



Editorial

NO LETUP

The new government formed after the conclusion of 19th General Election to Lok Sabha will start functioning by the time this issue reaches your hand. Common Bond welcomes the new government and hope that the aspirations and expectations of millions of countrymen as expressed through their verdict will be honoured and taken care of in the coming days. We also expect that post-election we will be able to move towards a more inclusive India where the real debate will be regarding the path of economic development to be followed for the benefit of the countrymen and not on issues which have no immediate direct bearing on their lives.

Bank men of the country are unfortunately at the receiving end during the last few years. As is well known, they had implemented with great determination but with serious compromise with their personal life, the various social welfare schemes of the government. They had borne the brunt of demonetization and number of bank officers had laid down their lives while discharging their responsibilities in their line of duty.

It is but natural for them to expect that their genuine demands will be met and steps will be taken to reward the bank employees for the pains and troubles that they are undertaking on a daily basis. It is needless to mention that implementation of ever stringent prudential accounting norms have seriously affected the published financials of the banking sector. Here also the bank employees in general and the bank

officers' in particular have burnt their midnight oil to script a decent turnaround story. It is widely believed that keeping in the back the days of ever increasing non-performing assets, the public sector banks will be back in the black within the current financial year itself. The same would not have been possible without the dedication and sacrifice of the bank officers at the cost of their work-life balance.

It is in this backdrop, we strongly feel that a go ahead should now be given for a decent salary revision of the bank officers' without any rider. The external conditionality like linking wage revision with immeasurable performance index or denying the benefit of the uniform service condition enshrined in Pillai Committee recommendations to the senior executives on the plea of non-availability of mandate should be immediately done away with. The performance of the bank employees simply demands removal of all such irritants and we expect that necessary guidelines will be issued without any further loss of time.

The period had also seen so called merger and consolidation in the public sector banking space defying all economic and accounting logic. News reports are coming that nearly thousand branches of Bank of Baroda, post-merger, will be closed down during this financial year itself. This may trigger further closure in the days to come. We have to view it against the government decision to allow the private sector lenders and foreign banks to open more retail outlet while ensuring shrinkage of public sector banking space. Such action has confirmed the suspicion of AIBOC that

FACTS ARE MANY BUT THE TRUTH IS ONE

the real game plan behind merger and consolidation is nothing but an initiation of the process of reverse nationalization in the interest of private capital and owners of private banks.

Public Sector Banks require adequate capitalization and a level playing field. They require a broad based supervisory system re-engineered and realigned to the modern day needs under control and superintendence of the Board of Directors with representation from the officers and employees, being the largest stake holders. Democratization of the management structure, restriction on cross selling of third party products towards personal benefits, emphasis on core banking business and ensuring of work-life balance in the banking industry demand immediate attention of the powers that be to meet the genuine aspirations and expectations. The expectation and genuine demands of the seniors should also be taken

care of. But we are aware that none of our expectations will be fulfilled without the fullest mobilization of our organizational strength in a combative mood. AIBOC is in the streets, moves to the court and knocks at the corridor of power during the last year with the hope that the good sense will prevail with the political leadership and its bureaucracy. Political scientists say that the first few months of a new government is its 'Honeymoon' period. Bank men have really lost its patience and cannot wait for the end of 'Honeymoon' period. While we once again wish the government well, we like to emphasise that there will be no letup in our organizational preparedness for protecting the public sector banking space, for pushing back all efforts of reverse nationalization and to ensure a decent life for our members and seniors. This is our resolution as the new dispensation start discharging their responsibilities. ■

Organisational Issue

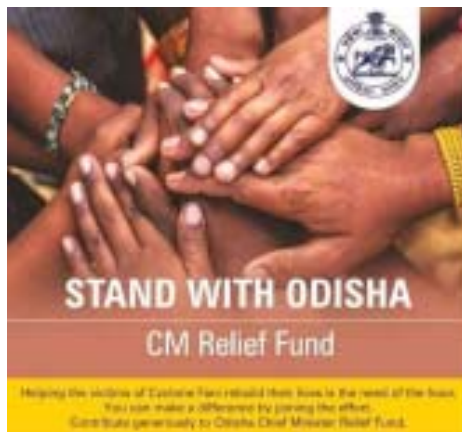
AIBOC GIVES CLARION CALL TO 'REBUILD ODISHA'

