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Editorial

A NEW BEGINNING

Lightly, O lightly we bear her along
She sways like a flower in the wind of our song;
She skims like a bird on the foam of a stream.
She floats like a laugh from the lips of a dream.

We welcome the second decade of the 21st century which has just traversed from its teens leaving behind the melancholic memories and failures of the past with new hope and dreams to be fulfilled.

No doubt this is a depressing time. We recollect the immortal lines of Dickens in his Tales of two Cities that the worst of the times are also the best of the times. We have seen the triumphant march of the forces of privitisation during the last part of this decade. We have seen the emergence of an India which is not taller and inclusive. There are attacks on the very edifice of public sector in general and that of public sector banking in particular. There are delays in wage settlement with a stubborn stand taken by IBA to deny the legitimate right of the officers' community to negotiate up to the level of Scale-VII in wage negotiation. Mega merger of banks were announced. Efforts are on to de-unionise the officers by introduction of a system of online registration of subscription deduction bypassing the age old system of the trade union right to register a member and then instruct the management to deduct his/her subscription from salary. A wholesale privatization of public sector units including the profitable ones and those engaged in strategic areas of national economy are also on. The economy itself is in a tailspin. GDP is showing a declining rate of growth. Unemployment is on the rise. NPA in the banking sector is mounting. There is no tangible result out of IBC and NCLT mechanism for redressal of NPAs.

In the micro level, there is severe disruption in the work-life balance of bank officers. There are certain unfortunate incidents of suicides by bankers unable to bear the pressure in day to day life. Core banking activities are given a go bye by insisting on cross selling of other products not relating to banking. There are shortages of staffs and officers with closure of branches in the name of rationalization and more is expected to follow in the coming days when the mega merger is made effective from 1st April, 2020. Is the time really so depressing? The tenacious attitude of IBA is defeated by equally determined stand of our organization of not participating in the negotiations unless the issue of full mandate is resolved. There are lot of Nay Sayers who believe that such determination by an officers' organization will bring more disaster than it solves.

History has its own laugh. We mentioned in earlier paragraph that determination does pay. If determination does pay in one instance, it can be replicated in others too. So the basic learning of the decade to which we are bidding our farewell is that we have to negotiate all challenges with resolute determination. This is also a learning process which we need to carry forward in the incoming future.

The challenges are numerous and daunting. Let us also admit that our responses will be multi-dimensional. We have to find new avenues of resistance. New attacks require response in a manner which the attacker cannot apprehend. While formulating such strategies, we cannot compromise with our basic foundation of unwavering commitment to the ideals of equal distribution of wealth, building up of an inclusive tolerant India and ensuring a decent service life for the membership while zealously upholding all the hard earned rights.

In this New Year, may we all fulfill our personal aspirations, dreams and desires and be associated for the overall development of our esteemed organization along with the respective bank we serve. Let us renew our pledge as a responsible member of AIBOC in this New Year 2020 and conduct ourselves in a manner to achieve the much needed work life balance and enable us to devote quality time for our family members and pursuing our passion. We, at AIBOC, are members of one huge family. Let us continue to support and stand by each other through thick and thin and not remain spectators when our colleagues are humiliated and feel embarrassed. We should congratulate our fellow members with accolades on their success and support them through hard times of struggle. These are all our humble New Year resolution. We will translate them to reality overcoming all the odds.

We bid farewell to the decade and the year to make us conscious about our rightful duties and responsibilities to the organization and society by exposing ourselves to such aggressive form of attack. We are really grateful that the passing decade has given us the opportunity to build steel like cojones in our inner frame with which we shall thunder past all the obstacles. May we greet the upcoming days with renewed resolve and stand tall amidst all adversities.

Wishing you all the very best for a Fulfilling, Rewarding and Happening New Year 2020.■

THERE IS NOTHING PERMANENT EXCEPT CHANGE

AIBOC BIDS ADIEU TO COMRADE DEBASIS GHOSH, PRESIDENT

Comrade Debasis Ghosh, President AIBOC and General Secretary of All India Union Bank Officers' Federation (AIUBOF) has superannuated from Union Bank of India with an unblemished record on 31st December, 2019.

