

GAHC010150512019



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

Case No. : WP(C)/4647/2019

ON THE DEATH OF ANIRBAN ROY
HIS LEGAL HEIRS.

1.1: SMT. OLYMPIA ROY
AGED ABOUT-43 YEATS
W/O-LATE ANIRBAN ROY
R/O- JOYMOTI NAGAR
BY LANE-10
ADABARI
GUWAHATI
PIN-781012.

2: ANINDIT ROY
S/O- ANIRBAN ROY
H.NO. 42
PANDAV NAGAR
ADABARI TINIALI
GHY- 1

VERSUS

THE STATE BANK OF INDIA ANAD 4 ORS.
REP. BY THE CHAIRMAN AND MANAGING DIRECTOR CORPORATE
CENTRE, IV FLOOR, STATE BANK BHAWAN, MADAME CAMA ROAD,
MUMBAI- 400021

2:THE CHIEF GENERAL MANAGER
STATE BANK OF INDIA
LOCAL HEAD OFFICE
DISPUR
GHY-6

3:GENERAL MANAGER (NW-II)
STATE BANK OF INDIA

LOCAL HEAD OFFICE
DISPUR
GHY-6

4:SECRETARY
GOVT. OF INDIA
MINISTRY OF FINANCE
DEPTT. OF FINANCIAL SERVICES
JEEVAN DEEP
3RD FLOOR
PARLIAMENT STREET
NEW DELHI- 110001 (REP. STATE BANK OF INDIA)

5:THE UNION OF INDIA
SECY. TO THE MINISTRY OF PERSONNEL
PUBLIC GRIEVANCES AND PENSIONS
DEPTT. OF PERSONNEL AND TRAINING
NORTH BLOCK
NEW DELHI- 11000

Advocate for the Petitioner : DR. J L SARKAR

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioners : Dr. GJ Sharma, Advocate.

For the Respondents : Shri H Buragohain, Advocate.

Dates of Hearing : 13.05.2024.

Date of Judgment : 13.05.2024.

JUDGMENT & ORDER

Heard Dr. GJ Sharma, learned counsel for the petitioners whereas the respondents-State Bank of India is represented by Shri B Buragohain, learned

counsel.

2. The challenge in this writ petition is towards a disciplinary proceeding initiated vide a Charge Sheet dated 14.12.2012, the Inquiry Report dated 24.12.2015, penalty order of removal from service with forfeiture of gratuity dated 16.05.2016 and the rejection of the appeal vide order dated 02.12.2016. The challenge is structured both on the merits of the allegations as well as procedural irregularities and infirmities.

3. Before proceeding, this Court has been informed that during the pendency of this writ petition, the original petitioner no.1-delinquent has expired on 05.11.2023 and he was duly substituted by his legal heirs/present petitioners, who are his son and wife.

4. The present case has a chequered history, including history of litigation. The original petitioner no. 1 was serving as an Assistant Manager (Accounts) in the Koupati Branch of the respondent-Bank when a disciplinary proceeding was initiated against him vide a Charge Sheet dated 14.12.2012. On completion of the inquiry, a second show cause notice was issued by the disciplinary authority whereby the findings of guilt of the petitioner were already concurred with. Though reply was filed, an order of penalty dated 24.09.2013 was imposed by which, the petitioner was dismissed from service and his gratuity was forfeited. The departmental appeal of the petitioner being rejected, he had approached this Court by filing WP(C)/3941/2014. The said proceeding had culminated in an order dated 04.08.2015 passed by this Court whereby the impugned penalty was set aside. However, a *de novo* inquiry was directed to be conducted and the

petitioner would be continued to be under suspension.

5. Pursuant to the said order, new Inquiry Officer and Presenting Officer were appointed and the inquiry was conducted which culminated in a report dated 24.12.2015. The second show cause notice was issued to the petitioner on 31.12.2015 in which, however, the disciplinary authority had made an observation that he was in agreement with the views of the Inquiry Officer and five out of six allegations were held to be proved and one allegation was held to be partially proved.

6. Dr. Sharma, learned counsel for the petitioners has submitted that the entire procedure adopted, including those in the inquiry are not in accordance with law and there has been gross violation of the norms and fair procedure. As regards the inquiry made, it is submitted that no witnesses were examined and though one person, Uttam Kalita was subsequently named as a witness, he was not examined and therefore, the question of cross-examining him also did not arise. It is submitted that all the allegations which are apparently serious in nature were held to be established without the same being proved in the inquiry by competent witnesses.

