S.S. Koshal, Ex-Officer, Junior Management, SBI and Others Vs State Bank of India and Others

Court: Madhya Pradesh High Court

Date of Decision: Jan. 15, 1992

Acts Referred: State Bank of India (Supervisory Staff) Service Rules, 1975 â€" Rule 50(3), 51(2)

Citation: (1992) JLJ 422 : (1993) 1 LLJ 525 : (1992) 37 MPLJ 307 : (1992) MPLJ 307

Hon'ble Judges: K.L. Issrani, J; D.M. Dharmadhikari, J

Bench: Division Bench

Advocate: Ravindra Srivastava, for the Appellant; V.S. Shroti, for the Respondent

Final Decision: Allowed

Judgement

D.M. Dharmadhikari, J.

The petitioner was posted during the year 1980 as Branch Manager at Mohgaon under the State Bank of India. He challenges in this petition the

impugned order dated May 8, 1984 whereby the Chief General Manager (respondent No. 2) in his capacity as disciplinary authority has imposed

on him punishment of removal from service after a disciplinary enquiry for charges contained in the charge-sheet (Annexure-A).

An Enquiry Officer was appointed, who, after conducting the enquiry, submitted his enquiry report (Annexure-B), The Enquiry Officer held that

charges Nos. 1 and 5 were proved against the petitioner, but charge Nos. 3, 4 and 6 were not proved.

The disciplinary authority in his final order, imposing punishment, dated May 8, 1984 (Annexure-C) agreed with the findings of the Enquiry Officer

in respect of charges Nos. 1 and 5 as proved and 3 and 4 as not proved. He, however, disagreed with the finding of the Enquiry Officer with

respect to charges Nos. 2 and 6 and held that charge No. 2 was fully proved and charge No. 6 was partly proved. Based on the report of the

Enquiry Officer and the order of the disciplinary authority disagreeing partly with it, the only charges,which need consideration by us, are charges

Nos. 1 and 5. which have been held established by both the authorities, charge No. 2, which has been found as fully proved by the disciplinary

authority and charge No. 6 which is held to be partly proved by the disciplinary authority.

So far as the charge No. 1 is concerned, not much discussion is required by us, because the petitioner had already admitted the fact that on

November 10, 1980 upto 4.45 p.m. he could not open the branch of the Bank. The Enquiry Officer in his report accepted the explanation of the

petitioner that there were amongst others genuine cause of illness of the uncle of the petitioner which held him up at Jabalpur and made almost

impossible for him to reach back to Mohgaon in time on November 10, 1980 to open the branch. The Enquiry Officer has also accepted his

explanation that the entire days''s work and the transactions were completed after the branch was opened that day at about 4.45 p.m.

Charge No. 2 against the petitioner, which, according to the counsel for the Bank, is a serious charge deserving extreme penalty of removal from

service, is in substance as explained below.

The petitioner is alleged to have shown undue favour to certain customers and allowed them withdrawals on their cheques presented for collection

without waiting for its collection through the issuing branch of the Bank.

Petitioner''s explanation to the charge was that the issuing branch was the State Bank of India, Malajkhand and after telephonic confirmation

regarding the cheques, the credits were made and the withdrawals were permitted. The party was a reputed creditworthy customer having current

account with the bank. With regard to the entries made in the account books of the bank for such withdrawals, his explanation was that on the

basis of the telephonic confirmation, he expected that such entries must have been made by the Branch Manager, Malajkhand Branch so as to

allow him to make corresponding entries in accounts books of his branch at Mohgaon.

It is to be noted that Malajkhand Branch was at a very close distance from Mohgaon Branch and the distance is stated to be between 4 to 5 Km.

The cheques for collection in two branches used to be sent per messenger. The gist of defence of the petitioner was that all these withdrawals were

permitted on telephonic confirmation from the issuing branch at Malajkhand and in any case, it caused no loss to the bank.

With regard to the above narrated charge No. 2, the Enquiry Officer held that the procedure followed by the petitioner was not strictly in

conformity with the laid down procedure for collection business, but it was held in favour of the petitioner that there was no mala-fide intention on

his part and there was no undue favour shown to the concerned customer.

The disciplinary authority, however recorded his disagreement stating that the telephonic communications said to have been received from

Malajkhands Branch have not been proved at all. The Enquiry Officer came to the conclusion that since there were credit entries made the same

day in the accounts books in Mohgaon Branch by the petitioner, inference of undue favour shown by the petitioner can reasonably be drawn.