Comrade Ghosh was a senior leader of the students' movement during his college and university days. The grooming that he had in that movement got reflected in his leadership of bank officers movement, the journey of which started when he joined the movement in May 1985. He was elected in the Executive Committee of AIBOC, Delhi Unit in 1991 and elected as DGS in 1992. He was elected as Vice President of the AIUBOF in 1998 and in the same year inducted in the National Executive Committee of AIBOC. He assumed the responsibility of the Officers Director on Board of the Bank at the age of 44 years from 2005 to 2009.

His absence will be strongly felt in our ongoing struggle against the regressive economic policies of the Government and for strengthening the public sector. AIBOC will be missing his negotiation skill while dealing with IBA for a decent wage revision. His absence due to his demitting office will be very much felt. It is only by intensifying our struggle for the basic values with which AIBOC is identified, the values of upholding the struggle against privatization, liberalization and globalization; we can pay our tribute to a towering leader like Comrade Debasis Ghosh in a befitting manner. ■

SHARED ARTICLE

A CASE STUDY ON MEGA MERGER OF SBI WITH ITS ASSOCIATE BANKS AND BHARTIYA MAHILA BANK

This article is an excerpt reprinted with due acknowledgement to Ms Jaspreet Kaur, Assistant Professor, Management Department, Trinity Institute of Professional Studies, Dwarka. The editorial team thinks that this is an excellent and painstaking analysis which validates the stand of AIBOC from day one after the initiation of mergers. (Editorial Team Common Bond).

Merger and Acquisition is one of the major aspects of corporate finance world. M&A is defined as consolidation of firms. Merger refers to combination of two or more companies to form one. With an objective of wealth maximization, companies keep evaluating different opportunities through the route of merger or acquisition because it is believed that two separate companies together create more value compared to being on an individual stand.

From the past few years Banking Industry is being consolidated to reap the benefits of mergers and acquisitions. Bank in general terminology is referred to as a financial institute or a corporation which is authorized by the state or central government to deal with money by accepting deposits, giving out loan and investing in securities. The main roles of Banks are economic growth, expansion of the economy and provide funds for investment. In the recent times banking sector has been undergoing a lot of changes in terms of regulation and effects of globalization.

Founded in 1806, Bank of Calcutta was the first Bank established in India, and over a period of time, evolved into State Bank of India (SBI). SBI represents a sterling legacy of over 200 years. It is the oldest commercial Bank in the Indian subcontinent, strengthening the

LEARNING NEVER EXHAUSTS THE MIND

nation's trillion-dollar economy and serving the aspirations of its vast population.

The Bank is India's largest commercial Bank in terms of assets, deposits, branches, number of customers and employees, enjoying the continuing faith of millions of customers across the social spectrum. SBI, headquartered at Mumbai, provides a wide range of products and services to individuals, commercial enterprises, large corporates, public bodies and institutional customers through its various branches and outlets, joint ventures, subsidiaries and associate companies.

SBI merged with its associate banks in order to have increase balance sheet and economies of scales. With this merger:

- SBI has entered into the league of top 50 global banks.
- It has now 24,017 branches and 59,263 ATMs serving over 42 crore customers
- SBI is now a banking behemoth with an asset book of ? 37 lakh crore.
- The merged entity will have one-fourth of the deposit and loan market, as the SBI's market share will increase from 17% to 22.5-23%.
- SBI's asset base is now five time times larger than the second largest Indian bank, ICICI Bank.

Apart from these facts, there are many perceived gains as well: the government, as shareholder, feels that now it will have six less capital-hungry banks to worry about. It was expected that a larger institution will be better equipped to deal with sticky loans, thereby enabling fresh credit outflows to productive sectors. Thus Productivity and efficiency are also among the expected benefits.

But these benefits were questionable due to SBI's legacy and ownership structure. A former SBI chairman had once remarked that reforming SBI was trying to make an elephant dance. Even discounting for exaggeration, according to the statement, a larger and unmanageable bank is getting even larger. The merger seems to overlook a critical, post-crisis concern – the too-big-to-fail (TBTF) question. The TBTF theory posits that some institution are so large and intricately interconnected with different parts of the economy that failure can create a systematic shock. This forced many governments to bail out large financial institutions with taxpayer money. It might also be instructive to note that many countries have been formulating preventive TBTF regulations. Australia, for example, has prohibited any merger between the country's four largest banks.