We are reproducing the full text of Circular No. 30 dated 17th May, 2019 on the captioned subject:

STAND BY ODISHA JOIN HANDS TO 'REBUILD ODISHA'

Odisha is facing the fury of nature. "Fani" has wreaked havoc across the State in particular it has ravaged the 14 coastal districts viz. Puri, Khurda, Cuttack, Jagatsinghpur, Kendrapara, Dhenkanal, Nayagarh, Jajipur, Bhadrak, Baleswar, Gajapati, Ganjam, Keonjhar and Mayurbhanj.

2. This catastrophe has resulted in loss of many precious human lives and livestock. Over half a million dwellings have been damaged and over 2 million trees have been uprooted. Infrastructure has been severely damaged. Communication system and power supply is in disarray. Potable water and essential materials have become precious



commodities and the prices have sky rocketed. The citizenry has been subjected to extreme misery and hardship as a consequence. Property and belongings of huge populace including our own employees and officers have been damaged and affected. It is estimated that the loss is about Rs.12000 crore.

3. The State is doing its best to provide relief. Various governmental arms and agencies have been pressed into rescue operations.

There are no words to adequately convey our appreciation to the emergency workers who along with civil society organisations, personnel of NDRF, the Odisha Disaster Rapid Action Force and officials of Odisha Government who are engaged in the

THERE IS NOTHING PERMANENT EXCEPT CHANGE

restoration work. Support is pouring in from all quarters as various organisations and individuals have spontaneously responded to the appeal of the Government to extend support in relief measures. Every effort is being made to bring back normalcy in the lives of people of Odisha.

4. True to the tradition and legacy of AIBOC, our State Unit in Odisha along with its affiliates is in the forefront, extending help not only to our members but also to the cyclone victims across the length and breadth of the State. Financial contributions are being extended from various PSBs, PSUs and other organisations. AIBOC will be contributing a sum of

Rs 11 lakh to the Chief Minister's Relief Fund to be a part of the effort to 'Rebuild Odisha'.

It is imperative and humane that we should all stand by the people of Odisha in this hour of crisis. As a responsible organisation, we have our social obligation towards the society. When huge population is suffering and are in distress, we are duty bound to rise to the occasion and do the best we can to ameliorate the sufferings. Let us, therefore, pledge to extend all possible assistance to 'Rebuild Odisha'. ■

#StandByOdisha
#RebuildOdisha

AIBOC KERALA STATE UNIT REACTS

The Kerala State Committee of All India Bank Officers Confederation (AIBOC) condemned the move to implicate the Branch Manager of Canara Bank in a case involving the suicide of a mother and daughter. The incident had occurred at Neyyattinkara and the bank was blamed for triggering the incident after it had allegedly enforced recovery procedures on a defaulted housing loan.

But a day after, a suicide note recovered from the site had attributed extraneous reasons, including domestic violence for the tragedy, and did not seem to make any direct charge against the bank.

The intervening day, however, saw political activists targeting a number of branches of Canara Bank and ransacking some, including the office of the bank in Thiruvananthapuram.

Abraham Shaji John, State Secretary, AIBOC, said that the bank had only tried to enforce legal procedures to recover dues and was not responsible for the unfortunate suicides.

The State Committee of the AIBOC also deplored the tendency to unleash acts of aggression against banks and bank officers on the basis of unsubstantiated facts or events.

As trustees of public money, it is the routine job of bank officer to lend it to different sections of the society for various activities as well as ensuring it returns to the system in good time.

It is only natural that banks resort to recovery measures as permitted by the law to recover non-performing assets. Canara Bank branch had sought to do only that, Abraham Shaji John said.

"In fact, in the instant case, the local Branch Manager had, in a gesture of empathy, extended action under the SARFAESI Act for years together. It was invoked nine years after the account had turned an NPA," he said.

Banks are only trying to comply with stringent provisioning norms of the Reserve Bank and achieve performance targets set by the Corporate Headquarter.

"The power of Branch Managers to extend/modify repayment of NPA accounts is very limited. So they are caught between the devil and the deep sea."

