

GAHC010122892014



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

Case No. : WP(C)/867/2014

MD. SARIFUDDIN AHMED
S/O- LT. ASRAT ALI, R/O- SARAIGHAT NAGAR, SADILAPUR, GHY- 12,
KAMRUP M, ASSAM.

VERSUS

THE ASSAM CO-OPERATIVE APEX BANK LTD. and ANR.
HAVING ITS HEAD OFFICE AT PANBAZAR, GHY- 1, KAMRUP, ASSAM, REP.
BY ITS MANAGING DIRECTOR.

2:THE MANAGING DIRECTOR THE ASSAM CO-OP. APEX LTD.
PANBAZARGHY- 1

Advocate for the Petitioner : MR.S KATAKEY
Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 21.03.2024

Date of Judgment : 21.03.2024

Judgment & order(Oral)

Heard Mr. S. Katakey, learned counsel for the petitioner. Also heard Mr. J. K. Goswami, learned standing counsel, appearing on behalf of the respondents Assam State Co-operative Apex Bank Ltd..

2. The challenge in the present proceeding is to an order, dated 21.10.2013, issued by the Respondent No. 2, herein, towards imposing the penalty of dismissal from service upon the petitioner on conclusion of a departmental proceeding initiated against him. The petitioner has also in the present proceeding, assailed the Inquiry Report submitted in the matter pursuant to the Show Cause Notice, dated 16.07.2007, issued to the petitioner, herein.

3. The petitioner while rendering his service as an Internal Auditor at the Head Office of the respondent Assam State Cooperative Apex Bank Ltd., came to be placed under suspension vide an order, dated 18.04.2007, in contemplation of drawal of a departmental proceeding against him. The said order of suspension was followed by issuance of a Show Cause Notice, dated 16.07.2007, initiating a departmental proceeding against the petitioner, herein, basing on 16 allegations and consequential charges as levelled against him.

4. On receipt of the Show Cause Notice, dated 16.07.2007, the petitioner submitted an application, dated 05.09.2007, praying for access to the relevant documents basing on which the said Show Cause Notice was so issued to him. In response to the said application as submitted by the petitioner; the respondent Bank vide a communication, dated 05.10.2007, proceeded to allow the petitioner to inspect the documents, with a stipulation that no copy of the documents would be furnished to him. The petitioner having not been able to access the documents for preparation of his written statement proceeded vide his representation, dated 20.10.2007, to again request the Respondent No. 2 for access to the relevant documents by highlighting that inspite of permission being granted to have access to the relevant documents, the concerned

branches of the Bank had refused to grant to him access to the relevant documents. The said representation was followed by another representation, dated 23.10.2007, wherein, the petitioner had highlighted the documents, he requires for inspection. The documents so sought for also included the preliminary Inquiry Report. The access being not granted to the petitioner to the documents as sought by him for the purpose of preparation of his written statement; the petitioner, left with no other alternative, proceeded to submit his written statement in the matter on 03.11.2011 with the stipulation that in the absence of the documents as sought for by, his preparation of the written statement had been greatly prejudiced.

5. At this stage; it is to be noted that the petitioner vide the representation, dated 11.12.2007, had required the Respondent No. 2 to drop the departmental proceeding as initiated against him vide the Show Cause Notice, dated 16.07.2007, on the ground that the appointing authority in his case being the Board and the Board having not approved the initiation of the departmental proceeding against him and the Show Cause Notice, dated 16.07.2007, being issued at the instance of the Respondent No. 2 who is not authorized to do so; prayed that the departmental proceeding so initiated against him, requires to be dropped.

6. The petitioner vide his subsequent representation, dated 06.08.2008, also drew the attention of the Managing Director towards the bias he contemplates against the appointed Inquiry Officer who was an official of the Board and accordingly, it was prayed that the appointment of the appointed Inquiry Officer be reconsidered and till such time, the departmental proceeding as initiated

against him, be kept in abeyance. However, the representations of the petitioner not having been responded to, he had participated in the inquiry proceeding and on conclusion of the same; the Inquiry Officer had submitted his report in the matter which is available at Annexure H to the writ petition.