7. On the aspect of procedure adopted by the disciplinary authority in issuing the second show cause notice, the learned counsel for the petitioners has submitted that such second show cause notice has become a mere formality inasmuch as the delinquent officer was deprived of a fair opportunity to make an endeavour to convince the disciplinary authority to take a view other than the views expressed by the Inquiry Officer holding the delinquent to be guilty of

the charges.

8. By referring to the notice dated 31.12.2015, it is submitted that the disciplinary authority had agreed with the views and had also come to a finding that the allegations were found proved. In such circumstances, the scope of submitting a written representation was absolutely obliterated as the disciplinary authority had already made up his mind on the establishment of the guilt. In support of his submissions, the learned counsel has relied upon the following case laws:

i) *Union of India Vs. Mohd. Ramzan Khan*, (1991) 1 SCC 588; and

ii) *Managing Director, ECIL Vs. B Karunakar*, AIR 1994 SC 1074.

9. In the case ***Mohd. Ramzan Khan*** (*supra*), the Hon'ble Supreme Court was explaining the position after the 42nd amendment of the Constitution of India by which the requirement of a show cause notice on the proposed penalty was done away with. It has been held that though the aspect of proposed penalty is not required to be notified prior to imposition of the same, the requirement of forwarding the views of the Inquiry Officer in case such inquiry is done by an officer other than the disciplinary authority would still be the mandatory requirement. The aforesaid position has been clarified by the later decision in the case of ***B Karunakar*** (*supra*) by holding that the proposition laid down in the case of ***Mohd. Ramzan Khan*** (*supra*) would be prospective in nature from the date of the said judgment i.e. 20.11.1990. It has also been laid down that a delinquent is required to plead the aspect of prejudice suffered by him due to non-furnishing of the inquiry report.

10. On the aspect of forfeiture of the gratuity, it is submitted that such forfeiture has been done away without following the due process of law. The learned counsel for the petitioner, accordingly submits that the impugned order of penalty is liable to be interfered with and the service benefits of the original petitioner no. 1 be released to the present petitioners along with the gratuity amount.

11. Shri Buragohain, learned counsel for the respondents-Bank has produced a photo copy of the records of the disciplinary proceeding. It is submitted that there is a finding that the original petitioner was satisfied with the inquiry proceeding. The learned counsel for the Bank has also tried to defend the second show cause notice dated 31.12.2015 by submitting that such agreement was tentative in nature and the original petitioner was given adequate opportunity to make his representation and by such tentative agreement, the proceedings would not be vitiated.

12. The rival submissions have been duly considered.

13. As observed above, the importance of furnishing the report of the Inquiry Officer to a delinquent before the same is acted upon by the disciplinary authority has been clearly laid down by the Hon'ble Supreme Court in a catena of decisions, including the above referred two cases. It has also been clearly laid down that while the requirement of informing the delinquent of the proposed penalty has been done away with by the 42nd amendment of the Constitution of India, the requirement for having the views of the delinquent before concurring

with the findings against such delinquent by the Inquiry Officer would still be an essential requirement.

14. What is intriguing in the present case is that in the earlier round of litigation, namely, WP(C)/3941/2014, the earlier order of penalty dated 24.09.2013 was interfered with on the same very ground. This Court has also noticed that in the earlier judgment dated 04.08.2015, this Court had recorded the submission made on behalf of the respondent-Bank that the inquiry was not conducted in accordance with law. In paragraph 16 of such judgment, the following observation has been recorded:

“16. Today, when Mr. Sharma rose to argue on behalf of the Bank, while deprecating the conduct of the petitioner, he, however, fairly conceded that the departmental enquiry conducted by the Inquiring Authority was not in accordance with law, inasmuch, as there was no discussion on the evidence adduced by the witnesses in the enquiry. The evidence was not considered before recording finding of guilt.”