This whole merger process was something like a shortgun wedding, with not enough opportunity to pause and ponder. There were many imponderables involved in this big merger, for example, the overlap in the combined physical network, the people question, or integrating disparate bank end systems and processes. Most recently the issue of employees has also come up. State Bank of India's mega merger with its associate banks has been anything but smooth for some of the latter's employees. Whereas officers and clerks working for the erstwhile associate banks feel that they have been given a raw deal with several instances of arbitrary transfers and many officers losing out on their seniority post the transfer. A senior official of the association said the employees are facing increased working hours as the servers at SBI are unable to handle the traffic, and they (the staff) are still adjusting to the new working conditions. There have been several instances of arbitrary transfers with allegations that SBI has not been following the rules governing transfers. Aggrieved SBI had filed a counter petition arguing that it was strictly complying with all the stipulations and safeguarding the interests of the employees of the associate banks and denied all allegations.

The bigger question was the impact that the merger would have on the health of SBI. Cumulative bad loans of the five associate banks were as big as 35% of the bad loans of SBI. Their slippage ratio stands at 20% and credit costs have deteriorated to 5.56%. Also their Non-Performing Asset (NPA) were around 4 times the NPAs of SBI alone. When these banks having deteriorating conditions join SBI, they will have adverse effect on SBI's health.

No doubt, the revenue will increase, but at what cost? What we need is not big, but strong, efficient and vibrant banks. ■

HOW CAN THE INDIAN ECONOMY RIDE OUT THE STORM?

This article is reprinted from "HINDU" dated 27th September, 2019 with due acknowledgement to Shri TCA Sharad Raghavan. Shri Ajit Ranade, Chief Economist at the Aditya Birla Group, and Shri Pronab Sen, former Chief Statistician of India, share their view to Shri TCA Sharad Raghavan. They add that we can expect to see the slowdown lasting for a few more quarters. Edited excerpts from the conversation. (Editorial Team Common Bond).

Unless rural incomes, hit by demonetisation, are revived, consumer demand is not going to grow

To pull India out of the current economic slowdown, the government can loosen its purse strings, make pending payments, give GST refunds quickly, and revamp MGNREGA to put more money in the hands of rural consumers.

Dr. Sen, do you think we are in a slowdown? And if we are, is it more structural, in that we need to make drastic changes, or is it more cyclical, where if we just make smaller changes we can ride out the storm?

Pronab Sen: We are in a slowdown. There is no question about it. And I think we have only seen the first phase of the slowdown. It has been five quarters now and I think it will go on for at least a couple of quarters more, maybe longer than that.

To my mind, the problem is essentially structural, but structural does not necessarily mean that you have to do deep reforms to get over it. What you have to do is identify the cause of the structural slowdown and address it directly. Indirect instruments don't work in the case of structural constraints.

Dr. Ranade, of the main drivers of the economy — government expenditure, private consumption, investment, and exports — which of them do you feel need a revival most urgently?

Ajit Ranade: I agree with Pronab that we are in a slowdown and I believe this is a problem of lack of aggregate demand. This is a slowdown not because we are not able to produce enough or that we have run out of capacity to produce; it is because there is not enough demand. You identified the four sources of demand. Of course the most sustainable and long-term solution to come out of the slowdown is when investment demand picks up, especially from private investment spending. But that is not something that can happen in a jiffy because it requires the investor's confidence, it requires investors to take risks.

So, in the near term, because exports depend on the enthusiasm of foreigners buying Indian goods, maybe some supply-side measures like trade facilitation, removing bottlenecks, reducing the GST refund period delay, or even managing the exchange rate [may work], but fundamentally if the global slowdown is a reality, then export demand cannot pick up quickly. Although, I do believe that India's share of manufacturing exports in the world is barely 2% or something, so we can easily go from 2% to 3%. In the near term I think the aggregate demand gap has to be filled in by some kind of government spending, although we can have a separate discussion on the fiscal situation. But I believe that's what is required.

Dr. Sen, Dr. Ranade has identified the most important driver that needs to be revived, but if we are looking for low-hanging fruit, if the government were to do something quickly that would have the biggest impact, what do you think that could be?

PS: I think Ajit and I agree. The problem is really private consumption demand. Remember that the government has limited instruments in its hands. It cannot stimulate private consumption directly, except in certain ways.