7. The Inquiry Report as submitted in the matter was furnished to the petitioner vide a communication, dated 03.01.2013. The petitioner, vide his representation, dated 14.02.2013, responded to the findings of the Inquiry Officer and in the said representation, the petitioner also highlighted the irregularities as committed in the inquiry proceeding and also the denial to him a proper opportunity of defending the allegations so levelled to him in the inquiry. It is seen that the Inquiry Report as well as the reply as submitted by the petitioner was thereafter placed before the Board and the Board resolved in the matter to impose the penalty of dismissal from service on the petitioner and for treating the period of suspension as not spent on duty and restricted to the amount of subsistence allowance already drawn by the petitioner. Basing on the said decision of the Board; the Respondent No. 2 vide order, dated 21.10.2013, proceeded to impose upon the petitioner the penalty of dismissal from service. Being aggrieved; the petitioner has instituted the present proceeding.

8. Mr. Katakey, learned counsel for the petitioner, at the outset has submitted that, before the Court considers the charges and the evidences coming on record, the irregularities as committed in the matter would require a consideration by the Court at the first instance. The learned counsel has contended that in terms of the Rules holding the field, the appointing authority of the petitioner who is a Grade E Officer happens to be the Board, however, the

Board was not apprised of the departmental proceeding sought to be initiated against him and the entire exercise was carried-out by the Respondent No. 2 i.e. Managing Director of the Bank without any jurisdiction. It was reiterated that neither the charge-sheet was so approved by the Board nor the initiation of the departmental proceeding against the petitioner and the holding of the inquiry was so done with the approval from the Board and accordingly, in the absence of the approval received from the Board to the departmental proceeding so initiated against the petitioner; the entire proceeding stands vitiated and requires to be interfered with by this Court.

9. In this connection, Mr. Katakey, learned counsel for the petitioner, has relied upon a decision of the Hon'ble Supreme Court rendered in the case of ***Union of India & ors. v. B. V. Gopinath***, reported in ***(2014) 1 SCC 351***.

10. Mr. Katakey, learned counsel, continuing with his submissions pertaining to the irregularities as committed in the matter, has submitted that inspite of repeated approaches being made by the petitioner after the issuance of the Show Cause Notice, dated 16.07.2007, for being granted access to the relevant documents and list of such documents being so submitted by the petitioner, which also included the preliminary Inquiry Report as conducted in the matter by an Official of the Board; the respondent authorities although had issued a communication, dated 05.10.2007, allowing the petitioner to inspect all such relevant documents, however, the stipulation as contained in the said communication, dated 05.10.2007, was not implemented by the various departmental authorities of the Bank and accordingly, the petitioner inspite of repeated approaches being made, was not provided access to the documents.

Accordingly, it was contended that the defence of the petitioner was prejudiced in-as-much as he could not submit an effective written statement in the matter. Mr. Katakey, learned counsel, has submitted that the above position being an admitted one and the same not being denied by the respondent Bank in their pleadings brought on record, on the said count itself, the entire departmental proceeding as initiated against the petitioner is required to be interfered with in-as-much as the same is in clear violation of the principles of natural justice.

11. With regard to the inquiry as held in the matter, Mr. Katakey, learned counsel, has categorically contended, by referring to the discussions in the Inquiry Report, that in the inquiry, the documents as relied upon by the Bank against the petitioner were not produced through any witness. The documents were produced directly by the Presenting Officer to the Inquiry Officer who accepted the same and recorded the said documents as exhibits.

12. It is contended by Mr. Katakey that in view of the above action, the petitioner was deprived of an opportunity to cross-examine the witnesses to dispute the contents of the documents as brought on record. The learned counsel has also submitted that mere exhibition of a document would not also lead to a conclusion therein, that the contents of the same has also been proved.

13. Mr. Katakey, learned counsel, by referring to the discussions available in the Inquiry Report, has contended that only Xeroxed copies of the documents were produced and there were apparent discrepancies which was also noted by

the Inquiry Officer in the Inquiry Report. However, the same was not clarified by the Presenting Officer by producing in the inquiry, the original records.

