

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.93 of 2023

1. Tripura Gramin Bank (A Govt. Undertaking, represented by its Chairman, having his Office at Abhoynagar, P.O- Agartala, Pin-799005)
2. The Disciplinary Authority (Chairman), Tripura Gramin Bank, Head Office at Abhoynagar, P.O- Agartala, Pin-799005
3. The Inquiry Officer (Chief Manager) (SPF-123) Tripura Gramin Bank, Head Office (C&R Department), at Abhoynagar, P.O-Agartala, Pin-799005

.....Appellant(s);

Versus

Sri Sunil Chandra Das, S/O- Amarendranath Das, of Kalikapur, P.O-
Ramnagar, P.S-West Agartala, West Tripura-799001

.....Respondent(s).

For Appellant(s) : Mr. P. Saha, Advocate.

For Respondent(s) : Mr. S. Lodh, Advocate,
Mr. S. Majumder, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Date of Judgment & Order: **01.04.2024**

Whether Fit for Reporting: **YES**

JUDGMENT & ORDER (ORAL)

Heard Mr. P. Saha, learned counsel for the appellants-Tripura Gramin Bank and Mr. S. Lodh, learned counsel for the respondent.

2. The respondents-Bank in WP(C) No.923/2021 is in appeal. By the impugned judgment & order dated 13.03.2023 the learned Single Judge has quashed the recovery order dated 27.10.2021 inflicting penalty upon the petitioner of withdrawal of one third of the monthly pension admissible until recovery of pecuniary loss to the Bank as being illegal, arbitrary and contrary to established principles of law. The Bank has been ordered to refund the recovered amount to the petitioner within a period of two months.

3. The factual details relating to initiation of disciplinary proceedings against the petitioner have been referred to in detail in the impugned judgment which have not been disputed by the parties. In brief, the relevant facts are referred to hereinafter in order to appreciate the grounds of challenge raised by the appellants-Bank.

4. Petitioner had superannuated on 28.02.2018 from the post of Senior Manager under the appellants-Bank. A show cause notice was issued upon him on 04.03.2020 [Annexure-1 to the memo of appeal] asking him to reply in respect of alleged violation of the lending norms of the Bank. He had sanctioned and disbursed 20(twenty) loans to 11(eleven) persons. Petitioner submitted his reply on 27.03.2020 and stated that it was not possible for him to respond to the notice adequately after two years of his superannuation. He had handed over the charge to the concerned authority and had no liability towards the Bank. He had discharged his responsibility with sincerity and honesty to the satisfaction of the Bank during his service period. Being dissatisfied with his reply, the Bank initiated departmental proceeding against him vide articles of charges dated 22.09.2020 which at Annexure-3. The departmental proceeding was initiated under sub-regulation (2) of Regulation 46 of the Tripura Gramin Bank (Officers and Employees) Pension Regulations, 2018 [“Pension Regulations of 2018”, *for short*]. The substance of imputation of misconduct was set out under the articles of charges at Annexure-I. The imputation of misconduct of each article of charge was enclosed as Annexure-II. Lists of documentary evidences and witnesses were enclosed as Annexure-III to Annexure-IV. Petitioner was asked to admit or deny the charges within

7(seven) days. The articles of charges at Annexure-I cited the cases of irregularity in sanction of 20 numbers of loans in respect of 11 persons. It alleged that the petitioner had irregularly sanctioned loan involving amount of Rs.2,06,52,992.53/- as on 21.09.2020. The imputation of misconduct also alleged that he had violated Regulation 18 & 20 of Tripura Gramin Bank (Officers and Employees) Service Regulations, 2018 (*sic 2010*) alleging that by not complying the rules and regulations of the Bank and by not taking care of interest of the Bank, he has undertaken irregular activities and failed to serve the Bank honestly and faithfully which amounted to major misconduct for invocation of Regulation 46(2) of the Pension Regulations of 2018 in respect of articles of charges under item number 1 to 18 as mentioned in Annexure-I. The inquiry was held ex parte as petitioner failed to participate after the first date. The inquiry officer held that the petitioner is guilty of all charges for “Gross Misconduct”, “Violation of Bank’s Lending Policy/Circulars/norms” & Financial Loss to the Bank to the tune of Rs.1,01,05,124/- only. The disciplinary authority issued second show cause notice enclosing the inquiry report vide letter No.TGB/HO/VIGIL/F.345/341/ 2021 dated 30.07.2021 asking the petitioner to tender his written submission on the findings of the Inquiry Officer within 10(ten) days with a stipulation that if he failed to do so, it would be presumed that he is not inclined to tender any submission and in that event, the matter would be disposed of as per rule. Petitioner did submit his reply dated 16.08.2021 [Annexure-7]. He contended that earlier vide letter dated 10.10.2020, he had requested to withdraw the charge sheet and stop the departmental proceeding. He also contended that the service rule does not

