



THE GAUHATI HIGH COURT

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

Case No. : WA/193/2021

- 1.** The Punjab National Bank,
Represented by its Chief Executive Officer and
Managing Director, Head Office, Plot No.4,
Section-10, Dwarka, Delhi.
- 2.** The General Manager PAD Appellate Authority,
PNB, Head Office.
- 3.** The Dy. General Manager, Disciplinary
Authority, PNB AG Towers, 3rd Floor 125/1
Park Street, Kolkata-17.
- 4.** The Chief Manager, Circle Office, North East
Circle, Nilgiri Mansion, GS Road, Bhangaghar,
GHY 781005, Assam.

.....Appellants

-Versus-

Chitta Ranjan Das,
Son of – Late Nabin Ch. Das,
Fouzdari Patty, Near S.P. Bunglow,
P.O. & Dist. Nagaon, Assam,
PIN-782001.

..... Respondent

– B E F O R E –
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE KARDAK ETE

For the Appellants : Mr. S. Dutta, Advocate.

For the Respondent : Mr. S.K. Talukdar,
Mr. P.K. Medhi, Advocates.

Date of Hearing : 14.03.2023 & 21.03.2023.

Date of Judgment : 12th May, 2023

JUDGMENT & ORDER

S. Mehta, C.J.

The instant intra-Court writ appeal has been preferred by the appellant employer Punjab National Bank for assailing the judgment dated 19.05.2021 passed by the learned Single Judge whereby, the writ petition, being, WP(C) 187/2015 preferred by the writ petitioner employee (respondent herein) was accepted and the order dated 25.01.2014 passed by the Disciplinary Authority imposing upon the writ petitioner, major penalty of removal from service; the order dated 30.04.2014 passed by the appellate authority dismissing the appeal; and the order of the reviewing authority dated 24.09.2014 dismissing the review, were set aside and the appellant bank was directed to give all pecuniary benefits including salary from the date of suspension and retiral

benefits to the respondent (since retired) within a period of three months.

2. We have heard and considered the submissions advanced at the Bar and have gone through the impugned judgment and the materials placed on record.

3. The respondent (hereinafter referred to as the Charged Officer or C/O in brief) was subjected to a disciplinary enquiry on various allegations and imputations. After concluding the enquiry, the Enquiry Officer submitted an enquiry report dated 28.01.2013, before the disciplinary authority, concluding that-

Charge 1(1), proved.

Charge 1(2), not proved.

Charge 2, not proved.

Charge 3(1), not proved.

Charge 3(2), not proved.

Charge 3(3), partly proved (only sub-charges nos.2 & 16 were found proved)

Charge 4, proved.

The Disciplinary Authority accepted the report of the Enquiry Officer and imposed the penalty aforesaid upon the C/O which was further affirmed in appeal and review.

Since the Charge Nos.1(2), 2, 3(1) and 3(2) were found not proved, we need not advert to the same. Learned Single Judge, concluded that the Charges No.1(1), 3(3) and 4 which were found established by the Disciplinary Authority were as a matter of fact,

not proved by valid and admissible evidence/material and accordingly, the writ petition was allowed as above by the judgment dated 19.05.2021 which is assailed in this appeal.

4. For the purpose of adjudicating upon the issues raised in this appeal, the charges which the Disciplinary Authority found established against the C/O, are reproduced hereinbelow for the sake of ready reference;

Charge-1 (1) *Shri Das had engaged one Shri Nawaj Sharif as an agent for sanctioning the loans. Shri Das did not visit to the place of the borrowers and sent them to Mr. Nawaj Sharif for processing the said loans. He used to route all fresh KCC borrowers through that agent. Blank forms and documents were allowed to be kept under the custody of Shri Nawaj Sharif. Shri Sharif used to execute all the loan documents either at his residence or at the residence of the borrowers and submitted them to the Bank.*

After Shri Das sanctioned the loans to the borrowers, the disbursements of the loans were handed over to Shri Nawaj Sharif for distribution to the borrowers and in several cases paid lesser amount to them. In a large number of cases loan proceeds were released to the persons other than the actual applicants. There are 62 such cases. To quote a few:-

(Sl. Nos. 1 to 10) (For brevity, detail list, not mentioned).

Charge 3 (3) *The following serious anomalies are also observed in several accounts:-*

1.

2. *Signature of the borrower UDDIN of Account 88-9791 tally with of a/c 88-9436 and a/c 88-9278. The borrowers have claimed that they have not signed the documents and withdrawal forms of KCC.*

.....

16. Borrowers of the account number 88-9791, 88-10269, 88-9302, 88-8871, 88-9782, 88-11082, 88-9311, 88-9816, 88-9250 are claiming that they have neither signed the loan documents nor withdrawal forms of KCC and not received the loan amount as disbursed.

