees

BE TRUTHFUL, BE FEARLESS

8. On the Non-financial demands
9. On the need for structured forum for Bank Retirees.
10. Increased awareness for the Retirees
11. Resolution on operation of Bank Account.
12. Resolution on Appointment of Chartered Accountants
13. The Election of office bearers was held at the end of the session and the following were unanimously elected as office bearers for the ensuing term.
 1. **Com. K.V. Acharya (IOB) President**
 2. **Com. B.L. Rathore (SBBJ) Vice President**
 3. **Com. S.R. Sengupta (BOI) General Secretary**
 4. **Com. B.N. Bardhan (Indian Bank) –Treasurer**
 5. **Com. B. Bagchi (Union Bank) Dy. Treasurer**

Besides above, 10 Vice Presidents and 11 Dy. General Secretaries, 19 Committee Members were elected unanimously.

14. Com. P.K. Sarkar, in his concluding speech congratulated the new team of office bearers and assured on behalf of AIBOC all support to all the activities of the Pensioners' Confederation. He wished all success to the Confederation in all its future endeavours.

15. Com. Harvinder Singh, who took the responsibility of holding the Conference at Delhi expressed his happiness that his desire to be a witness to the historic conference was fulfilled. He recalled the emergence of AIBOC in 1985 at Delhi and by holding this Conference, history is repeated. He thanked the Conveners for giving an opportunity to hold the landmark conference at New Delhi.

16. Com. K.V. Acharya, the newly elected President expressed his gratitude to the members and assured that the team will work unitedly for bringing cheers to the retirees.

17. Com. S. R. Sengupta, proposing vote of thanks, thanked profusely all the leaders, activists, volunteers who struggled in a totally indefatigable manner for making the conference a great success.

18. The Confederation now onwards will usher as a formidable force and in conjunction with AIBOC, achieve the goals and objectives for which the Confederation has been founded.

19. "Common Bond" congratulates, all the newly elected office bearers and wish them all success in their endeavors in consolidating the Retirees officers and Pensioners under the banner of AIBPARC. ■



CHECK YOUR CHEQUE NOT TO USE OLD CHEQUES AFTER DECEMBER 31 ★

Over the past month, banks have asked the customers to surrender the old cheque books and collect the new one before December, 31, 2012, through advertisements in newspapers or the notices put up on the bank's website or at the branch.

Beginning January 1, 2013, customers will no longer be able to use bank cheques that do not conform to the cheque truncation system (CTS) 2010 standards. The new cheques have additional security features, making it difficult to counterfeit.

Old cheques may not be dishonored immediately but it is better to get the new format cheques.

But before one rush to the branch, check if cheques

are indeed of the old format as several banks had started issuing new cheque books since 2011.

If post-dated cheques are issued to your bank or home loan lender towards payment of equated monthly installments (EMI), get in touch with them at once and replace the cheques.

If you are holding an old-format cheque that you have to encash, do it before December 31*. If it is dated after that, get in touch with the person or institution that has issued the cheque and ask for a new one. The new cheques will have additional security features and standardized features.

Source: Business Standard, Dated 03/12/2012
★RBI has since extended the date up to 31/3/2012

SUCCESS COMES ONLY TO THOSE, WHO DARE AND ACT

NEW CENTRALIZED HIRING PROCESS FOR PSBS SOON

Soon, all public sector banks (PSB) including the State Bank group and IDBI –are likely to adopt a centralized recruitment process, where a selection board will place the chosen candidates only in any one bank according to merit and reservation in a given year after a common interview and test.

The idea is to save time and costs and improve efficiencies. Significantly, this means candidates will have to go through the whole selection process again if they want to get appointed in any other bank. Currently, a candidate – clearing the Institute of Banking Personnel Selection's common test and the different interviews conducted by the PSBs- can be selected by many banks. The candidate then gets to choose more than one bank before finally settling down in one of the chosen banks. This system makes it difficult for banks to fill up vacancies if candidates they have chosen opt for another bank in the final choice. The State Bank group and IDBI, however, have their own independent selection processes.

The new and simplified selection process will have a common interview and will see the successful candidate being asked by a common recruitment board to choose any one bank according to his/her merit and after taking into account whether he /

she falls in the reserved category, according to official sources. While most PSBs agree with this centralized system, efforts are on to get the State Bank group and IDBI into it, as the new system will save time and cost for the banks as well as candidates. Of the 84,489 vacancies, PSBs hope to fill 63,200 vacancies by this fiscal end. SBI alone is looking to fill 21,000 vacancies (1,200 officers and 20,000 clerks), while the rest of the banks have to fill the vacancies for 22,000 officers and 20,000 clerks.

