

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)**

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 16304 of 2017

Chinmoy Bhattacharyya

-Vs.-

Bangiya Gramin Vikash Bank & Ors.

For the Petitioner : *Mr. Indranath Mitra*
Mr. Neil Basu

For the Respondents : *Md. Mokaram Hossain*
Mr. K.P. Mukherjee
Mr. Sandipan Maity

Heard on : 18.08.2023

Judgment on : 20.09.2023

Partha Sarathi Chatterjee, J:-

1. By taking out this writ petition, the petitioner questions the sustainability of the charge-sheet dated 25th November, 2013, the order of punishment dated 11th October, 2014, the order

dated 6th April, 2015 passed by the appellate authority and the petitioner also prayed for release of his retirement benefits together with interest.

2. Just five days before the date of superannuation i.e. 30th November, 2013, while the petitioner was officiating the post of the Bank Manager of Bangiya Gramin Vikash Bank (in short, the bank) at its Nodakhali Branch, a charge sheet *vide.* dated 25th November, 2013 was issued against the petitioner bringing as many as seven charges against him which are as follows :

“i) committing acts detrimental to the interest of the bank, ii) sanctioning and disbursing loans violating the norms/lending policy of the bank, iii) exposing the bank to huge financial loss, iv) discharging the official duties in negligent and casual manner, v) committing breach of trust, vi) committing acts of suppression of facts & vii) committing breach of discipline.”

3. The sub and substance of the allegations levelled against the petitioner was that while working as the Branch Manager at Nodakhali Branch, the petitioner granted loan of Rs. 1.66 Crores to 20 nos. of borrowers without involving the second officer of the bank, without following lending policy and

withoutmaking verification of - i) the working capital and the financial statement of the borrowers; ii) basing upon the unstamped and incomplete documents; iii) without getting the assets of the borrowers insured. It was further alleged therein that the petitioner did not realize the processing charge in respect of one loan account. Due to such lapse on the part of the petitioner, 4 loan accounts involving 35.86 lakh had slipped to sticky accounts as on 18.11.2013. The petitioner granted loan of Rs. 19.11 lakh to 21 borrowers flouting the instructions contained in the letter dated 05.03.2008 and hence, the petitioner violated the regulation nos. 18 and 20 of the Bangiya Gramin Vikash Bank (Officers and Employees) Service Regulations, 2010 (in short, the Service Regulations).

4. On 10th December, 2013, the petitioner submitted his reply to the charge sheet denying the allegations levelled against him. By a letter dated 24th January, 2014 the petitioner was informed that his reply to the charge sheet was found unsatisfactory and the presenting officer and the enquiry officer were appointed.

5. The enquiry officer informed that preliminary enquiry will be held on 12th March, 2014 at 10 am at Nodakhali Branch. The persons adduced evidence on behalf of the management. The enquiry proceeding was conducted on diverse dates. The presenting officer and the delinquent exchanged their respective briefs. Under a covering letter dated 7th July, 2014, the Disciplinary Authority and the General Manager of the bank communicated the report of the enquiry officer to the petitioner.
6. The petitioner submitted his response to the findings of the enquiry officer on 28th July, 2014. The Chief Manager of the bank under his covering letter dated 11.10.2014 forwarded a copy of the order of punishment of removal from service *vide*.dated 11.10.2014. The petitioner preferred statutory appeal assailing the order of punishment but the appeal fails and the order of punishment was affirmed by an order dated 06.04.2015. In such chronological events, the petitioner has been constrained to prefer this writ petition. Despite direction, none of the parties hereto has filed affidavit.

7. Mr. Mitra, learned advocate appearing for the petitioner contends that just five days before the retirement with a pre-determined mind the disciplinary proceedings was contemplated against the petitioner. He vociferously contends that the proceedings was continued and concluded in violation of principles of natural justice and the punishment was awarded. He submits that the delinquent was never placed under the suspension and even the delinquent was allowed to retire. In that event, it was not open to the disciplinary authority to invoke the regulation no. 45 of the Service Regulations, 2010 to continue the proceeding against a retired employee.
8. He strenuously argues that on perusal of the particulars of loan accounts it will be explicit that most of the Non Performance Assets (in short, NPA) became standard i.e. operative. He contends that to expand the business of the bank, a Branch Manager is obligated to sanction loans but presently, it has been a regular phenomenon of the bank that as and when some loan accounts slip to NPA, the branch manager is forced to face such sort of proceeding.