A MAN CAN BE DESTROYED BUT NOT DEFEATED

But the focus needs to be primarily on that. The things that Ajit talked about in terms of exports would have to be in terms of trade facilitation and issues of that kind, and a sensible exchange rate policy, which we don't have at the moment. The focus really would have to be on how to do you revive consumption demand. To my mind, the first step is really to go back to something we briefly touched on, which is the fiscal deficit.

If you were to ask me what I would recommend, I would say the first thing I would recommend is please recognise that the true fiscal deficit is significantly above the reported fiscal deficit. Because the outcome of trying to suppress your fiscal deficit artificially is that the government is not paying its dues. It is not giving refunds; export credit refund is a large issue. But this is true of GST refunds across the board. The second is that the government is not paying off its suppliers. The third is that a lot of government spending that has already been budgeted for and announced has not being made. PM KISAN is still languishing. These are things which have been budgeted for but that money has not been spent or has not been shown to be spent, simply because the government is not releasing the requisite funds. Just recognise the fiscal deficit for what it is and put the money out, then we can go back to the serious issue of correcting the fiscal deficit over the next few years.

Dr. Ranade, the government has recently announced certain steps to release some of these locked up funds. It is saying that within a time-bound period, we will pay our suppliers, and GST input tax refunds will be credited in a short window. Does this mean that the government will then have to cut down on other spending or can it keep the fiscal deficit target and say that we'll do both — we'll increase our spending and we'll give all of these pending payments?

AR: I am going to ask for forgiveness from god, and Pronab, and all my colleagues. I am going to stick my neck out and say that this is a time when we need to actually worry less about the fiscal deficit target. After all, 3% or 3.3%, there is no golden rule. I want to emphasise what Pronab said: even the routine stuff, the clearing payments which are not in dispute, where the vendors have supplied their services or goods, that itself is a very huge number if you count State and Central governments. I think it is very large, about ?10 lakh crore. Just releasing this payment or making very quick refunds for exporters, especially SMEs, who have to pay 28% GST and then claim a refund would help a lot. So, that is the easier thing to do, and I would recommend that we don't get hung up on the deficit, even though the CAG said that the 3.3% reported is not the right number. The actual deficit at the Central government level may be as high as 5.5% and when you factor in the State governments, the combined deficit could be 8-8.5%.

But remember that the nominal GDP growth rate has dropped to 8% and we are in a very unusual and unprecedented situation of low inflation and low GDP growth in nominal terms, so this is the time when we have to take the risk of cyclical fiscal expansion. One thing I would like to mention, which Pronab also mentioned, is that purchasing power, especially in rural areas, is of prime importance. So, the driver of growth we need to look at is government spending, but also consumption in rural areas which is going to be helped by things like MGNREGA and wage growth because that will also require fiscal expansion.

Dr. Sen, there were reports on how the government is considering pegging MGNREGA payments to an updated CPI inflation. Do you feel this will have a big impact in terms of putting more money in the hands of rural workers?

PS: MGNREGA wages in any case were inflation indexed. What the government has announced is that it will be linked to the CPI for agricultural labour or the rural CPI, whichever shows more inflation. That's all they have done. It's been indexed all along, nothing new in that.

Whether this is going to have an effect will depend entirely on how well MGNREGA is being implemented. The fact of the matter is that over the past five years or so, the confidence of State governments that the Central government will pay up the MGNREGA funds has eroded significantly. And the net result is a lot of State governments simply haven't been putting the same level of commitment in MGNREGA as they used to. Over the years MGNREGA has become a a supply-based system from a demand-based system. The State government says, I have got a public work, now you guys want to work on it, you can come and work

WHOEVER IS HAPPY WILL MAKE OTHERS HAPPY TOO on it. Earlier, it used to be a system where people went and demanded work and the State government was bound to give it to them and the Central government was bound to refund the labour cost of that particular project. So, unless you redesign MGNREGA to its original form, just indexing the wages is not going to do a whole lot.

Now that we have identified private consumption as one major driver that needs to be revived, what are the ways, Dr. Ranade, that we can put more money in people's hands? Are income tax rate cuts viable and will they be effective?