In the current system, following the common written test, the candidates who have scored more than the prescribed cut off marks for different banks, have to then appear for interviews conducted by those banks. This forces the candidates to appear for many interviews, which is a time consuming and costly process.

Following these interviews a candidate then joins the first bank that selects him and then if he gets a call from another bank of his interest, he will then resign from the first bank (even paying the bond amount, if asked by the bank) to join the other bank. Presently, IBPS test is held twice annually and then the individual banks conduct their own interviews. ■

Source: Financial Express, Dated 27/11/2012

NEW BANK LICENSES ONLY AFTER RBI ACT AMENDMENT

Ending speculation that the Reserve Bank of India (RBI) may issue final guidelines for fresh banking licenses without the amendment of the Banking Regulation Act, the central bank on 8th Nov.2012 said that neither the final norms nor the process for inviting application could be done without changing the law.

Despite pressure from the finance ministry to allow new banks, the banking regulator has made it clear that it needs more power like to supersede bank boards before it could invite new entrants.

"As indicated in the draft guidelines, certain amendments to the Banking Regulation Act, 1949 are under consideration by the Government of India, including a few that are vital for finalization and

implementation of the policy for licensing new banks in the private sector. The final guidelines will be issued and the process of inviting applications for setting up new banks in the private sector will be initiated only after the Banking Regulation Act is amended," said the central bank.

In February, 2010, while presenting the Budget, the then finance minister Pranab Mukherjee had announced that the RBI would consider issuing fresh licenses to private players and non-banking financial entities. After that, in August 2010, the RBI released a discussion paper taking into account international practices and experience with private sector banks. The draft guidelines were released in August 2011, specifying the conditions relating to eligible promoters, minimum capital required, criteria for foreign share

NEVER BEND BEFORE THE INSOLENT MIGHT

holding, business model, desirable corporate structure and governance standards of the applicant group. **Source: Business Line; Dated 9/11/2012**

NOTE: By the proposal of the government in granting licenses to industrial houses and corporates, they are only making a 'U' turn from their original policy of nationalizing the banks. They also forgotten their social obligations by allowing the private sector to flourish at the expenses of the public sector banks when the existing public sector banks are capable

of meeting the financial inclusion programme of the government of India with the availability of more net works of rural branches, manpower, knowhow and infrastructure, they should be asked to meet the requirement of financial inclusion instead of bringing the corporate and industrial houses. The Banking laws (Amendment) Bill has now been approved by Parliament. Confederation has extended their fraternal support to the strike called by AIBEA and BEFI on 20th December, 2012 against the Government move to amend the Act. ■



POLITICAL RESOLUTIONS - A MYTH

Winston Churchill, the former Prime Minister of England during world war II, also a great statesman, orator and writer was once asked by a reporter about the qualification of becoming a politician. Churchill in his usual humorous and characteristic style has replied that a politician should have the capacity of predicting what is going to happen in his constituency or country the next day, next week, next month, next year. He should also have the capacity of explaining why those things never happened, he added.

Making statements on different subjects has become a regular practice among the politicians as a strategy, whether on inflation, price rise, developmental projects, eradication of poverty, social welfare schemes etc. to activate their cadre and show their capacity. It is also their habit of forgetting such statements until some other occasion arise. It is more prevalent during election campaign or while joining the cabinet when they talk about their portfolio which they are yet to study and make many proposals and promises. It is also common for the ministers to make statements or promises on a subject not connected with their portfolio suited to local demand. Every time they come out with innovative ideas and give tall promises. For any fall out they may blame the media and deny making of any such statement. Another escape route from their commitment is to appoint an enquiry commission at the cost of exchequer in case of any public revolt or calamity, thereby avoid any public wrath. Most surprisingly many reports by such commissions remain in cold storage when the

government is unable to implement the recommendations as it may go against them.

Politics was once considered as a sacred religion being service to humanity and service to God, when political leaders and their followers were leading a honest life with austerity. By the time country achieved freedom, the political system got corrupted. It has lost its charm and sanctity. Seeing the dangers of contaminating the system, Gandhiji even advocated for a decent burial of the political party under whose banner the freedom movement was fought. The same view was endorsed by none other than the former Prime Minister Jawaharlal Nehru. According to him leaders were sinking to the level of ordinary politicians who have no principle to stand by and their conduct and functioning was marked by opportunities. The defence taken by certain leaders against the current issue of corruption bear testimony to this apprehension. Unlike in the past when politics was considered as a sacred religion no political leader has ever admitted involvement in any scam directly or indirectly and set example to others. Similarly no political party has ever admitted involvement their leaders or their relatives in any scam and tried to come out clean. Instead they only tried to attack the whistle blowers who have exposed the scam. Country has seen in recent times utterance by many ministers and political leaders justifying corrupt practices by ministers and political leaders unbecoming of their stature.

