Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 1809 of 2013
With
IA No. CAN 4 of 2023

Goutam Roy
Vs.
Union of India & Ors.

For the petitioner	:	Mr. Debabrata Saha Roy Mr. Indranath Mitra Mr. Falguni Bandyopadhyay Ms. Riya Ballav
For the respondent Bank	:	Mr. Dyutimoy Paul Mr. Santosh Kumar Ray Ms. Antalina Guha
Heard on	:	18th August, 2023 & 23rd November, 2023.
Judgment on	:	24th November, 2023.

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the order of suspension dated 28th October, 2009, charge sheet dated 15th June, 2009, the enquiry proceeding during the period from 21st August, 2009 to 20th November, 2009, enquiry report dated

13th February, 2010 and the order of dismissal from service, including the order passed by the Appellate Authority.

2. The petitioner initially joined the service of the respondent no.2, in the Clerical cadre on 8th August, 1984. At the relevant point of time, he was posted at Chawri Bazar. Subsequently, he was transferred to the Asansol Branch in the District of Burdwan, West Bengal, and remained posted thereat between 1988–1990. Later, he was transferred to Krishnanagar Branch, District–Nadia and was posted in the said Branch between the year 1990–1999. He was later promoted as Scale – I Officer and was posted at Kolkata, during the period 2002–2005. Still later, he was promoted to the Officer cadre of the Bank, in Scale – II and during the period 2005–2007 was posted as Branch Manager at Tinsukia, Assam. Subsequently, however, he was transferred to Rajarhat Branch, Kolkata, and continued to serve there till the year 2009.

3. It is the petitioner's case that while being posted at the Regional Office at Kolkata, he was served with a charge sheet dated 15th June, 2009, issued by the respondent no.3 in his capacity as the petitioner's Disciplinary Authority. It would appear from the records that the petitioner had duly responded to the said charge sheet by a communication in writing dated 22nd June, 2009. The

respondent no.3, upon considering the said response to the charge sheet and having found the reply given by the petitioner to be unsatisfactory, by an order dated 8th July, 2009 appointed the respondent no.7, as the enquiry officer.

4. The petitioner duly participated in the aforesaid enquiry and upon conclusion of the same by a communication in writing dated 13th February, 2010, the respondent no.7 forwarded the findings of the enquiry to the respondent no.3. Copy of the aforesaid enquiry report was also forwarded to the petitioner seeking his response. In the interregnum, however, the respondent no.3, by an order dated 28th October, 2009 had put the petitioner under suspension. The petitioner by a letter dated 1st March, 2010, while making a detailed representation to the findings of the enquiry authority, had forwarded the same to the respondent no.3, for his consideration as the Disciplinary Authority of the petitioner. Incidentally, by a memorandum dated 12th April, 2010, the respondent no.6 by claiming himself to be the Disciplinary Authority of the petitioner by concurring with the findings of the Enquiry Authority imposed the penalty of dismissal from service, on the petitioner.

5. Challenging the said memorandum, *inter alia*, including the order of dismissal, the petitioner had filed a statutory appeal before the

Appellate Authority on 3rd May, 2010. The Appellate Authority on 14th July, 2010 was, *inter alia*, pleased to dismiss the said appeal.

6. Mr. Saha Roy, learned advocate appearing in support of the aforesaid petition at the very out set submits that the charge sheet had been issued by the respondent no.3 in his capacity as the Disciplinary Authority of the petitioner. The respondent no.3 upon considering the reply given by the petitioner had applied his mind and having found that the response given by the petitioner to be unsatisfactory, appointed the respondent no. 7 as an enquiry officer to enquire into the charges levelled against the petitioner. Pursuant to the aforesaid, the enquiry officer had enquired into the charges and had forwarded the enquiry report to the respondent no.3. Although, the petitioner had made a detailed representation, the same was not considered by the respondent no.3, instead, by an order dated 12th April, 2010, the respondent no.6, claiming himself to the Disciplinary Authority of the petitioner by a cryptic order, while concurring with the findings of the enquiry officer, dismissed the petitioner from service.

7. It is submitted that the respondent no.6 did not initiate the enquiry in his capacity as the Disciplinary Authority of the petitioner. The respondent no.3 having initiated the enquiry, the

respondent no.6 could have only, if at all, passed the order of punishment and could not have acted as the Disciplinary Authority of the petitioner, especially when the respondent no.3 was available.