AR: Let's not forget that a big driver of growth is consumption, which includes rural consumption. And so, I want to reiterate what Pronab said about MGNREGA. Make it truly demand-driven, make the wage indexation meaningful and involve social audits which were successful in some States like Andhra and Rajasthan. Involve social audits to ensure effectiveness, and also focus on the dual objective of asset creation wherever possible. But primarily it should be about putting some income in the hands of rural consumers.

I am going to propose a radical suggestion. Since we also agreed that some of the reasons for the slowdown are structural, I believe one of the big structural features of the Indian economy right now is the massive drop in female labour force participation. In the last 10 or 12 years, it has come down by 10 percentage points, from 30-32% to 22%, which means that only one out of five working age women are actually working for a paid job. So, here's my radical suggestion: Think of a 10-year or 15-year completely tax-free income for women. That is zero income tax for all women. That's a suggestion to also increase consumption but it would be mainly to encourage paid jobs for women.

Dr. Sen, is it accurate to say that this slowdown that we are seeing is the delayed effect of demonetisation and that has completely removed the parallel economy?

PS: Yes, unquestionably so. The unorganised sector has been hit now for a long time and unless rural incomes are revived, and that is where 70% of our population is, consumer demand is not going to grow. So, what we are talking about is the same, that the principal cause of distress in rural areas was demonetisation. If you want to fix that structural break, you need to bring back rural income to some semblance of normalcy.

Dr. Ranade, do you agree?

AR: Yeah, 90% of India's labour force is in the informal sector. We have to recognise that this is the normality of the Indian economy and, therefore, whatever disrupts that, we are disrupting the mainstream. And that I believe is the lingering effect of demonetisation. I believe the rural wages, which used to grow at perhaps 10-15% a year, have grown at barely 1% in the last few years. And this has certainly affected rural purchasing power. ■

ORGANISATIONAL NEWS

MASSIVE DHARNA IN THE NATIONAL CAPITAL ON 10.12.2019 OPPOSING MISPLACED REFORMS INCLUDING MERGERS AND DEMANDIND PROTECTION OF INTEREST OF CUSTOMERS

INDEPENDENCE IS HAPPINESS

On 10th December, 2019 all the Trade Unions covering the entire banking industry in the country under the banner of UFBU observed a day's Dharna before Parliament opposing - banking reforms such as merger / amalgamation, harassment to customers with penal charges, abnormal hike in service charges, attack on jobs and job security; and demanding - initiation of immediate steps for recovery of bad loans from corporate houses, stringent action against defaulter borrowers, increasing interest on deposit, and adequate recruitment in banks.

The following political personalities and trade unions leaders addressed our Dharna and extended their support to our demands.

Shri Pradeep Bhattacharya, MP, Congress
Dr. K.V.P. Ramachandra Rao, MP, Congress
Shri Saugata Roy, MP, Trinamool Congress
Shri Sukhendu Sekhar Ray, MP, Trinamool Congress
Shri M. Shanmugam, MP,DMK and Gen Secy , LPF
Shri T.K.S. Elangovan, Ex MP, DMK
Shri D. Raja, Ex MP, CPI
Shri Binoy Viswam, MP CPI
Shri T K Rangarajan, MP,CPI-M
Shri Elamaram Kareem, MP,CPI-M
Shri N K Premachandran, MP,,RSP
Shri R C Kuntia, Ex MP,INTUC
Shri Amarjit Kaur, AITUC
Shri Harbajan Singh Sidhu, HMS
Shri Swadesh Dev Roye, CITU
Shri Santosh Kumar Rai, AICCTU
Shri Satyavan Singh, AIUTUC
Ms Lata Behn, SEWA
Shri R S Dagar, UTUC
Shri C Srinivas,, Progressive Forum, AP

Government has been pursuing misplaced reforms in banking sector such as Mergers & Amalgamation in banking industry with a single agenda to destroy the Public Sector Banks and pave the way for Private entities to take over. It has been amply proved across the globe that mergers did not serve any of proclaimed purpose(s), Government continues to embark upon this misadventure that too on a very critical sector like banking, which is the backbone of Indian economy.

The Mega Merger of state run banks would certainly reduce the number of bank branches in the name of rationalisation on account of merger and thus it is against the philosophy of financial inclusion being advocated by the Central Government and sure to derail the banking services available as of now to millions of ordinary customers in the country.