14. Mr. Katakey, learned counsel, has submitted, on a perusal of the findings as recorded by the Inquiry Officer, it would come to the forefront that the same are based on suspicion and it is a settled law that a mere suspicion cannot take the place of proof, more particularly, with regard to the documents which were for the periods after the petitioner was placed under suspension. In the above premises and also in view of the fact the departmental proceeding was so initiated against the petitioner without the approval of the Board, Mr. Katakey, learned counsel, has submitted that the entire departmental proceeding so initiated against the petitioner culminating with the issuance of the impugned order of penalty, requires to be interfered with by this Court.

15. Per contra, Mr. Goswami, learned standing counsel appearing for the respondent Bank, at the outset, has fairly submitted that a perusal of the Inquiry Report would reveal that the documents so relied upon were held to be proved on its production by the Presenting Officer and the documents were not found to have been exhibited through any witnesses. He has also submitted that the approval of the Board admittedly was not received prior to issuance of the Show Cause Notice, dated 16.07.2007, in the matter against the petitioner. He has also submitted that the Inquiry Officer has relied on evidence which admittedly was not received in the inquiry in the manner required.

16. Mr. Goswami, learned standing counsel, after having made the above submissions in the matter; has contended that this Court has to examine the matter with regard to the conduct of the petitioner which is clearly evident from the allegations levelled against him and the findings recorded by the Inquiry Officer in the matter, in-as-much, as the petitioner being an official of the Bank holds a position of trust and the Bank having lost its trust on him, a loss of confidence of the Bank on the petitioner, herein, having occasioned and given the nature of the allegations levelled against the petitioner, his continuance in the Bank would be prejudicial to the interest of the Bank, depositors of the Bank and the general public at large and as such, Mr. Goswami, has submitted that a perusal of the findings as recorded herein would reveal that the petitioner was not prejudiced in the matter in any manner and the findings so recorded by the Inquiry Officer was solely based on documents available in the matter and the allegations being of a nature which can be determined by placing reliance on the documents so available, the petitioner's contention that the documents, in question, ought to have been produced through witnesses; in the facts and circumstances existing in the matter, contends Mr. Goswami, learned standing counsel, to be not acceptable.

17. It is further contended by Mr. Goswami, that the substance of the allegations levelled against the petitioner having been held to be proved by applying the principle of preponderance of probability and the Board being satisfied with the findings so recorded by the Inquiry Officer with regard to the allegations so levelled against the petitioner in the matter; this Court would not act an appellate authority in the matter and re-evaluate the evidences coming on record.

18. Mr. Goswami, learned standing counsel, has submitted that the participation of the petitioner in the proceedings tantamounts to a waiver with regard to the procedural errors if any that would have crept in the conduct of the proceeding including the question of the proceeding being so initiated without the approval of the Board. He has submitted that a due proceeding having been initiated against the petitioner and a detailed inquiry having been conducted in the matter and materials coming on record having demonstrated the misconduct committed by the petitioner in the matter, this Court would be pleased not to interfere with the Inquiry Report and/or the penalty imposed upon the petitioner basing thereon, which he has contended to be so done by the Board of the Bank.

19. Mr. Goswami, has further submitted that the matter subsequently having been placed before the Board, and a decision arrived at in the matter by the Board with regard to the penalty that is to be imposed upon the petitioner, which decision being so arrived at by examining the matter in its entirety, has to be construed to have also granted ex-post facto approval to the initiation of proceedings against the petitioner. Accordingly, it was submitted that the proceedings as initiated against the petitioner does not call for an interference on the ground that at the time of its initiation, the same did not have the approval of the Board.

20. I have heard the learned counsels appearing for the parties and considered the materials coming on record.

21. This Court in view of the categorical submissions made by Mr. Katakey, learned counsel for the petitioner that the departmental proceeding stands vitiated on account of procedural lapses as committed in the matter which have prejudiced the defence of the petitioner, would like to examine the same at the outset before proceeding to make a consideration of the matter on its merits.