8. Mr. Saha Roy next contends that the order passed by the respondent no.6 is an unreasoned order. The respondent no.6 did not apply his mind and did not independently decide the matter. The said order is no order in the eye of law and is unenforceable. He says that although, a statutory appeal was preferred by the petitioner, the same was decided by the respondent no.5 who in terms of the Dena Bank Officer Employees' (Discipline & Appeal) Regulations, 1976 (hereinafter referred to as the "said Regulations") was not competent to act as an Appellate Authority. By referring to the schedule, for disciplinary action against officer/employees, he says since, the petitioner was in the Pay Scale – I and was posted at the Regional Office at Kolkata as such at the relevant point of time, only the persons featuring in the column no. II of the schedule, could have acted as the Disciplinary Authority of the petitioner. Since, the petitioner, at the relevant point of time, was posted at the Regional Office at Kolkata, the respondent no.3 had issued the charge sheet and had directed initiation of disciplinary proceeding in his capacity as the Disciplinary Authority. The respondent no.3 having, thus,

acted as the Disciplinary Authority, no person below the rank of Regional Manager in Pay Scale of V could have acted as the Appellate Authority of the petitioner. He further submits, in this case both the orders passed by the respondent no.6 dated 12th April, 2010 as also the order passed by the respondent no.5 on 14th July, 2010 cannot be sustained as the same are without any authority and jurisdiction. It is still further submitted that the authority, who is vested with the power can alone exercise jurisdiction and no other person can. In the facts, as stated above, the entire proceeding stand vitiated. In support of the aforesaid contention, he has placed reliance on the following judgments: -

1. A.C. Jose v. Sivan Pillai & Ors., **AIR 1984 SC 921**;

2. K. K. Parmar & Ors. v. H.C. of Gujarat, **(2006) 5 SCC 789**;

3. Chairman-cum-Managing Director, Coal India Limited & Ors. v. Ananta Saha & Ors, **(2011) 5 SCC 142**;

9. It is still further submitted that the Disciplinary Authority was obliged to give reasons while concurring with the report of the enquiry officer. Having failed to give any reason and having failed to apply his mind, the aforesaid order passed by the respondent

no.6 stands vitiated. In support of aforesaid contention, he has placed reliance on the following judgments: -

1. ***Anil Kumar v. Presiding Officer & Ors.*, (1985) 3 SCC 378;**
2. ***Ravi Yashwant Bhoir v. District Collector, Raigad & Ors.*, (2012) 4 SCC 407;**
3. ***Joint Action Committee of Air Line Pilots' Association of India (AlPAI) & Ors. v. Director General of Civil Aviation & Ors.*, (2011) 5 SCC 435.**

10. Mr. Saha Roy, submits that although, there was no charge as regards the quantum of financial loss suffered by the Bank, in the final order, the respondent no.6 has included the same. The aforesaid ground alone is enough to vitiate the entire disciplinary proceeding.

11. *Per con*tra, Mr. Paul, learned advocate representing the respondents takes me through the charge sheet including the entire enquiry proceeding. He submits that the petitioner was not unaware with regard to the financial irregularities or the loss suffered by the respondent bank. By referring to the charge sheet he submits that the charge sheet in particular, identifies the particulars of the transactions. The petitioner had responded to the charge sheet. The petitioner duly participated in the enquiry proceeding. There had been no violation of the principles of

natural justice. There are no contemporaneous documents complaining failure of justice. The petitioner was duly supplied with the copy of the enquiry report. Upon receipt of the enquiry report, the petitioner had made a representation. The respondent no.6 taking into consideration not only, the enquiry report but also the representation made by the petitioner and after concurring with findings of the enquiry officer, had inflicted punishment on the petitioner in the form of dismissal from service.

12. By placing reliance on Regulation 5(3) of the said Regulations, he says that the Disciplinary Authority or any other authority higher than it, may imposed any of the punishments specified in Regulation 4. By referring Regulation 4 he says that the petitioner has been inflicted with a major penalty and as such the respondent no.6 who was a person higher in rank that of the respondent no.3 was otherwise competent to, and had accordingly awarded the punishment. By further placing reliance on the notes appended to the schedule for the disciplinary action against the officers, he submits that the same authorizes any authority higher than the one specified in column 3, 4 and 5 of the said schedule to exercise the authority/power of the Disciplinary/Appellate Reviewing Authority under the said Regulation, as the case may be.

13. Admittedly, in this case, the respondent no.6 is higher in rank than that of the respondent no.3 and was, thus, competent to exercise the powers of the Disciplinary Authority, which in this case, has been done. The petitioner cannot feel aggrieved by the same.