Forming a political party is within the fundamental rights of a citizen. As such many political parties have mushroomed in various parts of the country since

SAVE PUBLIC SECTOR, SAVE INDIA

Common Bond, January - 2013

independence. In many cases they are only the offshoots of major national or regional parties formed by the disgruntled national or regional leaders. According to Election Commission there are more than 1200 political parties registered in India out of which only 140-150 parties are in operation. With the formation of regional parties the strength of the national parties has dwindled leading to coalition politics at the centre which has become a marriage of convenience. Swift political somersaults has become the order of the day putting every one on tenter hooks disregarding the future of the country. The country is now facing turmoil due to various scams erupted recently due to lack of affective leadership. In spite of progressive and comprehensive legislature on many reforms, lethargy continues. There are several reasons attributed to the erosion of administrative system that includes politicalised and compromised bureaucrats, widespread corruption, weakened monitoring system and decline in moral value. A weak leadership causes indiscipline and corruption among the cadre. Even strong, honest regional leaders may not be able to perform well under such circumstances.

Many people are occupying high office due to political compulsion irrespective of their capacity, who lord

over much more qualified, trained civil servants who have many years of rich administrative experience in various specialized areas. Under our democratic system it is up to the representatives of the people to take various policy decision and allow bureaucrats to implement. Instead of monitoring and implementing they try to poke their nose and spoil the whole system.

Political icons leading the nation have started crumbling with the spread of literacy among citizens who have started realising their responsibilities and resist being exploited. They are not carried away by the freebies offered by the political parties nor the rhetoric by the political leaders. Capacity of leaders started stagnating or even deteriorating in recent times despite periodic rhetoric who try to survive on sycophancy. Still the local or national leaders are trying to convince the people with their promises on controlling price, economic growth, inflation etc.,. Giving false promises periodically has become part of our political systems. Fortunately it is up to the advantage of our political leaders that our society is turning in to a world with amnesia, as every thing seem to have forgotten to the advantage of the politician at the helm of the government. ■



Judicial Verdict

APEX COURT REVERSES OWN VERDICT ON CHEQUE DISHONOR

COMPLAINTS CAN BE FILED EVEN AFTER SECOND, SUBSEQUENT NOTICES

The beneficiary of a cheque who chose not to prosecute the drawer after serving the first notice on him can do so after serving on him a notice the second and subsequent times, held the Supreme Court. In *MSR Leathers v. Palaniappan and Another*, the Court overturned its own verdict delivered in *Sadanandan Bhadran's* case in 1998. In that case it had held that if the beneficiary of a cheque after serving notice on the defaulting drawer-within a month of notice of dishonour – to pay up within fifteen days, does not follow it up with a complaint to the magistrate within a month of lapse of the fifteen day's time to pay up, he forfeits the right to file a complaint with the magistrate if his second and subsequent notices also remain unheeded.

The Apex Court wondered why in the earlier judgment it had not examined the doctrine of waiver of right to prosecute to condone his failure to prosecute hot on the heels of the first default. A beneficiary of cheque might waive his right to prosecute for a variety of reason including the possibility of the drawer landing funds on the second and subsequent occasions. Instead the Apex Court had in the earlier verdict chosen to press in the doctrine of absolution according to which when a person does not prosecute a person in respect of a non-cognizable offence he is deemed to have pardoned the defaulter. Taking a refreshing new look into the issue, the Court pointed out that a beneficiary cannot be presumed to have granted absolution but given

NATION FIRST, ORGANISATION NEXT, INDIVIDUAL LAST

more opportunities for the defaulter to pay up. Viewed in this light, the cause of action rose each time, the beneficiary served notice and gave time to pay up. In other words, it did not die with his failure to prosecute after the first notice as was held in the earlier judgement. In any case, the Court pointed out, the law has since been amended to vest the magistrate with the power to file a complaint within a month of failure to pay up with fifteen days of

the notice which is a tacit statutory admission of the right to waive prosecution for the time being.