22. At the first instance, the contention of Mr. Katakey, learned counsel for the petitioner, that the departmental proceeding having been initiated against the petitioner vide the Show Cause Notice, dated 16.07.2007, without the same being approved by the Board, renders the same *ab initio* void, is being considered.

23. In addition to the learned counsel for the petitioner making his submissions in this connection; the petitioner in the writ petition has also made a categorical submission in this context and it was so contended that the proceeding being so initiated without jurisdiction, the same is a nullity in the eye of law.

24. The respondent Bank in its affidavit-in-opposition filed in the matter on its behalf, has not disputed the categorical contentions made in this connection by the petitioner in the writ petition. The respondent Bank had only raised a contention to the effect that the Show Cause Notice was issued by the Managing Director of the Bank on being satisfied with the materials that was brought on record in the preliminary inquiry held in the matter.

25. It is to be noted that the petitioner is a Grade E Officer of the Bank and in terms of the Rules holding the field, insofar as it concerns a Grade E Officer, the appointing authority happens to be the Board. It being a settled position of law that a departmental proceeding has to be initiated in the matter by the appointing authority. It is also a settled position of law that the charges that is to be levelled against the petitioner has to be initially framed and approved by the appointing authority and thereafter, the same may be so issued by an authority so authorized for the purpose. In the present case, it is seen that the Managing Director of the Bank had on receipt of the preliminary Inquiry Report, without any reference being made in the matter to the Board, had proceeded to issue the Show Cause Notice, dated 16.07.2007, and the follow-up measures including the appointment of the Inquiry Officer was also done by the Managing Director on a satisfaction being drawn by him on perusal of the said Show Cause reply submitted by the petitioner in the matter to be not satisfactory.

26. In this connection, reference is made to the decision of the Hon'ble Supreme Court in the case of **B. V. Gopinath** (supra) relied upon by Mr. Katakey, learned counsel for the petitioner, wherein, the Hon'ble Supreme Court had held that a charge-sheet/charge memo not approved by the competent authority is *non est* in the eye of law. The relevant conclusions of the Hon'ble Supreme Court in the matter is extracted hereinbelow:

“40. Article 311(1) of the Constitution of India ensures that no person who is a member of a civil service of the Union or an all-India service can be dismissed or removed by an authority subordinate to that by which he was appointed. The overwhelming importance and value of Article 311(1) for the civil administration as well as the public servant has been considered, stated and restated by this Court in numerous judgments since the Constitution came into effect on 19-1-1950 (sic). Article 311(2) ensures that no civil servant is dismissed or reduced in rank except after an inquiry held in accordance with the rules of natural justice. To effectuate the

guarantee contained in Article 311(1) and to ensure compliance with the mandatory requirements of Article 311(2), the Government of India has promulgated the CCS(CCA) Rules, 1965.

41. Disciplinary proceedings against the respondent herein were initiated in terms of Rule 14 of the aforesaid Rules. Rule 14(3) clearly lays down that where it is proposed to hold an inquiry against a government servant under Rule 14 or Rule 15, the disciplinary authority shall draw up or cause to be drawn up the charge-sheet. Rule 14(4) again mandates that the disciplinary authority shall deliver or cause to be delivered to the government servant, a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and the supporting documents including a list of witnesses by which each article of charge is proposed to be proved. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the disciplinary authority approves the initiation of the disciplinary proceedings, the charge-sheet can be drawn up by an authority other than the disciplinary authority. This would destroy the underlying protection guaranteed under Article 311(1) of the Constitution of India. Such procedure would also do violence to the protective provisions contained under Article 311(2) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the charge-sheet. Such a charge-sheet can only be issued upon approval by the appointing authority i.e. Finance Minister.