As per the data given by Reserve Bank, numbers of bank branches closed during the last three years are: 2016-17 - 253; 2017-18 - 2,083 and 2018-19 - 875. The classic example of the merger of SBI with its associate Banks which was a financial disaster as the merged entity continuously posted humungous losses for three consecutive quarters. It also had to endure several other problems that arose on account of merger. The amalgamation of Vijaya Bank and Dena Bank with Bank of Baroda has also amply established that it was another failure.

On the other hand, it is ironical that almost all stressed loans belong only to private sector corporates. Demands to initiate stringent action against defaulters have fallen on deaf ears. Pro-customer/citizenry demands like making available affordable banking facility, reduction in service charges, fees, obviating harassment and inconvenience to customers continue to be our persisting demands as we believe that banks are meant to serve the common man and "have nots" and just not the "haves".

On this golden jubilee year of Bank Nationalisation, we feel that the present Government has embarked on a mission of Reverse Nationalisation and privatization to write-off the loans of the corporate defaulters and hand over the banks to the corporate houses.

AIBOC, along with all the other trade unions of the banking sector strongly denounce this unwelcome move of mega merger of ten banks announced by the Government, which is neither the empirically tested panacea for the recent slowdown of the national economy nor for any betterment of financial condition of the poor masses and Common Man. Merger of public sector banks will definitely deprive affordable banking to the poor and the needy. Millions would be affected as employment - both direct and indirect - would take a hit. It is therefore a calculated move to divert the nation's attention from the piling up corporate defaults. Further, it also will lead to several other problems including that of synergy on account of merger.

Today's robust DHARNA of more than 10,000 members which commenced at 10: 30 a.m. was a huge success. It was addressed by UFBU leaders, leadership of fraternal organisations as well as leaders of various central trade unions, Members of Parliament, representatives of Retirees' Associations and eminent citizens. We are overwhelmed by the support for our movement that poured in from fraternal organisations, Trade Unions, farmers, workers, SHGs, other stakeholders and different resistance groups. The protesters took oath of continuing to protest and oppose any reform that is not in the best interest of the countrymen and the banking industry.

CIRCULARS

75 dated 30th November, 2019: Text of UFBU Circular No. UFBU/2019/11 dated 30.11.2019 inviting to the massive dharna to be held before Parliament on 10.12.2019 opposing mergers of banks and anti- common man banking reforms

76 dated 03rd December, 2019: Text of UFBU Circular No. UFBU/2019/12 dated 30.11.2019 on the massive dharna to be held before Parliament on 10.12.2019 opposing mergers of banks

77 dated 05th December, 2019: Text of UFBU Circular No. UFBU/2019/13 dated 05.12.2019 on wage revision talks held with IBA on 05-12-2019

78 dated 12th December, 2019 : Text of UFBU Circular No. UFBU/2019/14 dated 12.12.2019 on the success of the dharna before the Parliament House against merger of banks.

Judicial Verdict

2019 LLR 1300
SUPREME COURT OF INDIA
Hon'ble Mr. L. Nageswara Rao, J.
Hon'ble Mr. Hemant Gupta, J.
CAJCA No. 5842/2019 (Arising out of SPL (C) No. 16640/2017, Dt/-25-7-2019
State Bank of India & Ors.
Vs.
Atindra Nath Bhattacharya & Anr.

A. DISMISSAL – From Service – Grave and serious allegations of financial irregularities - Delinquent employee was Chief Manager - Financial irregularities took place under his charge – He was dismissed from service after holding enquiry, proving charges, by following due procedure – He challenged his dismissal order in writ petition - Learned Single Judge set aside the order of his dismissal on the ground that he was not given any opportunity to show cause in respect of nature and quantum of punishment, directing the management to reconsider his version – Instead of challenging order of the High Court, the Bank called the delinquent employee for personal hearing in terms of directions of Writ Court – Delinquent employee replied that he has challenged the order of Writ Court before the Division Bench – Division Bench rejected his appeal granting him another opportunity before the Appointing Authority – Bank has challenged the order of the Division Bench in civil appeal before Supreme Court – Head, delinquent employee has lost the chance to put up his version before the Competent Authority - Directions of Division Bench are not sustainable and set aside - Financial irregularities are grave and serious charges, punishment of removal cannot be said to be unjust - Appeal is allowed. Paras 10 and 11