Charge No. 5 against the petitioner was that he permitted withdrawal from the Saving Bank Account of one Kundaram Baiga of Rs. 450/- in the

absence of relative pass book. The said withdrawal, though entered in the daybook, was not checked with the relative ledger. Due to non-posting

of the said withdrawal, the account revealed effective overdrafts. Thus, the petitioner is said to have shown gross negligence and disregard to the

bank instructions in this connection. The Enquiry Officer accepted the explanation of the petitioner that the said withdrawal was permitted as the

customer was a known party and was also a borrower from the bank. Due to rush of work, the petitioner forgot to post the withdrawal in the

ledgersheet. The said customer Kundaram came to the bank to deposit Rs. 280/ in his S.B. account, but the successor of the petitioner got it

adjusted towards D.I.R. account of Shri Kunda Ram. This delayed liquidating the overdraft in the Savings Bank Account. It was, thus, a small

error, which caused no loss to the bank. In the opinion of the Enquiry Officer, such an error was excusable keeping in view the fact that branch

office at Mohgaon was managed single-handed by the petitioner. The disciplinary authority has fully agreed with the finding of the Enquiry Officer

on charge No. 5.

Charge No. 6 was found to be not proved by the Enquiry Officer. It has been held to be partly proved by the disciplinary authority. The gist of the

charge was that one Mohan Singh, account holder, had tendered a cheque for Rs. 5000/- on May 13, 1981 drawn at Baihar Bank, which was

purchased as D.D. by the petitioner. The above instrument was returned unpaid to Mohgaon Branch. On receipt of the cheque at the branch, the

unpaid amount thereof should have been recovered from the party, but this was not done, the amount was debited to the customer''s account only

on August 24, 1981 after the petitioner had left the branch. The petitioner refused to accept the responsibility of receiving the registered letter from

Baihar branch whereby the cheque was returned unpaid. The successor Branch Manager, P.D. Zarghar, stated in the enquiry that one messenger,

Iqbal Shrivastava, had informed him of having acknowledged the registered cover of return of cheque and then he returned the cheque. According

to the messenger, it was handed over to the petitioner as Branch Manager then. In the opinion of the Enquiry Officer, since neither the messenger,

Iqbal Shrivastava, nor the account holder Mohan Singh were produced by the department, the charge was not proved against the petitioner.

The disciplinary authority in relation to the above described charge No. 6, partly disagreed with the finding of the Enquiry Officer. The disciplinary

authority agreed that, part of the charge, which stated that the petitioner had prior knowledge of the cheque being returned unpaid and yet

deliberately allowed purchase of the cheque, was not proved. The disciplinary authority held that the remaining part of the charge that the petitioner

failed to take sufficient care to retain the returned cheque safely was proved.

13-A. The petitioner preferred an appeal under the provisions of the rule to the Appellate Authority which, by its communication dated January 25,

1985 (Annexure R2) dismissed the appeal.

It is in the above background, the stage of the above evidence and finding on charges Nos. 1,2,5 and 6, the legal contentions raised by the parties

are being taken up for decision. The disciplinary proceedings against the employees are regulated by the State Bank of India (Supervisory Staff)

Service Rules 1975 (hereinafter referred to as the ''Rules '),which have statutory force, being framed under the provisions of the State Bank of

India Act. The first legal contention raised by the learned counsel for the petitioner is that since in relation to charges Nos. 2 and 6, the disciplinary

authority had disagreed with the finding of the Enquiry Officer, the principles of natural justice demanded that the reasons for such disagreement

should have been communicated to the petitioner and he was heard against those reasons. The argument is that such a requirement should be held

to be implied in the provisions contained in Rule 50(3) (ii) of the Rules. The aforesaid rule reads as under:-

50(3)(ii). The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for

such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

Learned Counsel for the petitioner submits that where the disciplinary authority is not himself the enquiry authority and the former can agree or

disagree with the finding of the latter authority, the delinquent should have an opportunity to have his say on the adverse reasons of disagreement

recorded by the disciplinary authority on principle of fair play and justice. Reliance is placed on the State of Andhra Pradesh Vs. S.M. Nizamuddin

Ali Khan, and Brij Nandan Kansal Vs. State of U.P. and Another,

Learned counsel appearing for the Bank, in reply to the above legal contention of the petitioner, submits that such a requirement of communicating

reasons of disagreement recorded by the disciplinary authority to the delinquent cannot be read into the above-quoted rule and cannot be said to

be the requirement of natural justice. His argument, in reply, is that the Enquiry Officer acts only as an agent for and on behalf of the disciplinary

authority and the disciplinary authority is fully competent to reap-preciate the whole evidence and material on record to either concur or disagree

with the findings and reasons of the enquiring authority. The final verdict rests with the disciplinary authority and, therefore, the delinquent having

been granted full opportunity to face the charges in the enquiry and to cross examine the witnesses, there can be no further requirement of hearing

him against the reason for the ultimate decision, which is conveyed to him only with the final order of the disciplinary authority.