The Apex Court for good measure pointed out that constructive interpretation must be placed on statutes so that its objects are furthered and not stymied by narrow interpretations. ■

Source: Business Line, Dated 3/10/2012

[2010 (127) FLR 90]
(BOMBAY HIGH COURT)
P.B.MAJMUDAR and R.M.SAVANT, JJ.
C.A.J.Writ Petition No.5447 of 2002
July 13, 2010
Between
SHAMSUNDAR YASHWANT MORE
And
STATE OF MAHARASHTRA and others

Principles of Natural Justice-Punishment of withholding five increments with cumulative effect imposed after holding enquiry for misconduct-As upheld by Appellate Authority-Petitioner was not given reasonable time for filing reply of 2nd show-cause notice-By disciplinary authority-disciplinary authority acted in a hasty manner-Which is contrary to principles of natural justice-Therefore, the order of withholding increment passed by disciplinary authority is not sustainable.

JUDGMENT

P.B.MAJMUDAR, J.- By way of this petition filed under section 226 of the Constitution of India, the petitioner has challenged the order passed by the Disciplinary Authority i.e. respondent No.4 dated 28.4.1997, which is confirmed in Departmental Appeal by the first Appellate Authority by its order dated 15.6.1999, which is also confirmed by the second appellate authority by its order dated 20.6.2000. The petitioner was subjected to departmental proceedings and was given charge-sheet dated 23.5.1989, wherein certain charges were levelled against the petitioner. The petitioner gave reply to the charge-sheet and pleaded innocence. An Inquiry Officer was appointed who

conducted an inquiry. The Inquiry Officer submitted his report by holding that the charges levelled against the petitioner are not proved. The Disciplinary Authority disagreed with the Inquiry Officer's report and came to a conclusion that the charges are proved against the petitioner. The disciplinary Authority therefore, issued a show-cause notice to the petitioner on 24.4.1997. The Disciplinary Authority having differed with the findings of the Inquiry Officer and the conclusion recorded by him has given reasons for its conclusion in the said notice. The said notice along with the findings arrived at by the Disciplinary Authority was served upon the petitioner. In the said notice the petitioner was called upon to show-cause within four days from the receipt of the notice as to why proposed punishment

DUTY FIRST, RIGHT NEXT

regarding withholding of increments with cumulative effect should not be imposed upon him.

It is pertinent to note that the said show-cause notice was issued on 24.4.1997. The petitioner gave reply to the said show cause notice on 28.4.1997, which was sent through proper channel. It is not in dispute that 28.4.1997 was the last date by which the petitioner was required to give reply to the show-cause notice. However the disciplinary Authority on that very day i.e.28.4.1997, passed the impugned order of punishment withholding five increments with cumulative effect. The said order of the Disciplinary Authority finds place at Exh. N page 67 of the compilation. It is found by the Disciplinary Authority that till the date i.e. 28.4.1997 no reply was received by the disciplinary authority from the petitioner. In the impugned order, it is recorded that it is presumed that the petitioner has nothing to say in the matter, since he has not given any reply to the show-cause notice. On the above premises the disciplinary authority has passed the impugned order which was also confirmed by the first and second appellate authority.

2. The learned counsel for the petitioner submitted that even though the petitioner gave a reply on 28.4.1997, the disciplinary authority has wrongly recorded that no reply was given by the petitioner and therefore it was presumed by the disciplinary authority that the petitioner has nothing to say in the matter. It is contended by the learned Counsel for the petitioner that on 28.4.1997, the reply was given by the petitioner and it was even received by the respondents on that very day. The reply given by the petitioner is annexed at Exh. M. which is dated 28.4.1997. The said reply bears an endorsement of Mr. P.M.Nadkarni, UDC of having received the reply of the petitioner. The said reply was given in the office of the concerned department on the last date. In spite of the same the disciplinary authority has ignored the same and has said that the petitioner has not given any reply to the show-cause notice.

3. On the other hand the learned Counsel appearing for the respondents would contend that the petitioner should not have given reply on the last date. In the

affidavit-in-reply, it is averred that a copy of the show-cause notice was sent to the petitioner on 24.4.1997 and the same was accepted on the same day by the petitioner for which he gave an acknowledgement. It is further averred that the petitioner has not submitted any reply to the same and he is trying to take advantage on the ground that the department has received a procedural copy on 28.4.1997. The learned Counsel for the respondents further submitted that the petitioner cannot blame respondent No.4 as he has not directly handed over a copy of the reply to the disciplinary authority.