permit initiation of departmental proceeding after retirement. He also stated that the inquiry proceedings were held ex parte and are liable to be quashed. Therefore, the entire proceedings were vitiated and fit to be quashed. He should be exonerated from the alleged charges. The disciplinary authority proceeded to impose a punishment of withdrawing of one third of his pension vide order dated 27.10.2021 [Annexure-8 to the memo of appeal]. Being aggrieved, petitioner had approached the Writ Court.

5. The learned Writ Court has discussed the applicability of Regulation 40 & 46 of Pension Regulations of 2018 and Regulation 18 & 20 of the Service Regulations, 2010 in the conduct of disciplinary proceeding against the petitioner. The learned Writ Court has rejected the submission of the petitioner that the Pension Regulations of 2018 which came into effect from 01.04.2018 does not have retrospective application to the case of the writ petitioner as he had superannuated on 28.02.2018. The learned Writ Court, upon analysis of the relevant regulations- both of 2018 and 2010, however came to the conclusion that recourse to Regulation 46 of Pension Regulations of 2018 is not made out as none of the enumerated conditions applied to the case of the petitioner as are provided under Regulation 44 of the Pension Regulations of 2018. Learned Writ Court held that the allegation of grave misconduct against the petitioner is not covered under any of the explanations furnished under Regulation 44 which are – (a) “serious crime” (b) “grave misconduct” (c) “fraud” (d) “criminal breach of trust” and (e) “forgery”. The learned Writ Court also held that the disciplinary authority had not mentioned the pecuniary loss caused to the Bank in the impugned order of penalty dated

27.10.2021. The Bank had also not disclosed the proposed penalty in the show cause notice issued upon the petitioner. The pension amount paid to the petitioner also was not uniform over a period of time between September, 2021 and December, 2021. As such, the impugned order of recovery was quashed. Hence, aggrieved Bank is an appeal.

6. Mr. P. Saha, learned counsel for the appellants-Bank, has *inter alia* raised a ground that the Pension Regulations of 2018 is applicable to the case of the petitioner as has been rightly held by the learned Single Judge. The proceeding had been initiated after two years of his retirement which is within the limit of four years of drawing disciplinary proceeding as has also been held in favour of the Bank by the learned Writ Court. However, the finding of the learned Writ Court that none of the enumerated grounds of gross misconduct under Regulation 44 is applicable to the case of the petitioner is not correct. Because of the misconduct of the petitioner, the Bank has suffered financial loss. This act of the petitioner is fraudulent in nature within the meaning of Section 25 of the Indian Penal Code, 1860 as also provided under Explanation to Regulation 44. Learned counsel for the appellants-Bank submitted that the amount of pecuniary loss caused to the Bank has been indicated in detail both in the articles of charges containing the imputation of misconduct and also in the findings of the Inquiry Officer. Petitioner was served with a copy of the inquiry report, but he failed to submit his reply on any of the findings recorded by the Inquiry Officer against him. It is submitted that since the action of the writ petitioner, while in service, amounted to grave misconduct and causing wrongful loss to the Bank while causing wrongful gain to the loanees, the

articles of charges framed under Regulation 46 of 2018 Regulations read with Regulations 18 & 20 of the 2010 Regulations were fully established. Therefore, the learned Writ Court committed a serious error in holding otherwise. Learned counsel for the appellants-Bank has also assailed the finding of the learned Writ Court so far as quashing of the penalty order is concerned. It is submitted that since a wrongful loss was caused to the Bank, one third of the pension of the petitioner has been withdrawn as provided under Regulation 46. Therefore, the impugned judgment & order deserves to be set aside. The penalty order deserves to be restored. To support his contentions, Mr. Saha, learned counsel for the appellants-Bank, has placed reliance upon the following decisions:

- (i) ***Chairman, Life Insurance Corporation of India & Others v. A. Masilamani*** reported in (2013) 6 SCC 530
- (ii) ***The Inspector of Panchayats and District Collector, Salem v. S. Arichandran & Ors.*** passed in ***Civil Appeal No.6776 of 2022***
- (iii) ***The State of Uttar Pradesh and Others v. Rajit Singh*** passed in ***Civil Appeal Nos.2049-2050 of 2022***

7. On the part of the writ petitioner/respondent herein, learned counsel Mr. S. Lodh has submitted that learned Writ Court has, on a proper analysis of the relevant Regulation 46 read with Regulation 44 of the 2018 Regulation, rightly held that none of the allegations contained in the articles of charges and imputation of misconduct fell in the category of “serious crime” or “grave misconduct” or “fraud” or “criminal breach of trust” or “forgery” to sustain the findings of the Inquiry Officer and the order of withdrawing of one third of the pension against the petitioner. Learned counsel for the petitioner has also drawn comparison of Regulation 46 with the Regulation 46 & 48 of the Punjab and Sind Bank (Employees) Pension Regulations, 1995 as interpreted by the learned Single Bench of the Delhi High Court in the case of

Amarjit Singh v. Punjab & Sind Bank reported in (2014) Lab I C (NOC) 223 (DEL.).

8. However, after going through the decision in the case of *Amarjit Singh* (supra) we find that it does not apply to the case at hand as there are material difference in the relevant Regulation 46 sub-regulation (2) proviso in the case of the present petitioner with that of Regulation 46 and 48 of the Punjab and Sind Bank (Employees) Pension Regulations, 1995 which did not contemplate initiation of departmental proceeding against a retired employee if no disciplinary proceeding has been initiated during his service period.

9. Learned counsel for the petitioner has also ventured to question initiation of departmental proceedings under the Pension Regulations of 2018 as petitioner had superannuated on 28.02.2018 itself before coming into force of the Regulations on 01.04.2018. However, the findings of the learned Writ Court on the applicability of the Regulations 2018 read with Regulations 10 has not been assailed by the writ petitioner by filing a cross appeal or an independent appeal. Therefore, that plea cannot be entertained at the appellate stage at the behest of the writ petitioner/respondent herein. However, learned counsel for the writ petitioner has submitted that since the second show cause notice issued by the disciplinary authority did not contain the proposed quantum of penalty to be imposed upon the petitioner, learned Writ Court has rightly set aside the order of penalty dated 27.10.2021. Therefore, the writ appeal is without any merit and fit to be dismissed.

10. We have considered the submission of learned counsel for the parties at length. We have also taken note of the relevant material pleading

placed from record and the provisions of the Pension Regulations of 2018 and Service Regulations of 2010.

The applicability of the Pension Regulations of 2018, which came into force with effect from 01.04.2018 for initiation of departmental proceedings against the writ petitioner who superannuated on 28.02.2018, has been answered in favour of the appellants-Bank which remains unimpeached on the part of the writ petitioner. Therefore, we need not delve into that issue any further. The findings relating to the grave misconduct against the petitioner under the explanations under Regulation 44 of 2018 Regulations as rendered by the learned Writ Court need to be gone into in some detail hereinafter. We shall also deal with the finding of the learned Writ Court so far as the infirmity in the second show cause notice is concerned as regards the absence of proposed quantum of penalty.

11. The articles of charges containing the imputation of misconduct made a serious allegation against the petitioner that the petitioner had irregularly sanctioned 20 numbers of loans to 11 persons involving Rs.2,06,52,992.53/-. The gist of allegations is contained in the imputation of misconduct. In substance, it alleges that building loans were sanctioned in favour of the loanees @ 11.5% interest, but petitioner gave the reduced interest benefit to such loanees against the lending norms of the Bank which led to loss of interest margin in each such individual case. The allegations in respect of each such loanees also claim that petitioner had sanctioned and disbursed number of new housing loans to these borrowers while their existing housing loans were still alive without proper assessment and processing or valid

documents. In most cases, the borrowers' repayment capacity was not considered and beyond the ambit of 60:40 ratio of gross income, the housing loans were given at a reduced interest rate for which the Bank had to face huge interest loss. In different cases, the margin ranged from 2.25% to 4.50%.