14. The petitioner has not been able to demonstrate what prejudice he has suffered by reasons of the respondent no.6 exercising jurisdiction of the Disciplinary Authority. Admittedly, in this case, the petitioner had advanced loans without verifying the assets. The quantum of financial irregularities had been indicated in the charge sheet. The petitioner had admitted the charges not only before the enquiry officer but also while making his representation as also subsequently, while preferring the appeal. Having regard to the same, it cannot be said that the respondent no.6 did not apply his mind. Admittedly, in this case, the substantive procedure has been followed. There is no irregularity on the part of the respondent no.6 in concurring with the report of the enquiry officer and in inflicting the punishment on the petitioner or in the respondent no.5 dismissing the appeal as the Appellate Authority. There is no jurisdictional error committed by either of the persons, as both the persons were otherwise competent to take a decision. In support of the

aforesaid contention he has placed reliance on the following judgments:-

1. ***State Bank of Patiala v. S.K. Sharma*, (1996) 3 SCC 364,**
2. ***H. V. Nirmala v. Karnataka State Financial Corporation & Ors.*, (2008) 7 SCC 639;**
3. ***S. L. Kapoor v. Jagmohan & Ors.*, (1980) 4 SCC 379.**

15. In the facts as stated hereinabove, the writ petition should be dismissed with costs.

16. Heard the learned advocates appearing for the respective parties and considered the materials on record.

17. The primary challenge in this writ petition appears to be exercise of authority by the respondent no.6, by holding out himself as the Disciplinary Authority of the petitioner, notwithstanding the respondent no.3 having exercised jurisdiction of Disciplinary Authority, by initiating the disciplinary proceeding thereby, holding himself out as the Disciplinary Authority of the petitioner.

18. From the admitted facts it would appear that not only did the respondent no.3 issue the charge-sheet dated 15th June, 2009 but consequent upon receipt of reply of the petitioner, had appointed the Enquiry Officer to enquire into the charges. It is the

respondent no.3, who by an office order dated 28th October, 2009 had put the petitioner under suspension. However, subsequent to the conclusion of the enquiry, the respondent no.3 did not consider the enquiry report or the response given by the petitioner, instead the respondent no.6, by an order dated 12th April, 2010, while concurring with the report of the enquiry officer had imposed a penalty of dismissal from service, on the petitioner with immediate effect. The petitioner had questioned the same by calling the same to be not only irregular but without jurisdiction as well. Since, the petitioner contends that the respondent no.6 did not have the authority to simultaneously hold the petitioner guilty and inflict punishment, when the respondent no.3 had initiated the disciplinary proceeding and was also available, it is necessary to consider the relevant provision which authorises and confers jurisdiction on a person to act as a Disciplinary Authority of the petitioner. It is noticed that disciplinary proceeding insofar as the petitioner is concerned is governed by the Dena Bank Officer Employees (Discipline and Appeal) Regulations, 1976. While regulation 4 of the said Regulation clarifies the penalties which can be imposed, Regulation 5 read with Regulation 3(g) identifies the authorities who may institute disciplinary proceeding and impose penalties.

19. The aforesaid Regulations also confers the jurisdiction on the Disciplinary Authority and any other authority, higher in rank of the Disciplinary Authority, to impose penalties specified in Regulation 4 of the said Regulations. The institution of disciplinary proceeding, however, vests within the exclusive jurisdiction of the Disciplinary Authority, though the note appended to the aforesaid schedule provides that any authority higher than the one specified in column nos. 3, 4 and 5 mentioned in the schedule is empowered to exercise the authority/powers of the Disciplinary / Appellate / Reviewing authority under the said Regulations.

20. Admittedly, in this case the institution of disciplinary proceeding was by the respondent no.3, who also is the Disciplinary Authority of the petitioner. The respondent no.3 did not hold the enquiry instead, on his subjective satisfaction upon receiving the response of the petitioner that an enquiry should be held in respect of the articles of charge, had appointed an enquiry officer. The aforesaid exercise of authority is in consonance with the said Regulations. No case of violation of principles of natural justice has been made out. After conducting the enquiry, the report in terms of Regulation 6(21) was prepared and forwarded to the Disciplinary Authority of the petitioner being the respondent no 3. The petitioner was also served with a copy of the report,

prepared in terms of Regulation 6(21)(i), which, *inter alia,* included as follows:

> *(a) a gist of the articles of charge and the statements of the imputations of misconduct or misbehaviour;*
> *(b) a gist of the defence of the officer employee in respect of each article of charge;*
> *(c) an assessment of evidence in respect of each article of charge;*
> (d) *the findings on each article of charge and the findings therefor.*

21. The petitioner had made his representation to the aforesaid report and had forwarded the same to the Disciplinary Authority being the respondent no.3. As would appear from Regulation 7 of the said Regulations, a duty is cast on the Disciplinary Authority, when he is not the enquiring authority to consider whether or not to accept the enquiry report, and in case of disagreement, to record his reasons for such disagreement. It is only on the basis of such a consideration that the Disciplinary Authority can form an opinion whether or not to impose a penalty.