Blaming bank officers without ascertaining facts and raising demands to register criminal case against the branch manager will only mislead the public and further demoralise officers.

This doesn't augur well for a matured political leadership. Officers must be enabled to perform their duties without fear or favour, which alone can ensure a robust banking industry. ■

(Source: Business Line)

LEARNING NEVER EXHAUSTS THE MIND

Even before the election result was formally declared, the bureaucrats in the North Block have set the ball rolling for next round of merger in the Public Sector Banking space. Newspaper reports suggest that even middle level officials are feeding the press with stories of possible merger sometime after the festival season in the month of October/November 2019. It is really surprising that in utter disregard of the principled opposition by the major stake holder i.e., bank men and relentless counter narrative built by AIBOC, the bureaucracy is ready with their own game plan of reverse nationalization which is nothing but the first logical step toward eventual privatization. It is in this background, Common Bond is sharing the following story so that we can keep a real time vigil on all the moves of the bureaucrat dominated government machinery and do not be caught unprepared.

Sankara Narayanan and Karnam Sekar are well-positioned to set the ball rolling for a fresh amalgamation, say banking experts

Having successfully piloted the merger of Vijaya Bank and Dena Bank with Bank of Baroda, will the erstwhile chiefs of the merged banks, moved recently by the government to helm Canara Bank and as a Whole-Time Director in Indian Overseas Bank, respectively, take a stab at another merger in the public sector banking space?

Banking industry experts feel this is within the realm of possibility as both top bankers are unlikely to face any difficulty in replicating their learning from putting through a complex merger.

Putting two and two together, the experts say that RA Sankara Narayanan, MD and CEO of Canara Bank (chief of erstwhile Vijaya Bank) and Karnam Sekar, Officer on Special Duty and Whole-Time Director in Indian Overseas Bank (chief of erstwhile Dena Bank), may be asked to explore another merger involving their respective banks and one or more state-owned bank by the government that

takes power after the ongoing general elections.

They reasoned that Sankara Narayanan and Sekar, both veteran bankers with collective experience of close to seven decades in commercial banking, have gained a wealth of knowledge and experience with the amalgamation of their erstwhile banks with BoB, and now are well-positioned to set the ball rolling on another merger in the state-owned banking space.

Sankara Narayanan was appointed MD and CEO of Canara Bank with effect from April 1, 2019, till his superannuation on January 31, 2020. Sekar has been appointed as Officer on Special Duty and whole-Time Director in Indian Overseas Bank, with effect from April 1 till the time of his taking charge as MD and CEO on July 1, 2019. He will superannuate on June 30, 2020.

Merger in the public sector banking space is expected to gather steam as the main national parties – the BJP and Congress – are on the same page regarding consolidation among public sector banks.

During its five-year tenure, the BJP-led NDA government kickstarted the amalgamation process in the public sector banking space, with the five associate banks within the State Bank Group, and the Bharatiya Mahila Bank getting merged with State Bank of India in 2017, and Vijaya Bank and Dena Bank merging with BoB with effect from April 1, 2019. The Congress party, in its 2019 Lok Sabha election manifesto, said it will amalgamate two or more PSBs, so that there will be only six to eight PSBs, with a national presence.

When the consolidation of Vijaya Bank and Dena Bank with BoB was initiated in September 2018 to create India's third-largest bank, the finance ministry emphasized that it will help create a strong, globally-competitive bank with economies of scale and enable realization of wide-ranging synergies. Leveraging of networks, low-cost deposits, and subsidiaries of the three banks have the potential of yielding significant

synergies for positioning the consolidated entity for substantial rise in customer base, market reach, operational efficiency, wider bouquet of products and service and improved access for customers, the ministry said.