4. We have heard the learned Counsel for the petitioner and the learned Counsel for the respondents at some length. It is not in dispute that the inquiry officer in its report found that the charges against the petitioner are not proved. It is true that the disciplinary authority disagreed with the said findings and issued show-cause notice to the petitioner stating that the disciplinary authority is not agreeing with the finding of the inquiry officer. It is also true that the petitioner has received the said show-cause notice on 24.4.1997.

5. It is required to be noted that the disciplinary authority was required to wait upto the last date i.e.28.4.1997 and could have passed the final order subsequent to the said date as the petitioner was required to give reply upto 28.4.1997. On the 4th day it self on which the petitioner gave reply, the disciplinary authority has passed the impugned order thereby withholding the five increments with cumulative effect. The petitioner had already given reply on 28.4.1997 through proper channel and submitted reply to the concerned Clerk of respondent No.4 on 28.4.1997.

6. The learned Counsel for the respondents submitted that the petitioner could have given reply directly to the disciplinary authority and the petitioner could not have submitted reply through the office. In our view such objection raised by the learned Counsel for the respondents is not at all tenable and justifiable as the concerned receiving Clerk, who has received the reply from the petitioner

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was duty bound to place it before the concerned authority. In the instant case even though the petitioner gave reply to the show-cause notice within the stipulated time, the disciplinary authority found that no reply is filed by the petitioner and that is the basis for passing the impugned order of punishment. On a query put by the Court to the learned Counsel for the respondents that as to why the impugned order of punishment was passed hurriedly and why only four days time was given to the petitioner to give his reply the learned Counsel for the respondents submitted that since the petitioner was going to retire on 30.4.1997, it was decided by the respondents to expedite the matter and to pass the order i.e. on 28.4.1997. In our view, the principles of natural justice are required to be followed in the real sense and it must not be a matter of just formality. It is surprising to note that as to why the disciplinary authority did not give reasonable time to the petitioner even though the disciplinary proceedings could have been continued even after the retirement of the petitioner and disciplinary authority could have passed the order after considering the reply of the petitioner and after considering the material on record. By the impugned order the disciplinary authority withheld five increments with cumulative effect there was no necessity for the Disciplinary authority to proceed in the manner done as the inquiry could have been continued even after superannuation of the petitioner. The disciplinary authority not only acted in a hasty manner and has passed the impugned order without giving reasonable opportunity to the petitioner by not considering the reply given by the petitioner on record even though it was submitted within the stipulated period. It is explicitly clear that the disciplinary authority was in hurry to pass the impugned order by the end of the day. In our view the order of the disciplinary authority is not sustainable as even though the petitioner has given reply which was tendered in the office the disciplinary authority passed the impugned order on the very day by holding that no reply has been tendered by the petitioner. The impugned order passed by the disciplinary authority is therefore contrary to the principles of natural justice. It is required to be noted that this is a case in which the inquiry officer had

exonerated the petitioner from all the charges levelled against him and the disciplinary authority though within its right issued show-cause notice differing with the inquiry officer report. However while passing the impugned order the disciplinary authority was required to follow the principles of natural justice in its proper perspective and in a meaningful manner.

7. At this stage a reference is required to be made to the ruling of the Apex Court in the case of ***Punjab National Bank and others v. Kunj Behari Misra***. In the said case the Supreme Court found that the disciplinary authority differed from the findings of the inquiry officer which report was in favour of the charge-sheeted employee.

It is found that in such cases the disciplinary authority is required to give opportunity to the concerned delinquent. The Supreme Court in Para No.18 of its judgment, held as under:

18. Under Regulation 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and while recording a finding of guilt imposes punishment on the officer. In our opinion in any such situation the charged officer must have an opportunity to represent before the disciplinary

authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in *Karunakar case.*"

7. Considering the aforesaid aspect, the impugned orders are not sustainable and are required to be set aside. In the normal circumstances, we would

have remanded the matter back to the disciplinary authority for passing fresh orders. However it is pointed out that the petitioner has already attained the age of superannuation on 30.4.1997 i.e two days after passing of the impugned order. It would now not be just and proper to remand the matter back to the disciplinary authority as the petitioner already stands retired since more than 13 years. It is required to be borne in mind that the inquiry was initiated against



the petitioner in the year 1989 and it was continued for more than 8 years while the petitioner was in service. In our view it would not be just and proper to remand the matter back to the disciplinary authority and to start the proceedings from

the stage from which it is found to be vitiated. The impugned orders of disciplinary authority as well as subsequent orders passed by the 1st and 2nd appellate authority are accordingly set aside.

Rule is made absolute in the aforesaid terms. Whatever benefits the petitioner is entitled to by virtue of this order the same may be released to him within a period of twelve weeks from today. ■

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