16-A. Having given our thoughtful consideration to this legal aspect of the matter and having carefully deduced the ratio and trend of the Supreme

Court decisions cited at the Bar, in our opinion, the contention of the petitioner being reasonable and sound deserves to be accepted. The

principles of natural justice are based on notions of fair play and justice. They are uncodified and unwritten rules. Yet, they are read by implication

in every judicial and quasi-judicial proceedings. One essential part of natural justice is based on audi alteram partem rule. It is true that in a

fullfledged enquiry conducted as per the disciplinary rules, the delinquent gets full opportunity to lead his defence, to cross examine the witnesses

and to submit his point of view before the Enquiry Officer. But where the Enquiry Officer is expected to prepare a report containing findings,

reasons and recommendations, with which the disciplinary authority may agree or disagree, the delinquent should have an opportunity to know the

views, which are adverse to him, so that he may submit in writing or orally his point of view before the disciplinary authority for coming to a just

conclusion on the basis of the material led in course of enquiry. Where the disciplinary authority himself is the enquiring authority, no such

requirement can naturally be held necessary, because he himself records evidence and hears the parties appearing before him so as to form bis final

opinion. But where he employs and takes assistance of an Enquiry Officer, on whose report he has to base his verdict, it appears to us that the rule

of natural justice demands that whatever adverse material exists, including the report of the Enquiry Officer and the opinion of the disciplinary

authority, containing his findings or reasons of his disagreement, should be duly disclosed to the delinquent and he is effectively heard before the

final decision is taken. For instance, in the present case, the Enquiry Officer exonerated the petitioner on charge No. 2 holding in his favour that

there was no mala fide intention on his part and no undue favour was shown to customer. Charge No. 2 was also held as not proved. The

petitioner was not supplied a copy of the report of the Enquiry Officer. He was also not communicated the reasons of disagreement recorded by

the disciplinary authority to the report of the Enquiry Officer. He came to know about the enquiry report and the reasons of disagreement only

when the final verdict of holding him guilty was given by the disciplinary authority and communicated to him. The petitioner was then left with the

remedy of challenging the said adverse reasons and conclusions only by way of an appeal provided in the service rules. In a case like this, where

reasons of disagreement are conveyed only with the final order, the delinquent loses valuable opportunity to submit his point of view to the

disciplinary authority to persuade it that the opinion of the Enquiry Officer, in relation to charge or charges on which he was exonerated, should be

accepted and the contrary conclusions reached on other charges are liable to be rejected. It should be taken to be a part of principles of natural

justice that before punishing a delinquent, all adverse material against him should be made known to him so that he gets full opportunity to meet

such adverse material before he is made to suffer punishment. It appears to us that where the requirement of Rule 50(3)(ii) is that the disciplinary

authority is to record reasons for his disagreement, communication of those reasons to the party likely to be affected adversely, must be held as

implied and necessary pre- requisite in accordance with the principles of natural justice. In our opinion, therefore, the disciplinary proceedings

stand vitiated due to non-communication of reasons for disagreement of the disciplinary authority to the petitioners as delinquent before taking final

decision toimpose punishment. In our view, when the disciplinary authoirty decided to disagree with the opinion of the enquiring authority, it should

have sent a copy of the Enquiry Officers"s report to the petitioner together with his proposed reasons for disagreement so as to afford him an

opportunity to have his say in the matter and only thereafter to have pronounced his final verdict. In these circumstances, such a procedure alone

can ensure complete fairness and justice.

We seek some support in our view from the decision of the Supreme Court in the case of Union of India v. Mohammed Ramzan 1991-I-LLJ-29.