45. Rule 14 of the CCS (CCA) Rules provides for holding a departmental enquiry in accordance with the provisions contained in Article 311(2) of the Constitution of India. Clause (8) also makes it clear that when the Finance Minister is approached for approval of charge memo, approval for taking ancillary action such as appointing an inquiry officer/presiding officer should also be taken. Clause (9) in fact reinforces the provisions in Clause (8) to the effect that it is the Finance Minister, who is required to approve the charge memo. Clause (9) relates to a stage after the issuance of charge-sheet and when the charge-sheeted officer has submitted the statement of defence. It provides that in case the charge-sheeted officer simply denies the charges, CVO will appoint an inquiry officer/presiding officer. In case of denial accompanied by representation, the Chairman is to consider the written statement of defence. In case the Chairman comes to a tentative conclusion that written statement of defence has pointed out certain issues which may require modification/ amendment of charges then the file has to be put up to the Finance Minister. So the intention is clearly manifest that all decisions with regard to the approval of charge memo, dropping of the charge memo, modification/amendment of charges have to be taken by the Finance Minister.

46. Accepting the submission of Ms Indira Jaising would run counter to the well-known maxim delegatus non potest delegare (or delegari). The principle is summed up in Judicial Review of Administrative Action by De Smith, Woolf and Jowell (5th Edn.) as follows:

"The rule against delegation

A discretionary power must, in general, be exercised only by the authority to

which it has been committed. It is a well-known principle of law that when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another."

The same principle has been described in Administrative Law, by H.W.R. Wade & C.F. Forsyth (9th Edn.), Chapter 10, as follows:

"Inalienable discretionary power

An element which is essential to the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred, and by no one else. The principle is strictly applied, even where it causes administrative inconvenience, except in cases where it may reasonably be inferred that the power was intended to be delegable. Normally the courts are rigorous in requiring the power to be exercised by the precise person or body stated in the statute, and in condemning as ultra vires action taken by agents, sub-committees or delegates, however expressly authorised by the authority endowed with power." 48. Much was sought to be made by Ms Indira Jaising on Clause (10) of the order which provides that once the Finance Minister has approved the initiation of departmental proceedings, the ancillary action can be initiated by CVO. According to the learned Additional Solicitor General, the decision taken by the Finance Minister would also include the decision for approval of charge memo. She pointed out the procedure followed for initiation of penalty proceedings/disciplinary proceedings. She submitted that the decision to initiate disciplinary proceedings is based on a satisfaction memo prepared by CVO. This satisfaction memo is submitted to the Member (P&V), Central Board of Direct Taxes, New Delhi who after being satisfied that the memo is in order, forwards it to the Chairman, CBDT who in turn, upon his own satisfaction forwards it to Secretary (Revenue) and finally to the Finance Minister. Based on the satisfaction memo, the Finance Minister, who is the disciplinary authority in this case, takes the decision to initiate disciplinary proceedings. While taking the said decision, the Finance Minister has before him, the details of the alleged misconduct with the relevant materials regarding the imputation of allegations based on which the charge memo was issued. Therefore, approval by the Finance Minister for initiation of the departmental proceedings would also cover the approval of the charge memo.

48. Much was sought to be made by Ms Indira Jaising on Clause (10) of the order which provides that once the Finance Minister has approved the initiation of departmental proceedings, the ancillary action can be initiated by CVO. According to the learned Additional Solicitor General, the decision taken by the Finance Minister would also include the decision for approval of charge memo. She pointed out the procedure followed for initiation of penalty proceedings/disciplinary proceedings. She submitted that the decision to initiate disciplinary proceedings is based on a satisfaction memo prepared by CVO. This satisfaction memo is submitted to the

Member (P&V), Central Board of Direct Taxes, New Delhi who after being satisfied that the memo is in order, forwards it to the Chairman, CBDT who in turn, upon his own satisfaction forwards it to Secretary (Revenue) and finally to the Finance Minister. Based on the satisfaction memo, the Finance Minister, who is the disciplinary authority in this case, takes the decision to initiate disciplinary proceedings. While taking the said decision, the Finance Minister has before him, the details of the alleged misconduct with the relevant materials regarding the imputation of allegations based on which the charge memo was issued. Therefore, approval by the Finance Minister for initiation of the departmental proceedings would also cover the approval of the charge memo.