THE ONLY JOURNEY IS WITHIN

B. NON-ATTENDING DISCIPLINARY PROCEEDINGS – Properly – Consequences of – Held, a delinquent employee who had refused to avail of the opportunities provided to him in a disciplinary proceedings of defending himself against the charges of misconduct, involving his integrity and dishonesty, cannot be permitted to complain later on that he had been denied a reasonable opportunity of defending himself. Para 10

For Appellants: Mr. Sanjay Kapur, AOR, Mr. Kauser Husain, Advocate, Mr. Megha Karnwal, Advocate. Ms. Shubhra Kapur, Advocate.

For Respondents: Mr. Anand, Ms. Rajeshri N. Reddy, Kumar Neeraj, Mr. B.P. Yadav, Advocates and Mr. Abhijit Sengupta, AOR.

IMPORTANT POINTS

1. Punishment of removal from service to the Chief Manager of the Bank, held guilty of the charges of financial irregularities which are grave and serious charges, cannot be said to be unjust.

2. A delinquent employee is not entitled to delay the enquiry by extending availing of opportunities granted to him to submit his defence, if any.

3. A bank employee who had refused to avail of the opportunities provided to him in a disciplinary proceeding of defending himself against the charges of misconduct, involving his integrity and dishonesty, cannot be permitted to complain later on that he had been denied a reasonable opportunity of defending himself.

JUDGMENT

PER HEMANT GUPTA, J. –

1) Leave granted.

2) The order of the Division Bench of the High Court at Calcutta dated April 7, 2017 is the subject matter of challenge in this appeal.

3) The respondent - Atindra Nath Bhattacharyya was charge sheeted on December 28, 1999 containing 16 charges on the ground that while working as Chief Manager of Baghbazar Branch of the Bank from November 19, 1997 to September 9, 1998, he has committed various irregularities pertaining to credit and local clearing instruments. The inquiry officer appointed conducted inquiry in respect of charges levelled against the respondent and submitted his report dated January 14, 2002 to the Appointing Authority which was also forwarded to the respondent on April 12, 2002. The Appointing Authority found huge irregularities on the part of the respondent and imposed punishment of removal on January 24, 2003. The appeal was dismissed by the Appellate Authority on April 19, 2005.

4) The respondent filed a writ petition before the High Court at Calcutta wherein, the order of punishment as affirmed by the Appellate Authority, was set aside by the Single Bench on January 13, 2016 on the ground that the delinquent was not given any opportunity to show cause in respect of the nature and quantum of punishment.

5) The appellant did not challenge the said order but instead called the respondent vide communication dated March 24, 2016 for personal hearing in terms of the direction of the learned Single Judge. In response thereto, the respondent sent communication to the Bank on March 31, 2016 that he has challenged the order passed by the learned Single Bench, therefore, the Bank should not proceed in respect of grant of opportunity of hearing. The appellant again called upon the respondent to appear for personal hearing vide communication dated April 7, 2016 but the respondent did not appear for personal hearing but sent communication to the Bank on April 13, 2016 that the Bank should not proceed as he has filed an appeal. The appellant, once again, called upon the respondent for personal hearing vide communication dated April 22, 2016 but the respondent did not appear. The intra-court appeal preferred by the respondent was dismissed on April 7, 2017 but the Court directed the appellant to grant another opportunity of hearing to the respondent to place his version before the Appointing Authority. It is the said opportunity granted to the

respondent which is the subject matter of challenge in the present appeal.

6) Before the appeal could be decided on April 7, 2017, an order of removal from service was passed on May 2, 2016 inter alia on the ground that the respondent has committed serious lapses which resulted to perpetration of frauds, such acts are in gross violation of extant norms of the Bank and resulted undue gain to third parties.