It is needless to add that there is no empirical evidence that merger will ensure the fulfillment of

all the wild dreams as being marketed by the finance ministry officials. There are strong counter evidence in the form of data based research papers that merger by way of sheer amalgamation of Balance Sheet normally produces counterproductive result with long term disastrous impact for the banking industry itself not to talk of its contagion effect on the real economy itself. ■

Articles from print media

A raging debate in the banking fraternity is about our apparent discomfort with the farm loan waivers. Any scheme of loan waivers is definitely counterproductive and destroys the basic credit culture of availing bank loan for productive purposes and repaying the same on time. However, we are reproducing an article by Rohit

Prasad who is a professor at MDI, Gurgaon, Co-authored with Gaurav Gupta, a banker with an interest in economic development. The article throws certain intriguing insights in the mechanism of NPA resolution and its economic impact. Common Bond acknowledge the article from 'MINT' dated 10th January, 2019. ■

FARM LOAN WAIVERS VIS-À-VIS CORPORATE NPAS

A recent newspaper headline read: "Farmer Bijay Lallya arrested at IGI Airport trying to flee the country over non-payment of bank loans of ₹ 5 lakh." As you might have guessed, this headline is made up. An instinctive reaction would be to ask—"How can farm loan waivers have anything in common with corporates' non-performing assets (NPAs)? Isn't one decision entirely political and the other entirely commercial?" But first impressions can be deceptive.

A farm loan waiver is a sector-wide extinguishing of loans mandated by the government, usually before an election, with the exchequer compensating banks. On the other hand, a corporate NPA represents a business failure, for reasons internal and external, and triggers a bankruptcy process to recover dues by financial creditors to the maximum extent possible—either through resolution or through liquidation. A bankruptcy process does not imply any liability of the government, unless very large in magnitude. The government obligation can be

more pressing if NPAs originate in public sector banks or are due from public sector corporations.

A key underpinning of bankruptcy procedures is the limited liability clause that protects the assets of promoters unless explicitly pledged. Corporate bankruptcy, therefore, is a simultaneous process of cleansing bank balance sheets and a mechanism allowing optimal risk-taking by entrepreneurs. Effective functioning of a bankruptcy law is expected to enable the generation of new cycles of credit, with credit flowing to better projects in similar or entirely new sectors. On the other hand, a farm loan waiver impedes the flow of such credit as structural problems besetting agriculture are typically not addressed. Couched in these terms, corporate bankruptcies and farm loan waivers appear to have nothing in common.

The equivalence arises when conditions warrant that the state must indirectly bear the burden of corporate NPAs by infusing funds into banks, as had happened in the US following the 2008 financial

A MAN CAN BE DESTROYED BUT NOT DEFEATED

crisis and as is happening now in India. Equivalence can also be drawn when the problem of corporate NPAs repeats itself in the same sectors implying that, for some reason, banks keep lending to the same sectors even in the absence of structural improvements. Persistent problems in power and infrastructure sectors and the fate of development finance institutions before some of them converted to universal banks immediately come to mind.

The evidence of this equivalence would be a slowdown in both agricultural and corporate lending occasioned by farm loan waivers and NPA crises, respectively—something we have been witnessing in India for the last few years. Another ground for equivalence arises if the resources of the exchequer are used to buoy companies that would otherwise go into bankruptcy. The assumption is that the motivation of keeping a company afloat interferes with the objective of choosing the most efficient vendor, and hence represents a distortionary cost—as in the case of preferential access to inputs such as coal, and award of contracts without regard to expertise in areas such as defence.

It is true that there has been a marked increase in the share of large loans in agriculture since 1990. In the same vein, the top 12 corporate houses received close to 15% of ₹ 70-80 trillion in total advances to the corporate sector and accounted for approximately 25% of the NPAs. The share of these borrowers in credit from the formal sector is almost the same as that of the entire agriculture sector. Four of these have been resolved within a year with about 52% recovery, representing only 14% of the dues from these 12 accounts.

Thus, as in agriculture, the corporate NPA crisis is also sector-specific, dominated by large accounts, not accompanied by adequate structural reforms, and expensive for the public exchequer. If the recapitalization of banks is welcomed, why is a farm loan waiver not acceptable?

It seems that the criticism of farm loan waivers reflects a view of the proper relation between the farm versus the non-farm sectors. It is believed that food prices for consumers must be kept low through restrictions on farmers and subsidies to consumers. The Organization for Economic Co-operation and Development (OECD) estimates that the average yearly revenue lost by Indian farmers between 2014 and 2016 on account of export restrictions, net of subsidies received, is ₹ 1.65 trillion.

Historical performance shows that the credit quality of large corporate borrowers is not superior to that of agriculture/priority sector lending. In that context, interest rates charged by banks to large corporate borrowers have been kept artificially low and incommensurate with the risks involved. Low prices of agricultural products can also be achieved by reducing the role of the middlemen but for various reasons, including the political muscle involved, this does not happen.