15. After the remand by this Court with a direction for holding a *de novo* inquiry, it appears that the same error of law has again been committed by the disciplinary authority. Even without going to the aspect of the challenge that no witnesses were examined in the inquiry which, however, has been disputed by the learned counsel for the respondents, the aspect of concurring with the findings of the inquiry by the disciplinary authority while issuing the second show cause notice dated 31.12.2015 is wholly contrary to the established procedure of law which mandates a fair opportunity to a delinquent to defend himself. In the case of **B Karunakar** (*supra*), it has been laid down that a fair

opportunity to the delinquent is a vested right which emanates from the initiation of the proceedings till the completion of the same, including the appellate stage. This Court has also noticed that in the affidavit-in-opposition filed by the then respondent-Bank, against the averments made in paragraph 16, the following reply has been made:

“19. That with reference to averments made in Para 16, I deny the claim that disciplinary authority without applying his mind to the inquiry report agreed with it and forwarded the same to CSO. I say that before doing so, the disciplinary authority, a responsible officer had duly considered the report based on the available records and having agreed to the findings recorded therein forwarded the report to CSO giving him reasonable time and opportunity to submit his written statement of defence. I say that on 12.05.2016 personal hearing to the petitioner was given again giving him a fair chance to submit his statement in his defence and hence, I say that no prejudice was caused to the petitioner, as alleged and there is no violation of principles of natural justice. The Honorable Supreme Court in *Boloram Bordoloi V Lakhimi Gaolia Bank & Ors.* (Civil Appeal No 4394/2010) vide judgment dated 08.02.2021, while upholding the judgment passed by this Honorable High Court has held that it is well settled that if the Disciplinary Authority accepts the findings recorded by the enquiry officer and passes an Order, no detailed reasons are required to be recorded in the order imposing punishment. In the case of *Managing Director, ECIL Hyderabad* as cited by the Petitioner, no such proposition was laid down by the Honorable Supreme Court that the enquiry report is to be served upon the CSO even before tentative conclusion is arrived at by the Disciplinary Authority. Rather the said judgment held that the delinquent employee is entitled to a copy of the

enquiry report before the Disciplinary Authority takes a decision on the question of guilt of the delinquent, and merely because a show cause notice is issued by indicating proposed punishment it cannot be said that disciplinary authority has taken a decision.”

16. The aforesaid stand taken by the respondents-Bank is a flawed stand in terms of the law laid down as the disciplinary authority before coming to a finding of agreement with the report of the Inquiry Officer is effectively required to have the views of the delinquent by giving him adequate opportunity. It would be a different matter if the inquiry is done by the disciplinary authority himself or that the delinquent chooses not to respond to the second show cause notice which, however, is not the case in hand.

17. With regard to other aspect of forfeiture of gratuity, the only provision regarding such forfeiture is under Section 4 (6) of the Payment of Gratuity Act, 1972 which essentially requires that the loss caused to the employer is to be ascertained and only to the extent of such loss, there may be forfeiture. There are no materials on record to show that any assessment in that nature has been done. This Court has also noted that the loss quantified in the proceeding was admittedly stated to be “probable loss” and therefore, without there being a certainty of loss caused, if any, gratuity of the delinquent employee cannot be forfeited. The mandate of the Act of 1972 regarding entitlement of gratuity has been discussed in a catena of decisions by the Hon’ble Supreme Court.

18. This Court has also pondered the situation which exists now when the original petitioner (delinquent) has passed away and therefore, the scope of any

further inquiry is practically not possible. This Court has also taken into consideration that on the remand of the matter by this Court vide order dated 04.08.2015, a fair procedure was required to be followed in the *de novo* inquiry. On the contrary, from the pleaded case of the respondent-Bank itself which has been mentioned, it appears that the legal position has not even been understood and comprehended by the respondent-Bank.

19. In view of the aforesaid discussions and facts and circumstances, the impugned order of penalty dated 16.05.2016 passed by the Appointing Authority & General Manager (NW-II) as well as the appellate order dated 02.12.2016 passed by the Appellate Authority & Chief General Manager are set aside and quashed. Since the original petitioner no. 1 who was the delinquent has passed away, the respondent-Bank is directed to release all the benefits which would have accrued to the original petitioner no. 1 to the substituted petitioners. The aforesaid entitlements would also include the amount of gratuity. The entitlements be released to the present petitioners expeditiously and in any case, within a period of 3 months from the date of receipt of a certified copy of this order. Since, it is submitted that in spite of the Courts order, the subsistence allowance was not paid to the original petitioner, the same is required to be calculated and paid at the appropriate rate to the present petitioners along with other benefits which have been directed to be paid.

20. The writ petition is accordingly allowed in the above terms.

21. The photo copy of the records is returned back to the learned counsel for the respondent-Bank.

JUDGE

Comparing Assistant