9. Mr. Mitra contends that charges brought against the petitioner are vague and non-specific. He submits that petitioner was charged of being instrumental in exposing the bank to huge financial loss but nowhere the quantum of loss was disclosed. He argues that it has not been disclosed anywhere which lending policy and which rules and/or norms had been violated and which fact or facts were suppressed. He claims that the petitioner is victim of office politics.
10. He arduously argues that there was no enclosure with the charge sheet. No list of witnesses and list of documents had been supplied to the petitioner and the photocopies of some documents were admitted in evidence but without authentication and without any verification. He submits that the petitioner's reply to the charge sheet was held to be unsatisfactory though no reason was assigned. He further submits that on the first day of the enquiry proceeding, the petitioner found that two persons were present to adduce evidence as management witnesses but the petitioner had never intimated that such persons would depose against him. The copies of the documents used against him were handed over just

on the date of enquiry. The recording of proceeding has not been provided to the petitioner.

11. He further contends that report of the enquiry office is cryptic.

According to him the enquiry officer is bound to return reasoned finding after analyzing evidence but from the enquiry report, it would be explicit that the enquiry officer submitted his report in mechanical manner holding that charges levelled against the petitioner stood proved and as such, the findings of the enquiry officer cannot be sustained. He contends that the disciplinary authority inflicted punishment upon the petitioner on a new charge i.e. moral turpitude and hence, the disciplinary authority disagreed with the findings of the enquiry officer and in that circumstances the disciplinary authority were required to give an opportunity to defend but no such opportunity was afforded to the petitioner. To buttress his argument he places reliance upon the judgments delivered in cases of *Rup Singh Negi vs. Punjab National Bank & ors.* reported in (2009) 2 SCC 570, *State of UP & Ors. vs. Saraj Kumar Sinha*, reported in (2010) 2 SCC 772 and *Anil Kumar vs. Presiding Officer & Ors.* reported in AIR 1985 SC 1121.

12. *Per contra*, Mr. Hossain, learned advocate representing the bank submits that as per clause 3 of the Regulation no. 45 of the Service Regulations, the bank can continue and conclude disciplinary proceedings even after retirement of its employee. He contends that the huge amount of loans of Rs.1.66 cores were sanctioned by the petitioner in derogation of the norms/lending policy of the bank and without making pre-sanction verification of the essential documents. He submits that although by an order the petitioner was prohibited from sanctioning any loan on or after 6th September, 2013 but the petitioner sanctioned loan even after 7th September, 2013. Drawing my attention to page 97 of the writ petition, he contends that the petitioners have virtually admitted the allegations of misconduct levelled against him. He cites a decision rendered by the Hon'ble Supreme Court in case of *V.K. Bahadur –vs- State Bank of India*, reported in 2000 (2) LLJ 76 for the proposition that even if there is no peculiarly loss, yet the bank authority can initiate disciplinary proceedings against the erring official and if the allegation of misconduct is proved, the bank can remove such employee from service. He contends

that there were no procedural irregularities in conducting the disciplinary proceeding and no rule or regulation has been violated. He asserts that in the banking business, absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee otherwise the confidence of the public/depositors would be impaired. He submits that in cases of financial irregularity committed by a bank employee there cannot be any punishment other than dismissal and/or removal from service. To lend support to his contentions, he places reliance upon the judgments delivered in cases of *Pankajesh vs. Tusli Gramin Bank & Anr.* reported in AIR 1997 SC 2654, *Ram Pratap Sonkar vs. Chairman and Managing Directed from Allahabad* reported in 2000 (2) LLJ 382 and one judgment passed by the Hon'ble Supreme Court of India in appeal (*Civil No. 4243/4244 of 2004*) (*State Bank of India & Ors. vs. S. N. Goyal*).

13. Indisputably, the charge must be specific and not vague. In the case at hand, the charges were sought to be supported by statement of allegations. In the charge sheet, the documents marked as 'A' (particulars of loan accounts), 'B' and 'C' and the

list of documents and witnesses were shown to have been annexed but Mr. Mitra claims that no annexure of the charge sheet was provided to the delinquent. Such submissions of Mr. Mitra have not been disputed on behalf of the bank and no document has been placed to show that particular of loans, list of documents and witnesses were provided to the petitioner along with the charge-sheet.

14. Procedural fairness in a departmental enquiry mandatorily requires proper disclosure of materials sought to be used against the delinquent. It is axiomatic that non-disclosure of particulars of evidence and non-supply of the documents to the delinquent employee would amount to violation of natural justice and the omission to disclose the list of witnesses and list of documents and failure to supply the documents or to afford an opportunity to inspect the document, as the case may be, would vitiate the entire decision making process and/or the disciplinary proceeding.