The above decision of the Supreme Court shows the modern trend in India, in the field of Administrative Law. It was held therein that recording of

reasons for a decision and supply of copies of the report of the Enquiry Officer are the essential requirements of principles of natural justice. It was

so held in spite of the amendment to Article 311 of the Constitution deleting therein the clause requiring an opportunity of hearing against the

proposed punishment to public servant. Thus, even at the second stage of enquiry, irrespective of amendment to Article 311 of the Constitution of

India, natural justice demands disclosure of all adverse material to the delinquent before final decision in the enquiry is reached by the disciplinary

authority. The academic views are also in the same direction. Professor Wade in his book "Administrative Law": Fifth Edition, at page 845 has

taken note of the existing law and practice in U.K. on this subject and has put it in the following words:-

One important requirement of natural justice is that the objector should have the opportunity to know and meet the case against him. ""The case

against him"", in the context of an enquiry, will be some scheme of an order proposed by some public authority.

Professor Wade at page 453 of the same book has made survey of the House of Lords decisions in the cases of Local Government v. Arlidge

(1915) AC 120 and Ridge v. Baldwin, (1964) ACP 40 and made the following com ments:-

In attempting to reconcile the procedure of a Government department with the legal standard of natural justice, the House of Lords stressed the

limits that must be set to the judicialisation of administrative procedure. But they missed an important opportunity in setting their faces against the

disclosure of the inspector''s report. It took over forty years for this mistake to be corrected, when it finally came to be understood that the

supposed analogy between the report and any other departmental papers was misconceived, and in the mean time there was much public

dissatisfaction at this unfairness in enquiry procedures. Even now the law stands where the House of Lords left it in the Arlidge case, and the

necessary reforms have been made administratively, following the report of the Franks Committee of 1957, as explained elsewhere. The Arlidge

case was, therefore, a turning point in which the law failed to keep abreast of the standard of fairness which public opinion demanded, rightly as it

turned out,in the procedure of Government department. The law was, indeed, destined to fail still further behind before it returned to its old course

in Ridge v. Baldwin in 1963.

The renowned Indian Authority M.P. Jain and S.N. Jain in their classic work ""Principles of Administrative Law"", Fourth Edition, have made the

following comments:-

By way of comment on all these cases, it may be pointed out that the judicial view goes counter to the safeguards contained in the American

Administrative Procedure Act as well as the recommendations of the Franks Committee that ""the right course is to publish the inspector''s report

and that the parties concerned should have an opportunity to propose corrections of facts stated in the report. The academic view is also in favour

of disclosure of the report. The judicial view here is too much coloured by what the House of Lords observed in Arlidge, although the sentiments

of scholars as well as expert committee which have studied the problem have all been in favour of showing such reports to the person concerned.

There is no doubt that non-disclosure of the report amounts to deciding a matter without fully revealing all the material to the affected party. The

rule ought to be that the report of the enquiry committee should, as a rule, be shown to the affected individuals so that they may make effective

submissions to the adjudicating authority. There may be some exceptional situations but these should be only exceptions and not a rule. There is a

clear provision in the Administrative Procedure Act of the United Stated that a hearing officer shall first make an initial or recommended decision

which should be available to the parties before the final decision and an opportunity given to the parties to make representations against the

proposed decision of the hearing officer.

The second contention on behalf of the petitioner is that non- supply of the copy of the enquiry report was in breach of provisions of natural justice.

The contention is that even after Constitutional Amendment made to Article 311 of the Constitution by deletion of the provision for issuance of

second show cause notice against the proposed punishment, the Supreme Court in the case of Mohammad Ramjan Khan (supra) held that supply

of enquiry report to the delinquent is a requirement of principles of natural justice.

On behalf of the bank, it is submitted that the aforesaid decision of the Supreme Court in the case of Mohammad Ramjan Khan (supra) cannot be

applied to past cases decided prior to the pronouncement of the above decision. Attention was invited to the observations made in paragraph 17

of the judgment of the Supreme Court in Mohammad Ramjan Khan (supra), which read as under at p.34:

There have been several decisions in different High Courts which, following the Forty Second Amendment, have taken the view that it is no longer

necessary to furnish a copy of the enquiry report to delinquent officers. Even on some occasions this Court has taken that view. Since we have

reached a different conclusion the judgments in different High Courts taking the contrary view must be taken to be no longer laying down good

law. We have not been shown any decision of a co-ordinate or a larger Bench of this Court taking this view. Therefore the conclusion to the

contrary reached by any two-Judge Bench in this Court will also no longer be taken to be laying down good law, but this shall have prospective

application and no punishment imposed shall be open to challenge on this ground.