49. We are unable to accept the submission of the learned Additional Solicitor General. Initially, when the file comes to the Finance Minister, it is only to take a decision in principle as to whether departmental proceedings ought to be initiated against the officer. Clause (11) deals with reference to CVC for second stage advice. In case of proposal for major penalties, the decision is to be taken by the Finance Minister. Similarly, under Clause (12) reconsideration of CVC's second stage advice is to be taken by the Finance Minister. All further proceedings including approval for referring the case to DoP&T, issuance of show-cause notice in case of disagreement with the enquiry officer's report; tentative decision after CVC's second stage advice on imposition of penalty; final decision of penalty and revision/review/ memorial have to be taken by the Finance Minister.

50. In our opinion, the Central Administrative Tribunal as well as the High Court has correctly interpreted the provisions of Office Order No. 205 of 2005. Factually also, a perusal of the record would show that the file was put up to the Finance Minister by the Director General of Income Tax (Vigilance) seeking the approval of the Finance Minister for sanctioning prosecution against one officer and for initiation of major penalty proceeding under Rules 3(1)(a) and 3(1)(c) of the Central Civil Services (Conduct) Rules against the officers mentioned in the note which included the respondent herein. Ultimately, it appears that the charge memo was not put up for approval by the Finance Minister. Therefore, it would not be possible to accept the submission of Ms Indira Jaising that the approval granted by the Finance Minister for initiation of departmental proceedings would also amount to approval of the charge memo.

51. Ms Indira Jaising also submitted that the purpose behind Article 311, Rule 14 and also the Office Order of 2005 is to ensure that only an authority that is not subordinate to the appointing authority takes disciplinary action and that rules of natural justice are complied with. According to the learned Additional Solicitor General, the respondent is not claiming that the rules of natural justice have been violated as the charge memo was not approved by the disciplinary authority. Therefore, according to the Additional Solicitor General, CAT as well as the High Court erred in quashing the charge-sheet as no prejudice has been caused to the respondent.

52. In our opinion, the submission of the learned Additional Solicitor General is not factually correct. The primary submission of the respondent was that the charge-sheet not having been issued by the disciplinary authority is without authority of law and, therefore, non est in the eye of the law. This plea of the respondent has been accepted by CAT as also by the High Court. The action has been taken against the respondent in Rule 14(3) of the CCS (CCA) Rules which enjoins the disciplinary authority to draw

up or cause to be drawn up the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charges. The term "cause to be drawn up" does not mean that the definite and distinct articles of charges once drawn up do not have to be approved by the disciplinary authority. The term "cause to be drawn up" merely refers to a delegation by the disciplinary authority to a subordinate authority to perform the task of drawing up substance of proposed "definite and distinct articles of charge-sheet". These proposed articles of charge would only be finalised upon approval by the disciplinary authority. Undoubtedly, this Court in P.V. Srinivasa Sastry v. CAG22 has held that Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, at the same time it is pointed out that: (SCC p. 422, para 4)

"4. However, it is open to the Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority."

It is further held that: (SCC p. 422, para 4)

"4... Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holders of a civil post."

55. Although number of collateral issues had been raised by the learned counsel for the appellants as well the respondents, we deem it appropriate not to opine on the same in view of the conclusion that the charge-sheet/charge memo having not been approved by the disciplinary authority was non est in the eye of the law."

27. Applying the conclusions as reached by the Hon'ble Supreme Court in the case of **B. V. Gopinath**(supra) to the facts of the present case, it is seen that it is the Board which is designated as the appointing authority of the petitioner and there being no prescription in the Rule for delegation of the said power to any other authority, including the Respondent No. 2 herein; the Respondent No. 2, ought to have after drawal of the charges against the petitioner, placed the matter for consideration before the Board and after approval of the Board, proceeded to issue the Show Cause Notice, dated 16.07.2007, to the petitioner in the matter. Thereafter, the Respondent No. 2 on receipt of the reply of the petitioner to the said Show Cause Notice, was again required to place the same

before the Board for arriving at a conclusion as to whether the same is satisfactory or not and if not satisfactory, for a direction to hold an inquiry in the matter against the petitioner.