This model of development is no longer tenable. First, India can no longer rely only on exports and will have to look towards domestic demand to power its growth. And skewing income distribution away from 50% of the population will not help. Second, cities are unable to manage the influx of refugees from agriculture. Third, the Swaminathan report of 2006 clearly states that India's food security cannot be achieved through imports, thus emphasizing the imperative of a healthy agricultural sector. Finally, from an ethical point of view, taking care of the big farmer who, unlike the corporate promoter, risks losing personal assets in the event of a default, is as important as taking care of the big businessman. In short, the problem of the spendthrift farmer and that of the flagrant corporate firm are two sides of the same coin. The difference is that unlike corporate honchos, farmers aren't fleeing the country. ■

WHOEVER IS HAPPY WILL MAKE OTHERS HAPPY TOO

WITHOUT COMMENTS!

We are reproducing unedited excerpts from an article of Shri Raghuram Rajan, Ex-Governor Reserve Bank of India published in 'The Hindu'

NO GUARANTEE THAT BANK PRIVATISATION WILL BE A PANACEA

The banking system is overburdened with non-performing loans. Much of the problem lies in public sector banks, but private sector banks like ICICI and Axis Bank have not been immune. Some of the malaise comes from a general need to improve governance, transparency and incentives in the system. However, the difficulties in even some private banks suggest that 'simple' solutions like privatising all public sector banks may be no panacea. At any rate, banking reforms should tackle four broad areas:

1. Clean up banks by reviving projects that can be revived after restructuring debt.
2. Improve governance and management at public sector banks.
3. De-risk banking by encouraging risk transfers to non-banks and the market.
4. Reduce the number and weight of government mandates for public sector banks, and for banks more generally.

Privatise or not?

Is privatisation of public sector banks the answer?
Much of the discussion on privatisation seems to make assumptions based on ideological positions.

Certainly, if public sector banks are freed from some of the constraints they operate under (such as paying above the private sector for low-skilled jobs and paying below the private sector for senior management positions, having to respond to government diktats on strategy or mandates, or operating under the threat of CVC/CBI scrutiny), they might perform far better. However, such freedom typically requires distance from the government. So long as they are majority-owned by the government, they may not get that distance.

At the same time, there is no guarantee that privatisation will be a panacea.

Some private banks have been poorly governed. Instead, we need to recognise that ownership is just one contributor to governance, and look at pragmatic ways to improve governance across the board.

There certainly is a case to experiment by privatising one or two mid-sized public sector banks and reducing the government stake below 50% for a couple of others, while working on governance reforms for the rest.

Rather than continuing a never-ending theoretical debate, we will then actually have some evidence to go on.

Some political compromises will be needed to allow the process to go through, but so long as the newly privatised banks are not totally hamstrung in their operational flexibility as a result of these compromises, this will be an experiment worth undertaking.

An alternative proposal to improve governance is to merge poorly managed banks with good banks. It is uncertain whether this will improve collective performance – after all, mergers are difficult in the best of situations because of differences in culture. When combined with differences in management capabilities, much will depend on whether the good bank's management is strong enough to impose its will without alienating the employees of the poorly managed bank.

We now have two experiments under way: State Bank has taken over its regional affiliates, and Bank of Baroda, Vijaya Bank and Dena Bank have been merged. The performance of the latter merger will be more informative. Thus far, market responses suggest scepticism that it will play out well. Time will tell.

INDEPENDENCE IS HAPPINESS

De-risk banking by encouraging risk transfers to non-banks and the market

Too many risks devolve on to banks, including risks such as that of interest rate volatility that banks elsewhere typically lay off in markets. Too much project risk stays with banks because other financial instruments such as equity and subordinate debt cannot be issued cheaply.

Risk also returns through the back door.

For example, banks do not make loans to housing developers because of their intrinsic risks.

But they do make loans to non-bank financial companies, which make loans to developers. To prevent risk from returning to bank balance sheets, NBFCs must be able to raise money directly from markets.

Banks will have to complement financial markets rather than see them as competition. The use of financial technology will be especially helpful to them in this endeavour.