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Charge No.4

The following cash deposit transactions in the personal accounts of Shri Das are of suspicious nature as these entries do not relate to his known sources of income.

S.N.	A/C	Date	Deposit
1	373000200023242	03-10-2011	18000
2	373000200023242	13-10-2011	40000
3	373000200023242	20-10-2011	100000
4	373000200023242	14-12-2011	20000
5	373000200023242	21-12-2011	10000
6	373000200023242	22-12-2011	5000
7	373000200023242	24-12-2011	40000
8	373000200023242	13-03-2012	20000
9	373000200023242	18-07-2012	30000
10	373000200023242	16-08-2012	10000
11	373000200023242	21-09-2012	20000
12	373000200023242	10-12-2012	10000
13	206000100064942	05-03-2012	50000
14	206000100064942	02-06-2012	40000
15	206000100064942	04-06-2012	20000
16	206000100064942	05-06-2012	13000
17	206000100064942	08-06-2012	20000
18	206000100064942	11-06-2012	50000
19	206000100064942	12-06-2012	53000
20	206000100064942	07-07-2012	30000

21	206000100064942	09-07-2012	25000
22	206000100064942	31-08-2012	10000
23	206000100064942	12-09-2012	10000
	GRAND TOTAL	-----	644000

5. Charge No.1(1) was based upon an imputation that the C/O engaged one Shri Nawaj Sharif for sanctioning loans. The C/O did not visit the place of the borrowers and instead he sent Nawaj Sharif for processing the loans. The entire process of executing the loan documents was done by Nawaj Sharif. The sanctioned loan amount was handed over to Nawaj Sharif for distribution but he paid lesser amounts to the borrowers.

Chare No.3(3) related to 17 instances of alleged impersonation of borrowers out of which only two instances, i.e. sub-charge no.2 and 16 were found proved.

Charge No.4 related to 23 cash deposit transactions totalling to Rs.6,44,000/- made in the personal bank account of the C/O between 3.10.2011 to 12.09.2012. It was alleged that these deposits were suspicious in nature as the same did not relate to the known sources of income of the C/O.

6. The learned Single Judge, while dealing with the findings of the disciplinary authority on these charges, held that the Charge No.1(1) was vague as the so called agent of the Bank Mr. Nawaj Sharif was not brought within the purview of the enquiry. The relevant village visit register was never produced. Neither any witness was examined nor any document was produced to establish this charge. On the other hand, the C/O presented five witnesses being the alleged complainants who confirmed the

receipt of the loan amounts and denied filing of any complaint. Accordingly, finding on the charge No.1(1) was reversed, and rightly so in our opinion.

7. During the course of arguments, learned counsel Mr. Dutta representing the appellant bank frankly conceded that the conclusion drawn by the learned Single Judge *qua* charge No.1(1) is unassailable on the admitted facts and evidence as available on record.

However, the fervent contention of Mr. Dutta was to question the findings recorded by the learned Single Judge on charge No. 3(3) which related to impersonation of the account holders of numerous bank accounts opened by the C/O. Mr. Dutta urged that there was no requirement of producing oral evidence of the concerned witnesses to establish the particular instances cited in this charge because, the C/O admitted the documents, i.e. the account opening forms etc. The Enquiry Officer, upon comparison of the signatures pertaining to item Nos.2 and 16 of charge No.3(3) observed stark noticeable differences therein and concluded on the basis of his experience as a banker that the accounts suffered from irregularity and impersonation. He thus urged that the learned Single Judge, was unjustified in reversing these findings by re-appreciating the evidence which is not permissible in a challenge laid to disciplinary proceedings in exercise of writ jurisdiction.

8. To this submission, contention of Mr. S.K. Talukdar representing the C/O was that the account holders concerned

could only have been the relevant witnesses to establish this charge. It was further submitted that the disciplinary authority itself, observed that the Presenting Officer (PO) failed to present the case convincingly and thus, 15 out of the 17 instances cited in charge No.3(3) were found not proved.

9. Having considered the submissions advanced by the counsel for the parties, we are in agreement with the findings recorded by the learned Single Judge that the department failed to prove sub-clauses 2 and 16 of charge No.3(3) which read as below;

“2. Signature of the borrower UDDIN of account 88-9791 tally with of a/c 88-9436 and a/c 88-9278. The borrowers have claimed that they have not signed the documents and withdrawal forms of KCC.”

“16. Borrowers of the account number 88-9791, 88-10269, 88-9302, 88-8871, 88-9782, 88-11082, 88-9311, 88-9816, 88-9250 are claiming that they have neither signed the loan documents nor withdrawal forms of KCC and not received the loan amount as disbursed.”