28. The procedure as mandated having not been followed, it is required to be held that the departmental proceeding as initiated against the petitioner was not so initiated in the manner required and the same cannot be sustained. However, at this stage; the submission of Mr. Goswami, learned standing counsel for the respondent Bank that the subsequent approval of the Board with regard to the findings of the Inquiry Officer and the appreciation thereafter made by the Board with regard to the Inquiry Report as well as the representation of the petitioner in the matter ought to be deemed to be the approval as granted by the Board in the matter also to the initiation of proceedings against the petitioner and basing on any technicality, the departmental proceeding as initiated against the petitioner, ought not to be interfered with by this Court, is now required to be examined. The said submission of Mr. Goswami, is considered only to be rejected in-as-much as noticed in the case of **B. V. Gopinath** (supra) by the Hon'ble Supreme Court, the initiation of a departmental proceeding not having been approved by the appointing authority/disciplinary authority, the proceeding so initiated, is non-est in the eye of law. The subsequent consideration by the Board of the respondent Bank in the matter being in relation to the quantum of penalty that would be called to be imposed upon the petitioner, the same cannot be deemed to have also approved the issuance of Show Cause Notice to the petitioner and for initiation of a departmental proceeding against him.

29. Having reached the above-noted conclusion with regard to the submission of Mr. Katakey, learned counsel for the petitioner that the departmental proceeding was not initiated against the petitioner by the authority authorised to do so in the matter; this Court would now proceed to consider the other submissions made by the learned counsel for the petitioner pertaining to the procedural irregularities committed in the conduct of the inquiry held in the matter.

30. Mr. Katakey, learned counsel, has submitted that inspite of the request of the petitioner for being granted access to documents relevant for the purpose of preparing his written statement of defence; the petitioner was not granted access to such documents. This contention of the petitioner was not countered by the respondent Bank in the affidavit-in-opposition filed on its behalf in the present proceedings. The materials brought on record having demonstrated that the petitioner was not granted access to the documents relevant to the matter; his defence in the matter admittedly was prejudiced. The petitioner not being facilitated to submit an effective written statement of defence in the matter, a prejudice to his defence having occasioned; the proceeding as initiated against the petitioner, stood vitiated. It is to be noted that denial of access to documents relied upon for framing of charges against the petitioner is proof of the prejudice caused to him and in such a situation, the petitioner is not required to prove that denial of access to documents had caused prejudice to him in preparing his defence in the matter.

31. It is to be noted at this stage that the departmental proceeding is a quasi judicial one and the provisions of the Evidence Act may not be applicable in its

totality. However, the principles of natural justice are mandatorily required to be complied with in the matter. It is further a settled position of law that inferences recorded by the Inquiry Officer basing on materials coming on record, must be so based on materials which are admissible evidence in the eye of law and which meet all legal principles.

32. Mr. Katakey, learned counsel for the petitioner, has further submitted that the documents so relied upon in the inquiry were so produced by the Presenting Officer and marked as exhibits by the Inquiry Officer without the same being so required to be produced through a witness. The said submission in substance of Mr. Katakey is that the petitioner was on account of the said process adopted by the Presenting Officer and Inquiry Officer denied an opportunity to cross-examine the witness to dispute the contents of the documents so produced in the matter. The right of cross-examination is a vital right and the same cannot be done away with in an inquiry. In the case on hand; it is seen that the petitioner had no opportunity to cross-examine the witnesses who would have produced the documents in the inquiry to dispute the contents of the documents so produced. It is a settled position of law that mere exhibition of a document would not also tantamount to an admission of its contents. The manner in which the documents were received in evidence in the inquiry would reveal that the contents of the documents were not proved and accordingly, the exhibited documents cannot be described as admissible evidence and the inquiry officer could not have placed reliance on the same for drawing his conclusion in the matter.

33. In this connection, support is drawn from the decision of the Hon'ble

Supreme Court in the case of ***Roop Singh Negi v. Punjab National Bank*** reported in ***(2009) 2 SCC 570***, wherein, the Hon'ble Supreme Court had categorically held that mere production of documents is not enough and the contents of the documentary evidence has to be proved by examining the witnesses. It was further held that the decision must be arrived at on some evidence which is legally permissible.