Reduce the number and weight of government mandates for PSBs

Uncompensated government mandates have been imposed on public sector banks for a long time. This is lazy government – if an action is worth doing, it should be paid for out of budgetary resources.

Mandates also are against the interests of minority

shareholders in public sector banks.

Finally, it does not draw the private sector in to compete for such activities. The government should incentivise all banks to take up activities it thinks desirable, not impose it on a few – especially as the privileges associated with a banking licence diminish.

Along these lines, requirements that banks mandatorily invest in government bonds (the SLR requirement) should continue to be reduced, substituting them instead with the liquidity coverage ratios and net stable funding ratios set by Basel. Among the more dangerous mandates are lending targets and compulsory loan waivers.

Government-imposed credit targets are often achieved by abandoning appropriate due diligence, creating the environment for future NPAs.

Loan waivers, as the RBI has repeatedly argued, vitiate the credit culture and stress the budgets of the waiving state or Central government. They are poorly targeted, and eventually reduce the flow of credit.

Agriculture needs serious attention, but not through loan waivers. An all-party agreement to this effect would be in the nation's interest.

Finally, the government should keep its banks well capitalised, conditional on improvements in governance and management efficiency. This is simply good accounting practice, for it prevents the government from building up contingent liabilities on bank balance sheets that a future government will have to pay for. ■

Banking News

CIRCULARS

* **27 dated 26th April, 2019:** All India Strike call given by Catholic Syrian Bank Officers' Association (CSBOA) for two days-29th and 30th of April 2019- Calling all affiliates to extend fraternal support

* **28 dated 27th April, 2019 :** May Day signifies the struggle of Working Class. Time to rethink, rejuvenate and resurge!! 29 dated

* **29th April, 2019:** Revision in Dearness Allowance from 1st May 2019 to 31st July, 2019

* **30 dated 17th May, 2019:** Stand by Odisha join hands to 'REBUILD ODISHA'

* **31 dated 21st May, 2019 :** AIBOC holds a meeting with major pensioners and retirees organizations on 20th May, 2019 at New Delhi. ■

COMING TOGETHER IS BEGINNING, WORKING TOGETHER IS SUCCESS

EXECUTIVE COMMITTEE OF ALL INDIA STATE BANK OFFICERS' FEDERATION MET AT MUMBAI



The Executive Committee of All India State Bank Officers' Federation met at Mumbai on 28th April, 2019 to bid farewell to Comrade Ramkumar Sabapathy, General Secretary, AISBOF and Sr. Vice President, AIBOC who demitted office on attaining superannuation from bank's service on 30th April, 2019 after putting in more than three decades of illustrious service in the bank. Common Bond conveys their sincere appreciation for his significant contribution in the trade union movement.

Comrade Soumya Datta, who is presently holding the position of the General Secretary of the Confederation, President of AISBOF and General Secretary, SBIOA (Bengal Circle) took over as the General Secretary of AISBOF. Comrade Sambit Mishra the Sr. Vice President of the Federation and General Secretary of SBIOA (Bhubaneswar Circle) was co-opted as the President due to the co-option of Comrade Soumya Datta as the General Secretary of the Federation. **Common Bond wishes the new leadership a great success.■**

**2019 LLR 473
SUPREME COURT OF INDIA
Hon'ble Mr. L. Nageswara Rao, J
Hon'ble Mr. M.R. Shah, J.
C.A. No. 3339 of 2019 (Arising out of S.L.P. (Civil) No.
100 of 2016, Dt/-1-4-2019
Raj Narain
vs.
Union of India & Ors.**