12. Petitioner, after the first date, did not participate in the inquiry proceeding. The Inquiry Officer held him guilty of all charges for "Gross Misconduct", "Violation of Bank's Lending Policy/Circulars/norms" and having caused Financial Loss to the Bank to the tune of Rs.1,01,05,124/-. The learned Writ Court has, after quoting the relevant Regulations of 2010 and 2018, also referred to the other regulations under Chapter IX of the Pension Regulations of 2018 which provide for the categories of official misconduct under the Explanation to Regulation 44. The learned Writ Court has, after analyzing those enumerated definitions under Explanation to Regulation 44, held that the petitioner has not been found to be involved in committing "serious crime" or "grave misconduct" or "fraud" or "criminal breach of trust" or "forgery" in terms of Regulations 40, 41, 43 of the Pension Regulations of 2018. For proper appreciation, we also intend to extract the relevant Pension Regulations herein:

CHAPTER IX

GENERAL CONDITIONS

"40. Pension subject to future good conduct.-

Future good conduct shall be an implied condition of every grant of pension and its continuance under these regulations.

41. Withholding or withdrawal of pension.-

The competent authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct:

Provided that where part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the minimum pension per mensem payable under these regulations.

42. Conviction by court.-

Where a pensioner is convicted of a serious crime by a court, action shall be taken in the light of the judgment of the court relating to such conviction.

43. Pensioner guilty of grave misconduct.-

In a case not falling under regulation 42, if the competent authority considers that the pensioner is prima facie guilty of grave misconduct, it shall, before passing an order, follow the procedure specified in the Service Regulations.

44. Provisional pension.-

(1) An employee who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued, a provisional pension, equal to the maximum pension which would have been admissible to him, would be allowed subject to adjustment against final retirement benefits sanctioned to him, upon conclusion of the proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld, either permanently or for a specified period.

(2) In cases referred to in sub-regulation (1), the gratuity shall be paid to the employee and only on conclusion of the proceedings and any recoveries to be made from an employee shall be adjusted against the amount of gratuity payable.

Explanation – in this Chapter,-

(a) “serious crime” includes a crime involving an offence under the Official Secrets Act, 1923 (19 of 1923);

(b) “grave misconduct” includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, documents or information, such as is mentioned in section 5 of the Official Secrets Act, 1923 (19 of 1923) which was obtained while holding office in the Bank so as to prejudicially affect the interests of the general public or the security of the State;

(c) “fraud” shall have the meaning assigned to it under section 25 of the Indian Penal Code, 1860 (45 of 1860);

(d) “criminal breach of trust” shall have the meaning assigned to it under section 405 of the Indian Penal Code, 1860 (45 of 1860);

(e) “forgery” shall have the meaning assigned to it under section 463 of the Indian Penal Code, 1860 (45 of 1860).

45. Commutation of pension during departmental or judicial proceedings.-

An employee against whom departmental or judicial proceedings have been instituted before the date of his retirement shall not be eligible to commute a fraction of his provisional pension under these regulations during the pendency of such proceedings.

46. Recovery of pecuniary loss caused to the Bank.-

(1) The competent authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service:

Provided that before passing any final orders under this sub-regulation, the Board shall be consulted:

Provided further that where a part of pension is withheld or withdrawn the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these regulations:

Provided also that departmental proceedings, if instituted while the employee was in service, shall, after the retirement of the employee, be deemed to be the proceedings under these regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued service.

(2) No departmental proceedings shall be initiated in respect of an event if more than four years time lapsed after the event:

Provided that the disciplinary proceedings initiated under this sub-regulation shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of this service.

(3) Where the competent authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of the employee.”

13. It is pertinent to mention here that Regulation 46 of the Pension Regulations of 2018 provides for withholding or withdrawing of pension or a part thereof, permanently or for a specified period, and also order recovery from pension of the whole or part of the pecuniary loss caused to the Bank if in a departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service. Regulation 46(2) also stipulates that no departmental proceeding shall be initiated in respect of an event if more than four years time lapsed after the event. Proviso thereto also stipulates that disciplinary proceeding initiated under this sub-regulation shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service. Sub-regulation (3) of Regulation 46 provides that recovery of pecuniary loss from the pension should not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of the employee.