34. Applying the ratio of the decision in the case of ***Roop Singh Negi***(supra) to the facts of the present case; it is seen that in the present proceeding, admittedly, the documents were not exhibited through witnesses and the Bank has not brought on record any contention to demonstrate as to why it was not necessitated to exhibit the said documents through a witness. The vital right of the petitioner in the matter having been so violated and he being denied an opportunity to cross-examine the witness to dispute the contents of the documents so exhibited; it has to be held that evidences as received in the matter being so received in clear violation of the principles of natural justice, cannot be construed to be legally permissible evidence. The Inquiry Officer having relied upon the said evidence for arriving at his finding in the matter, and accordingly, the findings so recorded in the Inquiry Report against the petitioner stands vitiated and it can also be safely held that the findings of the Inquiry Officer was so recorded basing on no evidence.

35. In view of the conclusions reached hereinabove, with regard to inquiry proceeding so initiated against the petitioner i.e. the same being initiated without the approval of the appointing authority, prejudice caused to the petitioner in denying to him access to the documents relevant for preparation of

his defence, and the manner in which evidences were received by the Inquiry Officer in the inquiry so held; this Court is not proceeding further to examine the findings as recorded by the Inquiry Officer in his report with regard to the charges levelled against the petitioner in-as-much as it is held by this Court that the evidences basing on which such findings were recorded are all inadmissible evidences. Further, the other contentions as raised by the learned counsel for the petitioner with regard to the manner in which the inquiry proceeding had proceeded including the issue of production of Xeroxed copies, etc., are not further examined in view of the above conclusions as reached in the matter by this Court.

36. In view of the above conclusions, it is held that the findings recorded in the departmental proceeding being so recorded without following the principles of natural justice are clearly perverse and such evidence is required to be ignored. In the case on hand, there being complete non-observance of the principles of natural justice since the initiation of the proceeding; the impugned order of penalty, dated 21.10.2013 including the decision of the Board as recorded therein, stands set aside.

37. The Hon'ble Supreme Court in the case of ***Dharampal Arora v. Punjab State Electricity Board***, reported in ***(2006) 13 SCC 93***, has held that once the final order goes, all the orders from the date of the charge sheet up to the date of passing of the final order becomes a nullity and redundant. Accordingly, applying the said ratio, the penalty order, dated 21.10.2013, having been interfered with; the Inquiry Report as well as the Show Cause Notice, dated 16.07.2007, also stand interfered with. [Also refer to the decision of the Division

Bench of this Court in the case of ***Violet Baruah v. Union of India & ors.***, reported in ***(2017) 2 GLR 804***].

38. Since the penalty and the departmental proceeding have been interfered on the ground of non-observance of the principles of natural justice; this Court hereby permits the respondent Bank to conduct a *de novo* inquiry into the charges so levelled against the petitioner herein by issuing a fresh Show Cause Notice to him with the approval of the Board and the same also may be so based on the allegations and charges as was contained in the Show Cause Notice, dated 16.07.2007.

39. In view of the interference made in the matter and the provisions of the Rules holding the field permitting the initiation of a departmental proceeding even against a retired employee after their superannuation, this Court directs that the respondent Bank shall without further delay after the matter has been placed before the Board and the approval of the Board obtained; proceed to initiate a *de novo* departmental proceeding against the petitioner, herein.

40. In the event, a decision is arrived at to conduct a *de novo* departmental proceeding against the petitioner in the matter; the same shall be concluded within a period of 6 months from the date of initiation of the same and appropriate orders as would be so called for, shall be so issued on conclusion of such proceedings and the petitioner is also directed to extend due cooperation in the matter for an early resolution of the issues.

41. Given the nature of the allegations levelled against the petitioner in the matter and the petitioner having already superannuated from his service, it is hereby provided that the manner in which the period from the date of his dismissal from service till the date he would have otherwise so superannuated from his service is to be regularized, would be determined by the Bank authorities upon conclusion of the *de novo* proceedings now directed to be conducted against the petitioner. Specific orders in this connection shall be passed by the authorities along with the final orders that would be so passed on conclusion of the said proceedings against the petitioner.

42. With the above directions and observations; this writ petition stands disposed of.

JUDGE

Comparing Assistant