Substance of these two sub-charges is based primarily on the imputation that the borrowers of the concerned accounts complained that they did not sign the documents and the withdrawal forms. Thus, in order to prove these allegations, it was imperative for the employer to have examined the borrowers in evidence or else, the Disciplinary Authority, acting as a handwriting expert, could have minutely examined the documents so as to arrive at an affirmative conclusion regarding discrepancies in signatures based on thorough comparison with admitted

documents leading to a positive and irrefutable inference of irregularities/falsification of records. However, the finding, which the Disciplinary Authority recorded on these two paras of charge No.3(3), is absolutely laconic which reads as below;

“However, in respects of irregularities reported under sl no 2 and 16, the documents produced and the argument placed by the PO have been found acceptable.”

Apparently thus, the Disciplinary Authority did not apply its independent mind to the documents and drew the above conclusion sheerly on conjectures and surmises by blinding agreeing with the arguments placed by the P.O.

10. Hence, we are not the least convinced by the submission of the appellant Bank’s counsel that the view taken by the learned Single Judge regarding these two instances, i.e. sub-charge Nos.2 and 16 of charge No.3(3) not having been proved requires interference. Hence the challenge given in this appeal to the findings of learned Single Judge *qua* these charges lacks merit.

11. Now, we come to the charge No.4 which was attributed to the C/O. This charge pertains to multiple cash deposits made in the personal bank account of the C/O between 3.10.2011 to 12.09.2012 as per the chart (supra) and the grand total of the amount so deposited is Rs.6,44,000/-. The C/O offered the following explanation to this charge;

“The allegation is not based on facts. It is pertinent to inform you that (even the PO is aware of it). I live in a joint family consisting of my 4 unmarried sisters and my wife who are all employees of the state Government. They all earn handsome

salaries. I did not want to say this but the circumstances has compelled me to say this. We wanted to construct a New House by demolishing our ancestral house for which my sisters and my wife pooled their savings and deposited the same in my a/c so that the payment to the vendors can be made in a systematic manner as making cash payments to the vendors help in getting cash discounts. This can be verified by your good self.

In view of the above I pray to you that the charge be considered as not proved.

This is my humble submission before you and request you to consider my brief on its merit and consider the charges as NOT PROVED.”

12. Needless to say that the source of cash deposited in the personal bank account can be presumed to be in exclusive knowledge of the account holder. In the explanation to the charge No.4, the C/O did not utter a single word that the amounts so deposited were derived from his own income. He made vague suggestions in reply to the Charge No.4 that his four unmarried sisters and his wife are all employees of the State Government. They earn handsome salaries. The family was desirous of construct a new house by demolishing their ancestral house. The C/O's sisters and his wife pooled their savings and deposited the same in his account so that the payment to the vendors could be made in cash.

13. As it was claimed that the cash deposits were made from the salaries of the close family members of the C/O, serving on civil posts, clearly, the onus to prove/explain the sanctity of these transactions/deposits was on the C/O, who was expected to do so

by either producing the corresponding bank entries or by examining the family members referred to in the explanation as defence witnesses. Section 106 of the Indian Evidence Act, 1872 stipulates that burden to prove a fact especially within the knowledge of any person is upon him. The provision reads as below;

“106. Burden of proving fact especially within knowledge.- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

Thus, the burden to prove that the amounts deposited in the bank account were sourced through valid transactions was upon the account holder, C/O who miserably failed to discharge this burden enjoined upon him by law. The learned Single Judge assigned the following reasoning while interfering with the said charge.

“32. Similarly, while holding the charge proved, as regards the Charge No. 4, that the accused has disproportionate transaction to his own source of income, the requisite data, such as, his monthly income, allowances, deductions, arrears etc. etc. (known source of income) has not at all been shown in the chart so prepared, as has been mentioned above, which again indicates the mechanical approach by the respondent department. Only certain deposits of amount w.e.f. 03.10.2011 to 12.09.2012, amounting to Rs. 6,44,000/- (Rupees Six Lacs Forty Four Thousand Only) has been shown, which is totally inconclusive to show the income of the petitioner at the relevant period. Apart from the chart prepared, no other supporting evidence was adduced. The plea of the petitioner that such an amount was deposited by family members for construction of his house, was

not taken into account, nor he was given adequate opportunity to adduce evidence in this regard. The entire enquiry was concluded within a very short span of less than one month, flouting the prescribed procedure, ignoring the vital aspect. The respondent department is bound to adhere to their own rules and regulations as well as the established principles of law to ensure fair play and justice, which is not reflected in the matter in hand.