15. It is well-acclaimed principle that an Enquiry Officer is a *quasi-judicial* authority and function of an Enquiry Officer is *quasi-judicial* in nature. An enquiry has to be conducted fairly,

objectively and not subjectively. A finding of the enquiry officer should not be perverse or unreasonable nor should the same be based on conjectures and surmises. The enquiry officer must record reasons for arriving at the findings of fact in the context of statute defining the misconduct. The enquiry must return a reasoned findings to show how the charges levelled against the delinquent stood proved. The purpose of enquiry is not somehow to establish the charge levelled against the delinquent but to unearth the truth.

16. Suffice it to note that the enquiry officer had submitted a two-page report. In the enquiry report, it was mentioned that on 12.3.2014, the documents were handed over to the delinquent and then, it was claimed that allegations were discussed and the charged employee was given opportunity to verify the documents and delinquent could not disown the evidence and hence, hearing summery argument and on scrutiny of the documents, the enquiry officer came to a conclusion which reads thus:

‘ the CO had been negligent in performing his duties and responsibilities at the time of Sanctioning the proposals without pre-sanction inspection, invalid

(blank)documentation, causing suppression of facts and violating the norms/lending of the Bank as well as exposing Bank to huge financial loss which as a whole sustainable the facts of committing misconduct by the CSO as has been envisaged by the Chare-Sheet.'

17. The charges levelled against the delinquent officer must be found to have been proved. The disciplinary proceeding is quasi criminal in nature and the standard of proof is preponderance of probability. It is mandatory requirement that the enquiry officer upon appreciation of evidence must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. The enquiry officer must consider the relevant evidence and exclude the irrelevant materials from his zone of consideration and he shall not shift the burden of proof and his decision must be informed with reason. In case of *Roop Singh Negi –vs- Punjab National Bank (supra)*, it was held that in disciplinary proceeding, mere production of documents is not enough. The contents documents are required to be proved. In the case at hand, the documents had been admitted in evidence on mere tendering and contents of the documents had not been proved.

18. There is no iota of doubt that the enquiry officer's finding is not informed with the reason and no evidence has been scrutinized to show how the allegation of misconduct stood proved and documents have been admitted on mere tendering. The contents of the documents have not been proved.

19. Mr. Hossain contends that the petitioner had admitted his guilt. On close scrutiny of the reply to the charge sheet, it would be explicit that the petitioner stated that before disbursement of any loan, he had duly filled in mortgage-document. Initially, he would carry the incomplete loan documents, which could not be filled in due to pressure of work, to his residence to incorporate the requisite information therein but the Regional Manager asked him not to take those documents at home. He anticipated that he could fill up those documents before his retirement but during last 20 days of his service tenure, his access to the loan documents were denied. In his reply to the enquiry report, the petitioner stated that due to pressure of the work, he could not fill up all the loan documents and some of the loan documents were either incomplete or adequate and he had approached the competent authority to afford him opportunity to fill up the

unfilled portions of the loan documents but in vain. The petitioner expressed his opinion that these are curable defects only.

20. It goes without saying that expression of opinion limited to the context is not admission. The delinquent defended the charge contending that before disbursement, he filled up mortgage documents but due to pressure of work, he could not fill up all loan documents and during last 20 days of his service tenure, his access to the loan documents were denied and hence, he could not fill up the documents. Such stand cannot be stated to be admission of guilt. He admitted that some of the loan documents had not been filled up but he explained as to why those documents could not be filled up.

21. The disciplinary authority observed that the petitioner has admitted his guilt contending that *'there was inadequateness and incompleteness in loan documents and said that incomplete documents were not irredeemable. But the (CSO) in his written submission, failed to explain rest of the findings of the Enquiry Officer. I would be inferred that the CSO admitted the other*

allegation/charges levelled against him and that he did not have any explanation to offer in his defence.'

22. The disciplinary authority omitted to consider that the delinquent defended the incompleteness of loan documents and in his reply to the charge-sheet and the enquiry, the delinquent has specifically denied all the other charges and gave explanation. At the cost of reiteration, it is stated that the burden lies upon the management to prove the allegation of misconduct and the management cannot enjoy the privilege to impose reverse onus upon the delinquent. The disciplinary authority observed that CSO admitted that he had received the letter dated 01.06.2013 whereby it was directed that his discretionary power would be regulated in terms of the circular dated 5.3.2008 and hence, he admitted that he had violated the directives of the bank. Such findings of the disciplinary authority speaks about the pre-conceived mind of the authority.

