

GAHC010002412012



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/30/2012

DHARANI DEORI
S/O- LT. BATIRAM DEORI, R/O VILL.- BORAHAT, P.O.- BARAMA, DIST.-
BAKSA BTAD, ASSAM.

VERSUS

ASSAM GRAMIN VIKASH BANK and 2 ORS
REP. BY ITS CHAIRMAN, HAVING HEAD OFFICE AT G.S. ROAD,
BHANGAGAR, GHY- 5.

2:CHAIRMAN
ASSAM GRAMIN VIKASH BANK
G.S. ROAD
BHANGAGARH
GHY- 5.

3:ENQUIRY OFFICER AND REGIONAL MANAGER
ASSAM GRAMIN VIKASH BANK
REGIONAL OFFICE
NALBARI
ASSAM
PIN

Advocate for the Petitioner : MR.A BHATTACHARYA

Advocate for the Respondent : MR.D CHAKRABORTY

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

JUDGMENT

Date : 29-08-2023

Heard Shri PP Dutta, learned counsel for the petitioner. Also heard Shri S Dutta, learned Senior Counsel assisted by Shri K Upamanyu, learned counsel for the respondent-Bank.

2. The subject matter of dispute in this writ petition is a departmental proceeding which has culminated in an order of imposition of penalty of Compulsory Retirement. The departmental appeal preferred by the petitioner was also rejected.

3. Before going to the issue which has arisen for adjudication, the facts in brief may be narrated as follows.

4. The petitioner had joined the services of the erstwhile Pragjyotish Gaonlia Bank in the year 1990 as an Officer Scale-I. The said Bank was subsequently amalgamated with three other rural Banks and emerged as the Assam Gramin Vikash Bank. While in service, on 21.02.2009, a charge memo was served to the petitioner containing five numbers of charges, including the charge of illegal drawl of customers' money. The petitioner, however, in his written statement of defence dated 08.05.2009 did not deny the allegations and had, rather undertaken to make good the loss. The matter was proceeded and an inquiry was instituted. The Inquiry Officer had submitted a report which was forwarded to the petitioner on 12.06.2010. The Inquiry Report states that the charges against the petitioner were proved. The petitioner, however, did not make any representation against the Inquiry Report. Consequently, vide the impugned order dated 20.11.2010, the petitioner was imposed the penalty of Compulsory Retirement which is a major penalty under the Regulation of the Bank.

5. Shri PP Dutta, learned counsel for the petitioner has submitted that the working condition at that particular point of time was such that he was compelled to do certain activities. It is further submitted that the penalty is harsh and not commensurate to the gravity of the offence and therefore, interference be made. It is further submitted that while disposing the departmental appeal, the Appellate Authority did not apply independent mind and have mechanically rejected the appeal.

6. *Per contra*, Shri S Dutta, learned Senior Counsel representing the Bank has submitted that the scope of interference in the present writ petition is almost minimal as in the present case, there was no denial at all from the delinquent petitioner. By referring to the written statement dated 08.05.2009 submitted by the petitioner against the charge memo, it is contended that instead of denying the allegations, those were admitted with an undertaking to make good the loss. The learned Senior Counsel submits that under such circumstances, the inquiry, itself was not warranted and the matter could have been brought to a logical end. However, to give a fair opportunity, an inquiry was conducted in which, the Inquiry Officer had examined the witnesses and also took into consideration twelve numbers of exhibits proved by the Management. The inquiry was held on four sittings and thereafter, the findings were made whereby the charges were held to be proved. It is further submitted that the petitioner chose not to submit any representation against the Inquiry Report in response to the second Show Cause Notice dated 12.06.2010 and therefore, it can be deemed that the petitioner was satisfied with both the procedure and the findings of the Inquiry Officer. The learned Senior Counsel, accordingly submits that the penalty imposed has been done by following the due procedure in law and taking into account the seriousness of the charges which includes illegal withdrawal of customers' money and therefore, the penalty is not at all disproportionate.

7. After hearing the parties and on examination of the materials on record, this

Court is of the view that in exercise of powers conferred under Article 226 of the Constitution of India, this Court's role of judicial review in matters of Disciplinary Proceeding is circumscribed and unless a case is made out of patent illegality or gross perversity, this Court would be loath to interfere with such a disciplinary proceeding. This Court may, however, interfere even in a case where the punishment imposed is *ex facie* disproportionate as was laid down in the landmark case of **BC Chaturvedi Vs. Union of India & ors.**, reported in **(1995) 6 Scc 749** wherein the Hon'ble Supreme Court has dealt with the scope of Courts-Tribunals to interfere with findings of facts based on evidence and substitute its own independent findings. Restrictions were also put on the Court-Tribunal regarding reappreciation of evidence and substituting its own findings.

8. However, in the instant case, apart from the charges being serious in nature, there was no denial from the petitioner at any stage. Firstly, in the written statement of defence dated 08.05.2009 wherein the first opportunity was given, rather than denying, the petitioner had accepted the charge and had undertaken to make good the loss.

9. The duties of a Bank employee are mainly on fiduciary capacity wherein the doctrine of public trust is applicable. Ultimately, it is the public money which is involved in any such Disciplinary Proceeding involving allegation of defalcation and misappropriation. That apart, the Inquiry Report furnished by the Inquiry Officer also does not disclose that there has been any gross violation of the procedure or the principles of natural justice in conducting the inquiry and what intrigues this Court is that the petitioner chose not to even submit a representation against the report of the Inquiry Officer.

10. This Court has also noticed that the order of penalty is of Compulsory

Retirement and this Court has been apprised that under such penalty, the petitioner had received certain benefits.

11. Under the aforesaid facts and circumstances, this Court is of the view that the present is not a fit case for interference and therefore, the writ petition is dismissed. It is, however, made clear that whatever entitlement is to be received by the petitioner after the imposition of the penalty of Compulsory Retirement, the same be released to him, if not done in the meantime.

JUDGE

Comparing Assistant