7) Learned counsel for the appellant relied upon the judgment of this Court in Bank of India v. Apurba Kumar Saha1 to contend that the Bank employee who had refused to avail of the opportunities provided to him in a disciplinary proceedings of defending himself against the charges of misconduct involving his integrity and dishonesty, cannot be permitted to complain later that he had been denied a reasonable opportunity of defending himself. The learned counsel for the appellant also relied upon a reasoned judgment passed by this Court in State Bank of India & Ors. v. 1 (1994) 2 SCC 615 Mohammad Badruddin2 wherein it has been held as under:

> "24. The previous punishments could not be subject matter of the charge sheet as it is beyond the scope of inquiry to be conducted by the Inquiry Officer as such punishments have attained finality in the proceedings. The requirement of second show cause notice stands specifically omitted by 42nd Amendment. Therefore, the only requirement now is to send a copy of Inquiry Report to the delinquent to meet the principle of natural justice being the adverse material against the delinquent. There is no mandatory requirement of communicating the proposed punishment. Therefore, there cannot be any bar to take into consideration previous punishments in the constitutional scheme as interpreted by this Court. Thus, the non-communication of the previous punishments in the show cause notice will not vitiate the punishment imposed."

8) On the other hand, learned counsel for the respondent relied upon an order passed by this Court in State Bank of India & Ors. v. Ranjit Kumar Chakraborty & Anr.3 wherein the order of removal was set aside for the reason that before imposing the punishment of major penalty, the delinquent was not heard. In response thereto, learned counsel for the appellant relied upon judgment passed by this Court in State Bank of India & Ors. v. B.R. Saini4 wherein said judgment was explained and held as under:

> "9. In State Bank of India v. Ranjit Kumar Chakraborty (supra) which is the basis of the judgment of the High Court, it was held that the Appointing Authority could not pass an order imposing a major penalty. In that case, the Disciplinary Authority sent the Records to the 2 Civil Appeal No. 5604 of 2019 decided on July 16, 2019 3 (2018) 12 SCC 807 4 (2018) 11 SCC 83 Appointing Authority who passed order of "dismissal from service". It is not clear from the judgment as to whether the delinquent officer in that case was given a notice by the Disciplinary Authority before the records were sent to the Appointing Authority. This Court held that even in the absence of any Rule requiring a notice to be given, the principles of natural justice would require an opportunity to the delinquent employee. It was not held in the said judgment that even if the Inquiry Report was furnished and an opportunity was given to the delinquent there is a further requirement of another opportunity before imposing the penalty. This Court found that before imposition of a major penalty the delinquent was entitled for an opportunity of being heard. The High Court was wrong in holding that the delinquent employee is entitled for a notice before the penalty is imposed.
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> 11. In this case, the Respondent had sufficient opportunity to respond to the Report of the Inquiring Authority and to the findings of the Disciplinary Authority disagreeing with the Inquiring Authority regarding Charge Nos. 6 and 8. He is not entitled to any further notice before imposition of a penalty. Apart from the requirement of a second show-cause notice before imposition of penalty no other point was raised in this Appeal."

9) We have heard the learned counsel for the parties and find that the direction issued by the Division Bench to grant another opportunity is not tenable in the facts of the present case.

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10) The learned Single Bench has set aside the order of punishment as well as the penalty order directing the employer to serve a notice before imposing penalty. The respondent avoided availing the said opportunity when offered on March 24, 2016, April 7, 2016 and April 22, 2016. Once opportunity has been granted to the respondent, he is not entitled to another opportunity on the ground of compassion. The only reasoning given by the Division Bench is 'justice demands' that the respondent be given one last opportunity to place his version. The respondent has lost his chance to put his version before the Competent Authority when called upon by the Authority to do so. Time and again opportunity of hearing cannot be granted on the pretext of justice. The delaying tactics cannot be rewarded in such a manner. Once the respondent has failed to avail of opportunity of hearing granted, the Bank cannot be directed to give another opportunity for the sake of justice. Therefore, we find that the directions contained in Para 18 of the judgment passed by the Division Bench are not sustainable and the same are set aside.

11) The allegations of financial irregularities against the respondent run into crores of rupees under multiple heads. The inquiry officer has found ten charges proved whereas six charges have not been proved. Because of grave and serious allegations of financial irregularities, the order of removal cannot be said to be unjust.

12) Even though, the judgment of the learned Single Bench finding fault with the order of removal as affirmed in the appeal, cannot be said to be justified in view of the judgment of this Court in the case of Mohammad Badruddin but since the Bank has not filed an appeal against such judgment, therefore, the correctness of the said judgment is not being examined in the present appeal which is directed against judgment of Division Bench of Calcutta High Court.

13) In view thereof, the present appeal is allowed.

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