23. In the concluding part of the order of punishment, the disciplinary authority observed as follows:

"I have carefully considered the above submission of CSO and find that the conduct of the CSO is contrary to honesty, modesty and good morals. Sri

Bhattacharya has failed to observe 'devotion of duty' and committed the offence involving moral turpitude. The expression 'moral turpitude' should be understood in the light of prevailing norms that is expected from a person. The term should be interpreted in a widest possible manner. In my opinion, there can be no scintilla of doubt that the case of Sri Bhattacharya definitely comes within the ambit of 'Moral Turpitude'.

24. No charges to the effect that i) *the conduct of the delinquent was contrary to honesty, modesty and good morals*, ii) *the delinquent had failed to observe devotion of duty* and iii) *commission of offence of 'moral turpitude'*, had been brought against the delinquent. These are the new charges. Hence, it can be argued that disciplinary authority had disagreed with the enquiry officer. In case of Punjab National Bank & Ors. –vs- Kunj Behari Mishra (*supra*), it was ruled that if disciplinary disagrees with the findings of the enquiry officer, he must give an opportunity of hearing to the delinquent but no opportunity has been afforded to the delinquent. I may fruitfully refer the case of *S.P. Malhotra –vs- Punjab National Bank*, reported in AIR 2013 SC 3739, wherein it was held that disciplinary authority is bound

to record reasons for disagreeing with findings of enquiry officer and to supply a copy thereof to the delinquent and non-furnishing copy of recorded reasons for disagreement from enquiry report prejudices delinquent and in that event, the consequential order of punishment would stand vitiated.

25. Indisputably, neither the enquiry officer in his report nor the disciplinary in his order has discussed and/or analyzed the evidence to show how the allegations stood proved which lead to an irresistible conclusion that findings of both the enquiry officer and disciplinary authority are perverse i.e. based on no evidence. No list of documents and list of witnesses had been provided to the petitioner. The enquiry officer did not scrutinize the evidence and the enquiry report is not informed with reason. The enquiry officer and the disciplinary authority misinterpreted the statements of the delinquent and held those statements to be his admission of guilt. The disciplinary authority has misplaced the burden upon the petitioner and imposed a reverse onus upon the petitioner and the disciplinary introduced new charges but no opportunity was afforded to the petitioner to defend such charges.

26. Both the enquiry officer and the disciplinary bypassed the issues namely, i) as to whether the bank had suffered any pecuniary loss or not and ii) as to whether due to incompleteness of the loan documents, the loans were left unsecured or not! To fill up this lacuna, Mr. Hossain cited the decision of *V.K. Bahadur (supra)* to contend that even if there was no actual loss of the bank, the employee can be held guilty of misconduct. Such submission of Mr. Hossain indicates that there was no pecuniary loss of the bank and nowhere, it has been claimed that the loan or loans sanctioned by the petitioner became unsecured.

27. If an eagle's eye is kept on the records and a strict view is applied then at best it can be argued that some loan documents were not filled up by the delinquent and loan or loans were granted by him after 6.9.2013 but for these reasons, the bank has not suffered any pecuniary loss and no loan has been left unsecured but an employee, who had rendered his service to the bank for decades, has been removed after his retirement and his entire retirement benefits have been forfeited. It goes without saying that punishment must be commensurate and/or

proportionate to the misconduct. I am of the view that doctrine of proportionality has not been followed in awarding punishment. The punishment is shockingly disproportionate. After almost 10 years, it would not be apposite to relegate the matter to the authority to fill the lacuna and award fresh punishment particularly in a case where it has been held that the charge sheet and the enquiry cannot be sustained and principles of natural justice have been violated in conducting the disciplinary proceeding.

28. There is no iota of doubt regarding binding effect of the judgments relied upon by Mr. Hossain but those are distinguishable on facts.

29. In view of the foregoing analysis, I have no qualm to hold that the charge sheet, the enquiry report, the order of punishment and the order of the appellate authority cannot be sustained.

30. In view thereof, the charge sheet dated 25th November, 2013, the enquiry report, the order of punishment dated 11th October, 2014, the order of Appellate Authority dated 6th April, 2015 are set aside. The respondent no. 2 is directed to disburse all

retirement benefits to the petitioner within four weeks from the date of receipt of a copy of this order.

31. With these observation and order, the writ petitioner being **WPA 16304 of 2017** stands **disposed of**, however, without any order as to the costs.

32. Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

33. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Partha Sarathi Chatterjee, J.)