BACK-WAGES – Justification of – Criminal case was registered against the workman for his involvement in forged payments – He was put under suspension on 23.10.1979 which was revoked on 21.10.1987 – He was dismissed on 28.02.1997 since he was convicted in criminal case – In appeal he was acquitted – His request for reinstatement was refused on 13.06.2002 – Workman challenged the dismissal order and refusal to reinstatement in Tribunal – Management was directed to reinstate the workman entitling him seniority and notional pay with increments from dismissal till reinstatement but without back wages when he was not in service – He made representation to the Management for full pay from 23.10.1979 to 11.11.1987 suspension period – In writ petition filed by him, the High Court allowed full back wages from date of acquittal to reinstatement – Workman assailed the order of High Court by filing SLP – Held, workman is entitled to back wages if criminal proceedings reveal that the same were mala fide or with vexatious intent – If an employee is involved in embezzlement of funds, the employer cannot be mulcted with full back-wages on his acquittal by criminal court unless it is found that prosecution is malicious – Hence, workman is entitled to full back wages for suspension period from 23.10.1979 to 21.10.1987 after adjustment of amounts already paid and for the period 31.08.2001 to 20.01.2003 as held by the High Court since after suspension on 23.10.1979, disciplinary proceedings against him were dropped on 21.03.1983 but he was reinstated on 21.10.1987 – Order of suspension was in contemplation of disciplinary proceedings.

For Appellant: Mr. Yashpal Dhingre

For Respondent (Union of India): Ms. Madhavi Divan, Additional Solicitor General

Important Points

- i) Workman is entitled to back wages if criminal proceedings reveal that the same were mala fide or with vexatious intent resulting into his acquittal by the Higher Court.
- ii) If an employee is involved in embezzlement of funds, the employer cannot be mulcted with full back-wages on his acquittal by criminal court unless it is found that prosecution is malicious.

JUDGMENT

L. Nageswara Rao, J. - Leave granted.

1. The Appellant was placed under suspension on 23.10.1979 while he was working as Sorting Assistant in Railway Mail Service (RMS) at Mughalsarai, in contemplation of disciplinary proceedings on the allegations of involvement in forged payments of high value money orders. An FIR was lodged against the Appellant at Mughalsarai Police Station and the case was registered as Crime No.358 of 1979 under Section 409/420 IPC. The order of suspension was revoked on 21.10.1987 pursuant to which he joined duty and worked till 28.02.1997, when he was dismissed from service in view of his conviction under Section 409, 467 and 420 IPC. He was sentenced to imprisonment for three years. The Appellant, thereafter, filed an appeal against his conviction. The Criminal Appeal filed by the Appellant was allowed and he was acquitted of the charges for offences under Section 409, 420 and 467 IPC.

2. The request of the Appellant for reinstatement after acquittal was refused on 13.06.2002. It was

mentioned in the Memo dated 13.06.2002 that the Appellant could be reinstated as he was already dismissed from service more than six years ago. The order of dismissal dated 28.02.1997 and the order of refusal to reinstate in service dated 13.06.2002 were challenged by the Appellant before the Tribunal. The Tribunal allowed the original application and directed the reinstatement of the Appellant by holding that he shall be entitled for seniority and notional fixation of pay with increments from the date of his dismissal till his reinstatement.

However, the Tribunal held that the Appellant shall not be entitled for any back wages for the period during which he was not in service. Pursuant to the order of the Tribunal, the Appellant was reinstated on 20.01.2003. By an order dated 01.05.2003, the Senior Superintendent of RMS, Allahabad rejected the representation of the Appellant for full pay and allowances for the period of the suspension i.e. 23.10.1979 to 11.11.1987. The Writ Petition filed by the Appellant against the order of the Tribunal by which he was not granted back wages was partly allowed by the High Court.

The High Court held that the Appellant shall be entitled to full back wages from the date of the order of his acquittal i.e. 31.08.2001 till the date of his reinstatement i.e. 20.01.2003. The Appellant is before us assailing the legality and validity of the judgment of the High Court by which the payment of back wages was restricted only to the period between the date of his acquittal and the date of his reinstatement.

3. The learned counsel appearing for the Petitioner relied upon the judgment of this Court in *Ranchhodji Chaturji Thakore v. Superintendent Engineer, 3 Gujarat Electricity Board and Anr.1 and Union of India and Others v. Jaipal Singh2* to contend that in case the criminal proceedings are initiated at the behest of the employer, and the employee is acquitted, he would be entitled to claim full wages for the period he was kept out of duty during the pendency of the criminal proceedings.

He also submitted that the Appellant is entitled to full salary for the period from 1979 to 1987. He submitted that the Appellant has filed an Interlocutory Application seeking the said relief in the High Court which was not considered.