22. As such in terms of the Regulation 7 of the aforesaid Regulations ordinarily, on the subjective satisfaction of the Disciplinary Authority, as regards due holding of enquiry, and the findings in the enquiry report, the question of imposing of penalty, if any, arise. Thus, the power of satisfaction as regards

the enquiry and the proof of charges, especially when the Disciplinary Authority is not the enquiry officer, is exclusively vested with the Disciplinary Authority. To morefully appreciate the above, Regulation 7 is extracted hereinbelow:

"7. Action on the inquiry report:

(1) The Disciplinary Authority, if it is not itself the inquiring authority, may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for fresh or further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of regulation 6 as far as may be.

(2) The Disciplinary Authority shall, if it disagrees with the findings of the inquiring authority on any article of charged, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in regulation 8, make an order imposing such penalty.

(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge, is of the opinion that no penalty is called for, it may

pass an order exonerating the officer employee concerned."

23. It is, however, noticed that Regulation 5(3) of the said Regulations confers the jurisdiction on any authority, higher than the Disciplinary Authority to impose a penalty. In this case the decision to impose the penalty had been taken by the respondent no.6, who is admittedly higher in rank than that of the respondent no.3. Ordinarily, if the enquiry was held by the Disciplinary Authority, on the charges being proved, it would be open both to the Disciplinary Authority or any other higher authority to impose penalty. However, when the enquiry is conducted by any person other than a Disciplinary Authority, unless the report of enquiry is accepted on the satisfaction of the Disciplinary Authority as provided for in Regulation 7, no further action to impose penalty can be taken. There is, however, another point canvased by Mr. Paul. He contended that in terms of the notes appended to the schedule for disciplinary action against officer employees, the respondent no.6, being an authority higher than the authority specified in column no.3 of the schedule, could have exercised powers of a Disciplinary Authority of the petitioner. I however, find that the respondent no.3, being the specified Disciplinary Authority, not only initiated the proceeding but on his subjective satisfaction that the charges levelled against the petitioner should be enquired into, an enquiry officer had been

appointed. It is therefore, apparent that in this case, the original authority specified in column no.3 of the schedule exercised the jurisdiction of a Disciplinary Authority of the petitioner. Once, the respondent no.3 exercised the jurisdiction of the Disciplinary Authority of the petitioner, in my view it was no longer open to the respondent no. 6, on the strength of the notes appended to the schedule to hold himself out as the Disciplinary Authority of the petitioner without any justifiable cause. It is also not the case of the respondents that the respondent no.3 was not available. The power to exercise the jurisdiction of the Disciplinary Authority of the petitioner by the respondent no.6, or any other higher authority is obviously subject to the original Disciplinary Authority not exercising jurisdiction.

24. As such the decision to impose penalty by the respondent no.6 by holding himself out to be the Disciplinary Authority of the petitioner having regard to Regulation 7 of the said Regulations including the notes appended to the schedule, cannot be said to be in consonance with the service regulations as applicable to the petitioner.

25. As rightly pointed out by the Mr Saha Ray since, the matter pertains to disciplinary proceeding, not only the provisions of principles of natural justice are required to be complied with but the rules/regulations and/or the statutory provisions governing such

enquiry are also required to be complied with. However, at the same time, simply because the disciplinary proceeding has been conducted in violation of the regulations, the same may not automatically vitiate the entire disciplinary proceeding. As held in the case of ***State Bank of Patiala*** *(supra),* the Court should consider whether the provision violated, is substantive in nature or whether the same is procedural. Failure to comply with a procedural provision may not be sufficient to vitiate the enquiry as the nature of prejudice caused needs to be ascertained. The same test is, however, not applicable when a substantive provision is violated. Admittedly, it is noticed that the power to initiate the departmental proceeding coupled with the power to arrive at a subjective satisfaction as regards validity and proof of the enquiry when conducted by any person apart from the Disciplinary Authority, cannot be said to be procedural as the same is substantive in nature. In this context it would be relevant to refer to the judgement delivered the Hon'ble Supreme Court in the case of the ***State Bank of Patiala*** *(supra*) wherein it was observed as under:

> *"**11.** It is not brought to our notice that the State Bank of Patiala (Officers') Service Regulation contains provision corresponding to Section 99 CPC or Section 465 CrPC. Does it mean that any and every violation of the regulations renders the enquiry and the punishment void or whether the principle underlying Section 99 CPC and Section 465 CrPC is applicable in the case of*

disciplinary proceedings as well. In our opinion, the test in such cases should be one of prejudice, as would be later explained in this judgment. But this statement is subject to a rider. The regulations may contain certain substantive provisions, e.g., who is the competent authority to impose a particular punishment on a particular employee/officer. Such provisions must be strictly complied with. But there may be any number of procedural provisions which stand on a different footing. We must hasten to add that even among procedural provisions, there may be some provisions which are of a fundamental nature in the case of which the theory of substantial compliance may not be applicable. For example, take a case where a rule expressly provides that the delinquent officer/employee shall be given an opportunity to produce evidence/material in support of his case after the close of evidence of the other side. If no such opportunity is given at all in spite of a request therefor, it will be difficult to say that the enquiry is not vitiated. But in respect of many procedural provisions, it would be possible to apply the theory of substantial compliance or the test of prejudice, as the case may be. The position can be stated in the following words: (1) Regulations which are of a substantive nature have to be complied with and in case of such provisions, the theory of substantial compliance would not be available. (2) Even among procedural provisions, there may be some provisions of a fundamental nature which have to be complied with and in whose case, the theory of substantial compliance may not be available. (3) In respect of procedural provisions other than of a

> *fundamental nature, the theory of substantial compliance would be available. In such cases, complaint/objection on this score have to be judged on the touchstone of prejudice, as explained later in this judgment. In other words, the test is: all things taken together whether the delinquent officer/employee had or did not have a fair hearing. We may clarify that which provision falls in which of the aforesaid categories is a matter to be decided in each case having regard to the nature and character of the relevant provision."*

26. Having regard to the aforesaid, it is not necessary to test the prejudice caused to the petitioner. Although, it has been strenuously contended by the learned advocate representing the respondents that there is no irregularity on the part of the respondent no.6 in concurring with the enquiry report or in inflicting punishment on the petitioner or in the Appellate Authority dismissing the appeal, I am unable to accept the same for reasons morefully indicated herein above. Independent of the above the order impugned is also a non-speaking order and is otherwise unsustainable. The judgment delivered in the case of ***S. L. Kapoor*** *(supra)* relied on by the respondents' advocate deals with procedural irregularity and consequential prejudice causes. The said judgment does not assist the respondents. Insofar as the judgment delivered in the case of ***H. V. Nirmala*** *(supra)* is concerned, the same considers appointment of an incompetent person as an enquiry officer, however, since, the

delinquent participated in such proceedings and thereby, waived such right and further since, appointment of enquiry officer involved carrying out procedural aspects of the matter, such objection was required to be raised at the threshold. The delinquent having not contemporaneously raised such objection, was not permitted to canvass the same before a superior authority. Such is not the case here. The aforesaid judgments are distinguishable on facts. In this case a jurisdictional issue is involved. Admittedly, the respondent no.6 is not the Disciplinary Authority of the petitioner and as such he had no jurisdiction to decide on the validity of the enquiry conducted by the enquiry officer nor was he competent to consider proof of charges levelled against the petitioner, once the original Disciplinary Authority had assumed jurisdiction. In absence of such authority vested in him, he could not have concurred with the findings of the enquiry officer. It is true that the respondent no.6 being an officer, higher in rank that of the Disciplinary Authority of the petitioner, was entitled to impose punishment. However, the right to impose punishment by the respondent no.6 was obviously dependent upon the respondent no.3, concurring with the report of the enquiry officer and accordingly its satisfaction as regards the validity of the enquiry and sufficiency of the proof of the charges.

27. For reasons morefully indicated hereinabove, the order dated 12th April, 2010 passed by the respondent no.6 accepting the report

of the enquiry officer and simultaneously inflicting punishment on the petitioner cannot be sustained, the same is accordingly set aside and quashed. As a sequel thereof the appellate order also cannot be sustained and the same is accordingly set aside. The petitioner thus, would be deemed to be in service till the date when he stood superannuated.

28. The parties have informed that during the pendency of the writ petition that the petitioner stood superannuated from service. Having regard to the aforesaid since, it is no longer possible to finally conclude the proceedings by affording opportunity to the respondents to conclude the same, I direct the respondents to disburse the retiral benefits of the petitioner by treating the petitioner to be in continuous service up to the date of superannuation. The aforesaid writ petition thus, stands disposed of.

29. In view of disposal of the writ petition the application for appropriate order being CAN 4 of 2023 also stands disposed of.

30. There shall, however, be no order as to costs.

31. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)