It is, thus, clearly held by the Supreme Court that the above verdict cannot be applied to the disciplinary enquiries in which punishments have

already been imposed. This cautious note of the Supreme Court was purposely made to avoid unsettling of the settled cases because, prior to this

pronouncement, in absence of such a provision in the rule, in several disciplinary proceedings, copies of enquiry reports were not supplied to the

delinquent and this would have vitiated the past proceedings in which the disciplinary authorities were not conscious of their duties to supply a copy

of the enquiry report to the delinquents. In our opinion, however, for the reasons that have been mentioned by us above, while considering the first

submission made by the petitioners, on the subject of communication of reasons of disagreement by the disciplinary authority to the Enquiry

Officer, the supply of copy of the enquiry report was all the more necessary to enable the delinquent of an opportunity to show cause against the

reasons of disagreement proposed to be recorded by the disciplinary authority. We reiterate that where the disciplinary authority intends to

disagree with the opinion of the Enquiry Officer so as to take adverse decision against the delinquent, the delinquent should be supplied a copy of

the enquiry report with a notice to show cause against the proposed reasons for disagreement to grant full opportunity to the delinquent to meet the

adverse conclusions sought to be drawn on the basis of the evidence and material led in the enquiry. Non-supply of copy of the enquiry report in

such a situation, where the enquiring authority and disciplinary authority had differed on vital aspects concerning the charges levelled against the

delinquent, vitiated the disciplinary proceedings. Principles of natural justice were, thus, violated and the petitioner was denied reasonable

opportunity to defend himself.

Lastly it was submitted that the order passed by the Appellate Authority is bad and liable to be quashed on the short ground that it does not

contain reasons. Reliance is placed on R.P. Bhatt Vs. Union of India and Ors (UOI) ., and Ram Chander Vs. Union of India (UOI) and Others,

Learned counsel appearing for the Bank submitted that as the order passed in appeal is one of affirmance of the order of the disciplinary authority,

recording of reason is not a requirement of quasi-judicial authority. Reliance is placed on Madhya Pradesh Industries Ltd. Vs. Union of India and

Others (UOI), and S.N. Mukherjee Vs. Union of India,

In view of our decision, that non-communication of reasons for disagreement by the disciplinary authority to the report of the Enquiry Officer,

vitiated the disciplinary proceedings, it is not, in fact, necessary for us to decide the question of validity of the appellate order, which, as a

necessary consequence, has to be quashed. But in our opinion, the appellate order needs quashing on additional ground that it suffers from vital

infirmity of being non-speaking order.

The provision of appeal is contained in Rule 51 of the Rules. Rule 51(2) reads as under:-

An appeal shall be preferred within 45 days from the date of receipt of the order appealed against. The appeal shall be addressed to the

Appellate Authority and submitted through or to the Authority whose order is appealed against. The employee may, if he so desires, submit an

advance copy to the Appellate Authority. The Authority whose order is appealed against shall forward the appeal together with its comments and

records of the case to the Appellate Authority. The Appellate Authority shall consider whether the findings are justified/or whether the penalty is

excessive or inadequate and pass appropriate orders. The Appellate Authority may pass an order confirming, enhancing, reducing or setting aside

the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such directions as it deems fit in the

circumstances of the case.

Learned counsel for the Bank placed reliance on the copy of official comments Annexure R1, which were placed before the local Board of the

Bank acting as the Appellate Authority. It was submitted that all the relevant material including the points taken in appeal and the comments of the

department, together with all enquiry documents, were placed before the Appellate Authority which show that there was due application of mind

and the appeal was dismissed for valid reasons.

A Division Bench of this court in Ram Dhin Gupta v. State of India 1991 Lab IC (NOC) 54 had an occasion to consider the ambit and

requirement of Rule 51 and along with it the scope of power of the Appellate Authority. Relying on the decision of the Supreme Court in the cases

of R.P. Bhatt and Ramchander (supra), which were based on similarly worded rules, applicable to Central Services and Railway Services, the

Division Bench held that the Appellate Authority of the Bank, even if it were to affirm the decision of the disciplinary authority, must record reasons

in support of its order. See the following observations in the Division Bench case of Ram Dhin Gupta (supra):

A similar view appears to be flowing from a few recent decision of the Supreme Court in that connection. Reference with advantage may be made

to R.P. Bhatt v. Union of India (AIR) 1986 SC 1040: and Ramchander v. Union of India. In the case of R.P. Bhatt (supra) the Chief Engineer

after departmental enquiry terminated the services of Supervisor who preferred an appeal before the Director General who also dismissed the

appeal observing that after thorough examination of the facts, brought out in appeal, the Director General was of the opinion that the punishment

imposed was just and in accordance with the rules applicable. Their Lordships took the view that in dismissing the appeal, the Director General has

not applied his mind to the requirements of Rule 27(2) of the Rules and there was no indication in the order that the Director General was satisfied

as to whether the procedure laid down in the rules has been complied. Considering the earlier decisions in State of Madras v. A.R. Shrinivasan