4. Ms. Madhavi Divan, learned Additional Solicitor General contended that the Appellant is not entitled to back wages. She submitted that there was no difference between a criminal case initiated at the instance of the employer and one by the police. She also submitted that the Appellant was not entitled to any relief of payment of full back wages between 1979 to 1987 as the I.A. filed by the Appellant does not find mention in the impugned judgment of the High Court. 1 1996 (11) SCC 603 2 2004 (1) SCC 121 4

5. This Court in Ranchhodji Chaturji Thakore (supra) considered the case of an employee who sought back wages for the period he was kept out of duty during the pendency of a criminal case for his involvement in an offence under Section 302, IPC. The claim of the Petitioner therein was that he was entitled to full wages on his acquittal by the Criminal Court. This Court rejected the said submission by holding that the question of payment of back wages would arise only in case of termination of service, pursuant to findings recorded in a departmental enquiry.

In the event of the dismissal order being set aside by the Court, the delinquent employee would be entitled to claim back wages as he was unlawfully kept away from duty by the employer. This Court was of the opinion that an employee against whom criminal proceedings are initiated would stand on a different footing in comparison to an employee facing a departmental inquiry. The employee involved in a crime has disabled himself from rendering his services on account of his incarceration in jail. Subsequent acquittal by an Appellate Court would not entitle him to claim back

wages.

6. The decision of Ranchhodji Chaturji Thakore (supra) was followed by this Court in Union of India and Others v. Jaipal Singh (supra) to refuse back wages to an employee who was initially convicted for an offence under Section 302 read with Section 34 IPC and later acquitted by the High Court in a criminal appeal. While refusing to grant relief to the Petitioner therein, this Court held that subsequent acquittal would not entitle an employee to seek back wages. However, this Court was of the opinion that if the prosecution is launched at the behest of the department and the employee is acquitted, different considerations may arise. The learned counsel for the Appellant endeavored to distinguish the prosecution launched by the police for involvement of an employee in a criminal case and the criminal proceedings initiated at the behest of the employer.

The observation made in the judgment in Union of India and Others v. Jaipal Singh (supra) has to be understood in a manner in which the department would become liable for back wages in the event of a finding that the initiation of the criminal proceedings was mala fide or with vexatious intent. In all 6 other cases, we do not see any difference between initiation of the criminal proceedings by the department vis-a-vis a criminal case lodged by the police. For example, if an employee is involved in embezzlement of funds or is found indulging in demand and acceptance of illegal gratification, the employer cannot be mulcted with full back wages on the acquittal of the person by a criminal Court, unless it is found that the prosecution is malicious.

7. The point that remains to be considered is whether the Appellant is entitled to payment of full wages between 1979 and 1987. The Appellant was placed under suspension on 23.10.1979 and his suspension was revoked on 21.10.1987. An interesting development took place during the

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interregnum by which the disciplinary proceedings were dropped on 21.03.1983. It is clear from the record that the Appellant was the one who was seeking postponement of the departmental inquiry in view of the pendency of criminal case. The order of suspension was in contemplation of disciplinary proceedings. By virtue of the disciplinary proceedings being dropped, the Appellant becomes entitled to claim full salary for the period from the date of his suspension till the date of closure of the departmental inquiry.

Thereafter, the Respondents took four years to reinstate him by revoking his suspension. The order of suspension dated 23.10.1979 came to an end on 21.03.1983 which is the date on which disciplinary proceedings were dropped. The Appellant ought to have been reinstated immediately thereafter unless a fresh order was passed, placing him under suspension during the pendency of the criminal trial which did not happen. Ultimately, the Appellant was

reinstated by an order dated 21.10.1987 by revocation of the order of suspension. Though, technically, the learned Additional Solicitor General is right in submitting that the impugned judgment does not even refer to the I.A., we are not inclined to remit the matter to the High Court at this stage for fresh consideration of this point. We hold that the Appellant is entitled for full wages from 23.10.1979 to 21.10.1987 after adjustment of the amounts already paid towards subsistence allowance.

8. For the reasons mentioned above, we approve the judgment of the High Court by holding that the Appellant shall be entitled for back wages only from the date of acquittal on 31.08.2001, till the date of his reinstatement on 20.01.2003. Further, the Appellant shall be entitled to full salary from 23.10.1979 to 21.10.1987.

9. Accordingly, the appeal is disposed of.■

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