14. In the instant case, the proceedings were initiated within two years of his retirement. The allegations in the imputation of misconduct clearly indicate that petitioner had caused huge interest loss to the Bank by sanction and disbursement of new housing loans to those borrowers while their existing housing loans were still alive. The inquiry proceedings were held on those allegations and the loss to the Bank was assessed as Rs.1,01,05,124/- by the Inquiry Officer in his report dated 28.07.2021.

15. Regulation 46 stipulates withholding or withdrawing of pension of a pensioner if found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service. The meaning of “fraud” assigned under Explanation (c) to Regulation 44 is the same as under Section 25 of the Indian Penal Code, 1860 which is as under:

“25. “**Fraudulently**”.— A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.”

16. By the acts of the petitioner, as found by the Inquiry Officer, wrongful loss has been caused to the Bank and wrongful gain has been caused to the loanees. The articles of charges and the inquiry proceeding against the petitioner proceeded on determination of the guilt of the petitioner on those allegations. The Inquiry Officer not only held the petitioner guilty of gross misconduct, but also for violation of bank’s lending policy/circulars/norms and also financial loss to the Bank to the tune of Rs.1,01,05,124/-. Learned Writ Court however while dealing with the enumerated definitions under Explanation to Regulation 44 erroneously held that the misconduct alleged

against the petitioner did not fall in any of these categories i.e. “serious crime” or “grave misconduct” or “fraud” or “criminal breach of trust” or “forgery”. We, therefore, are inclined to interfere in the findings of the learned Writ Court on that scope. The charges, established against the petitioner did amount to fraudulently causing loss to the Bank and consequent wrongful gain to the loanees, which very much comes within the meaning of “fraud” under the Explanation to Regulation 44 or the enumerated grounds under Regulation 46(1).

17. We now advert to the next question, i.e. whether the order of penalty of withdrawing one third of the pension of the petitioner was bad in law since the disciplinary authority had failed to propose the quantum of penalty while issuing second show cause notice. We are in agreement with findings of the learned Writ Court on this count. The second show cause notice dated 30.07.2021 [Annexure-5] does not reflect the proposed quantum of punishment/penalty to be imposed on the petitioner. A show cause notice has two ingredients – (i) the merits of the charges and (ii) the proposed quantum of penalty or punishment. The Apex Court in the case of *Gorkha Security Services v. Government (NCT of Delhi) and Others* reported in (2014) 9 SCC 105 at paragraph 21 & 22 of the report has categorically laid down the ingredients of a proper show cause notice. Paragraphs 21 & 22 thereof have been extracted hereunder:

“21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That

should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22. The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:

(i) The material/grounds to be stated which according to the department necessitates an action;

(ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.

We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.”

18. In the instant case, though the inquiry report was annexed to the second show cause notice for the petitioner to deny the merits of the findings of the Inquiry Officer, but it did not indicate the proposed quantum of penalty which the disciplinary authority intended to impose upon the petitioner if the reply of the petitioner was not satisfactory. In that case, the delinquent did not get a proper opportunity to submit his reply as to the proposed quantum of penalty. The show cause notice, therefore, suffered from violation of principles of natural justice and is lacking in the ingredients of a proper show cause notice. Therefore, the learned Writ Court was right in setting aside the order of penalty of withdrawal of one third of the pension amount of the petitioner. However, since the penalty order was set aside on technical grounds, i.e. for violation of principles of natural justice, the right course ought to be to remit the matter to the disciplinary authority to issue a fresh show cause notice proposing the quantum of penalty to be imposed upon the petitioner and giving him an opportunity to reply thereto.

19. We, therefore, deem it proper to remit the matter to the disciplinary authority from the stage of issuance of second show cause notice upon the petitioner. The disciplinary authority would issue a second show cause notice indicating the proposed quantum of penalty upon the petitioner within a period of 2(two) weeks from the date of receipt of copy of this judgment with opportunity to the petitioner to submit his reply thereto. On consideration of his reply or if he fails to submit his reply within the stipulated time, the disciplinary authority would proceed to pass an order on the quantum of punishment.

20. Writ appeal is allowed to the aforesaid extent.

Pending application(s), if any, shall stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