(supra); Som Datt v. Union of India(supra) and Tarachand v. Delhi Municipality (supra) which have been discussed by us in the foregoing

paragraph. Their Lordships of the Supreme Court set aside the order of the appellate authority and sent back the case with a direction to dispose

of the appeal afresh after applying the mind to the requirements of the rule. In the case of Ram Chander (supra) also their Lordships set aside the

order of the Railway Board which was the appellate authority for not giving reasons in the appellate order and sent back the case to the Railway

Board to hear and dispose of the appeal by a reasoned order.

It is, thus, now clear that the appellate authority even though it may be affirming order of the lower authority, has to give its own reason for its

decision and in the case before us which shall be discussed hereinafter, the appellate order suffers from the same in firmity inasmuch as the same is

without any reasons.

Learned counsel for the bank in support of his argument placed strong reliance on the decision of the Supreme Court in S.N. Mukherjee Vs.

Union of India, wherein it has been held that the order of affirmance of the appeal or revisional authority need not contain separate reasons. We

have carefully gone through the decision in the case of S.N. Mukherjee (supra) and we find that it is distinguishable because it was a case of a

member of the Armed Forces, governed by the Army Act and the Rules. The Supreme Court, after examining the entire provisions of the Army

Act and the Rules, held that the authorities holding Court-martial are not required to reveal reasons, for its verdict. There is also express provision

in the rules dispensing with recording reasons in pre-or post-confirmation Court-martial proceedings. The members of the Defence Forces have a

status distinct in character from those of civil servants and recording of reasons are dispensed with purposely in the Court-martial proceedings in

the interest of security of the Nation and Defence. The Supreme Court has taken due note of this distinction. The following observations of the

Supreme Court contained in para 38 explain the distinction and distinguishing feature of service conditions of civil servants and those in Defence at

page 1966 of AIR:-

with regard to the exercise of a particular power by an administrative authority including exercise of judicial or quasi-judicial functions the

legislature, while conferring the said power, may feel that it would not be in the larger public interest that the reasons for the order passed by the

administrative authority be recorded in the order and be communicated to the aggrieved party and it may dispense with such a requirement. It may

do so by making an express provision to that effect as those contained in the Administrative Procedure Act, 1946 of U.S.A. and the

Administrative Decisions (Judicial Review) Act, 1977 of Australia whereby the orders passed by certain specified authorities are excluded from

the ambit of the enactment. Such an exclusion can also arise by necessary implication from the nature of the subject matter, the scheme and the

provisions of the enactment. The public interest underlying such a provision would outweigh the salutary purpose served by the requirement to

record the reasons. The said requirement cannot, therefore, be insisted upon in such a case,

The Supreme Court, thus, very clearly noted the distinction in the matter of recording reasons by the ordinary quasi-judicial authorities and the

Army authorities exercising power in a Court-martial in relation to the members of the defence service. The Supreme Court has, however,

reiterated the principle that except in public interest and by express provision to the contrary, the requirement of recording reasons by quasi-

judicial authority must be inferred as part of rule empowering them to take decision. The following observations of the Supreme Court in para 39

of Mukherjee''s case (supra) may be seen:-

For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary

implications, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision.

For the foregoing reasons, we hold that the Appellate Authority, even while passing the order of affirmance, must record reasons to show that the

points raised in the appeal in the light of Rule 51(2) were duly considered and decided. Official comments cannot be read with the appellate order

as supplying reasons in it.

In our opinion, therefore, the appellate order (Annexure R-2) on the short ground of not containing any reasons, is liable to be quashed.

In view of the aforesaid discussion, this petition succeeds and is hereby allowed. The impugned order of disciplinary authority dated May 8, 1984

(Annexure-C) imposing the penalty of removal from service of the petitioner and the order dated January 25, 1985 passed by the Appellate

Authority are hereby quashed. It is directed that the petitioner be reinstated in the service. Since the petitioner himself confessed some of the lapses

and commission of procedural irregularities by him, we direct that he shall be entitled to only half the back-wages payable to him on his

reinstatement. In the circumstances, we direct that the parties shall bear their own costs. The amount of security be refunded to the petitioner.