14. Mr. Dutta, learned counsel representing the appellant bank urged that the findings recorded by the learned Single Judge for interfering in the conclusion of the Disciplinary Authority on Charge No.4 is absolutely arbitrary and irrational. He urged that it was nowhere the case of the C/O during the course of the enquiry that he was not given appropriate opportunity to defend himself. On the contrary, proper opportunity was given to the C/O to lead defence evidence, but he failed to avail the same. He referred to the letter dated 13.01.2014 forwarded by the C/O to the Deputy General Manager (Disciplinary Authority) after receiving the findings of the Enquiry Officer on the charges. Mr. Dutta submitted that in this letter, the C/O did not utter a single word that he was denied the opportunity to defend himself properly in the enquiry. He referred to the appeal submitted by the C/O against the final order of the Disciplinary Authority and pointed out that in the memorandum of appeal as well, the C/O did not raise a specific ground that he was not provided appropriate opportunity to defend himself in the enquiry proceedings or that he was denied the opportunity to present defence evidence. Reference was also made to the review petition submitted by the C/O wherein also, there is no such aspersion that appropriate

opportunity of defence was not given to him. Referring to the averments made in para 17 of the writ petition, Mr. Dutta urged that for the first time in the pleadings of the writ petition, the C/O raised a plea that he was not given the opportunity to prove his case. He urged that the belated plea taken by the C/O for the first time in the writ petition that appropriate opportunity of defence was not given to him is just an afterthought. He submitted that in the absence of any such aspersion during the course of the enquiry proceedings; explanation submitted to the Disciplinary Authority after receiving the enquiry report; memo of appeal and the review petition, the belated plea raised to this effect in the writ petition is totally unacceptable. He urged that the learned Single Judge was not justified in entering into pure questions of facts by re-appreciating evidence and interfering in the well reasoned findings of the Disciplinary Authority on this charge.

15. Learned counsel Mr. Talukdar representing the C/O supported the conclusions drawn by the learned Single Judge for striking down the Disciplinary Authority's finding on charge No.4 urging that the bank did not lead any evidence to establish this charge and thus the learned Single Judge was justified in reversing the finding of the Disciplinary Authority on this charge.

16. We have considered the rival submissions and have gone through the findings recorded by the Disciplinary Authority and the learned Single Judge on the charge No.4. Suffice it to say that the banking transactions/deposits in the account of the C/O which form the foundation of this charge, were admitted by him in reply to charge as well as pursuant to receiving the Enquiry Officer's

report. Thus, no evidence was necessary to prove the charge which was a self-contained and self-sustaining allegation. The burden to explain the sources through which huge cash amounts were deposited in the personal account of the C/O in a duration of less than 11 months, was clearly enjoined upon him by virtue of Section 106 of the Indian Evidence Act, 1872. The C/O failed to discharge the burden, and thus, the charge No.4 was found proved against the respondent C/O not by mere preponderance of probability but beyond all manner of doubt. The finding recorded by the learned Single Judge that the C/O was not given appropriate opportunity to defend himself is not sustainable on the face of the record considering the aspect that no such plea was raised by the C/O before the enquiry officer, in the memo of appeal and the review petition. Hence, we are of the firm view that the learned Single Judge was not justified in interfering with and reversing the finding of the Disciplinary Authority on Charge No. 4. As a consequence, the conclusions drawn by the learned Single Judge are reversed and the findings recorded by the Disciplinary Authority to the extent of the Charge No. 4 are restored.

17. Now, coming to the question as to whether the award of penalty of removal from service on this solitary charge would be justified or whether the said penalty can be substituted by compulsory retirement as prayed by the learned counsel for the respondent. We find that the charge No.4 was found proved as the respondent C/O failed to lead evidence so as to justify cash deposits totalling to Rs.6,44,000/- in his savings account. The

respondent filed a written submission so as to justify these deposits claiming that his wife and his sisters are all government servants and the amounts so deposited were contributed from their salaries. It appears that the respondent was misdirected in not leading oral evidence so as to controvert this charge and to explain the deposits/entries. The omission appears to be caused by error of judgment or may even be on account of over confidence. Thus, we feel that awarding the extreme and harsh penalty of removal from service for this charge would not be justified. The respondent has, during pendency of this proceeding superannuated and is nearly 69 years of age. Thus, we feel that ends of justice would be served by directing that the respondent shall be deemed to have been compulsorily retired from service from the date of the order of the Disciplinary Authority. We substitute the order of removal by directing compulsory retirement of the respondent C/O from the said date.

18. In view of the above discussion, the impugned judgment and order dated 19.05.2021 rendered by the learned Single Judge is modified/reversed to the extent of the finding on the charge No.4 and as a corollary, order passed by the disciplinary authority dated 25.01.2014; order passed by the appellate authority dated 30.04.2014 and the order of the reviewing authority dated 24.09.2014 are restored to the extent of Charge No.4. However, the penalty of removal from service, imposed upon the respondent, shall be substituted by compulsory retirement from service from the date of order of the Disciplinary Authority. The consequences flowing from the aforesaid direction shall follow.

19. The writ appeal is partly allowed in these terms.

No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant