

GAHC010239582012



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

Case No. : WP(C)/6332/2012

BORNALI SAIKIA
W/O MR. M K BURAGOHAIN, CHANDMARI, WARD NO.9, P.O., P.S. and DIST-
GOLAGHAT, ASSAM

VERSUS

STATE BANK OF INDIA and ORS.
WITH ITS HEAD OFFICE AT DISPUR, OPPOSITE TO SASHIBALOI, P.O.
SASHIBALOI, P.S. DISPUR, GHY-6

2:THE ZONAL MANAGER
STATE BANK OF INDIA
ZONAL OFFICE
NA ALI ROAD
P.O. JORHAT
DIST- JORHAT
ASSAM

3:THE DY. GENERAL MANAGER BandO
STATE BANK OF INDIA
ADMINISTRATIVE OFFICE
JORHAT
ASSAM

4:THE ASSTT. GENERAL MANAGER R-I
STATE BANK OF INDIA
REGIONAL BUSINESS OFFICE
REGION-1
JORHAT

5:THE CHIEF MANAGER
STATE BANK OF INDIA

GOLAGHAT BRANCH
GOLAGHA

Advocate for the Petitioner : MS.K SAIKIA

Advocate for the Respondent : MR.S S SHARMA

Date of Hearing : **19.12.2023**
Date of Judgment & Order: : **18.03.2024**

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

JUDGMENT AND ORDER (CAV)

The proceedings before this Court arise from the impugned order of dismissal by which the petitioner was dismissed from her services by the respondent authority following a departmental enquiry instituted against her and on the basis of the enquiry conducted and the report submitted to the respondent authority.

2. The petitioner was appointed as a Clerk-cum-Typist at SBI, Golaghat Branch on 24.01.1991. Subsequently, she was promoted to the post of Senior Assistant. While she was posted as Senior Assistant at SBI Golaghat Branch, she was served with a show-cause notice dated 06.11.2020 issued by the Assistant General Manager asking her to show-cause why disciplinary action should not be initiated against her based on

the allegations made in the said show-cause.

3. As per the allegations made in the show-cause, the petitioner was accused of withdrawing an amount of Rs. 88,000/- (Rupees Eighty Eight Thousand Only) in-total on various dates from the account of one Smt. Sabitri Das without her due knowledge and authorization. The further allegation against the petitioner is with regard to depositing the amount of Rs. 50,000/- (Rupees Fifty Thousand Only) by the petitioner in the account of said Smt. Sabitri Das on 19.09.2009. Pursuant to the complaint lodged by the said Smti. Sabitri Das, who was a customer of the Bank. The third allegations is that the petitioner had withdrawn an amount of Rs. 18,000/- (Rupees Eighteen Thousand Only) from the saving bank account of one Sri Nabin Ch. Dutta of the SBI by forging the signature of the account holder.

4. On receipt of the show-cause notice, the petitioner submitted her reply dated 26.11.2010. In her reply, she denied all the charges. Being dissatisfied with the reply submitted by the petitioner, the disciplinary authority appointed the Enquiry Officer and a Presenting Officer and proceeded with for the purposes of conducting the enquiry.

5. The petitioner participated the enquiry proceedings and she was defended by another employee of the Bank as the defence representative. The Enquiry Officer submitted his enquiry report upon conclusion of the enquiry holding that the charges were partially proved. The disciplinary authority by communication dated 16.02.2012 intimated the petitioner giving her an opportunity to represent against the punishment sought to be imposed by the disciplinary authority on the basis of the enquiry concluded. The petitioner submitted her reply denying the charges. However, the disciplinary authority by order dated 19.03.2012 imposed a major penalty of dismissal without notice, in terms of Memorandum of Settlement on Disciplinary Action Procedure for Workmen dated 10.04.2002. The petitioner preferred an appeal before the appellate authority by her appeal memo dated 18.04.2012 assailing the order of dismissal as well as the enquiry proceedings. The appellate authority by its order dated 23.06.2012 dismissed the appeal by reasoned order. Being aggrieved, the present writ petition has been filed.

6. The learned Senior counsel for the petitioner submits that in terms of the show-cause notice which was issued, none of the charges were proved as per law during the enquiry proceedings. The complainant on

whose complaint the proceedings were initiated against the petitioner was never produced in the enquiry proceedings. Consequently, the said complainant one Smt. Sabitri Das, who had lodged a complaint that the petitioner had withdrawn money from her savings account without her due authorization, was never examined or cross-examined in the enquiry proceedings. The learned Sr. counsel appearing for the petitioner submits there was absolutely no material which was available during the enquiry proceedings to prove the guilt of the petitioner in respect of the allegations/charges made against the petitioner in the charge-sheet. It is submitted by the learned Sr. counsel for the petitioner that the Memorandum of Settlement which is referred to in the order of imposition of penalty was never a part of the show-cause notice nor was it referred to during the enquiry proceedings. The petitioner is completely in the dark as regards the provisions of the said memorandum of settlement. It is submitted by the learned Sr. counsel for the petitioner that in any event there was no financial loss caused to the Bank which warranted such a severe punishment to be imposed on the petitioner. It is submitted that the disciplinary proceedings was carried on in a perfunctory manner and in gross violations of the Rules and the Procedure and therefore, the enquiry conducted against the petitioner is unsustainable in law and

consequently, the punishment imposed by the disciplinary authority on the basis of findings arrived at by the Enquiry Officer also cannot be sustained. In support of his contention, the learned Sr. Counsel for the petitioner relied upon the following Judgments:

1. *State Bank of India and Ors, Vs. Sh. Lalhmachhuana*, reported in 2012 (1) GLT 451;

2. *Kuldeep Singh Vs. Commissioner of Police and Ors*, reported in (1999) 2 SCC 10;

3. *S.R. Tewari Vs. Union of India* reported in (2013) 6 SCC 602;

4. *Akshay Mazumdar Vs. Chairman Assam State Text Book Production and Publication Ltd and Ors*, reported in 2003 (2) GLT 114; and

5. *Nirmala J. Jhala vs. State of Gujarat and Anr.*, reported in (2013) 4 SCC 301.

7. *Per Contra*, Mr. H. Buragohain, learned Standing counsel representing the SBI disputed the contentions of the learned Sr. counsel for the petitioner. The learned counsel for the Bank submits that the enquiry was instituted and conducted as per the procedure prescribed and all opportunity of participation was offered to the petitioner. All documents relied upon during the course of the enquiry was made

available to the petitioner. He further submits that the petitioner was also granted the benefit of a defence representative to defend her during the enquiry proceedings. The learned Standing counsel for the Bank also submits that prior to institution of the enquiry, there was a preliminary investigation in which the petitioner was also permitted to participate. In her reply given to the queries raised during the preliminary investigation, the petitioner herself admitted to the charges levelled in the enquiry report namely unauthorized withdrawal of money from the account of the Bank's customer and subsequently, refunded in a portion thereof. He submits that under such circumstances, in the face of the admissions by the petitioner, the disciplinary proceedings were instituted and the same concluded with imposition of a penalty of removal from service. The learned Standing counsel for the respondents/Bank submits that an employee of the Bank is required to maintain the trust repose on such employee by the Bank authorities as well as by the customers of the Bank. Only because no financial loss was caused to the Bank, it cannot be the ground to absolve the petitioner of the offences committed by her during her tenure as Senior Assistant. It is submitted that the enquiry having been conducted following the due process of law and the penalty imposed by the disciplinary authority having been imposed upon due

consideration of the findings arrived at by the enquiry officer as well as by independent application of mind, there is no infirmity in the enquiry proceedings and/or the imposition of major penalty by the disciplinary authority. He submits that the writ petition is devoid of merit and the same should therefore be dismissed. In support of his contentions, the respondents relies upon the following Judgments:

1. *State Bank of India and Ors. Vs. Partha Pradeep Dutta*, reported in 1997 (2) GLT 132;

2. *Union of India and Ors. Vs. P. Gunasekaran*, reported in (2015) 2 SCC 610;

3. *Director General of Police, Railway Protection Force and ors. Vs. Rajendra Kumar Dubey*, reported in (2021) 14 SCC 735;

4. *Lalit Popli Vs. Canara Bank and ors.*, reported in (2003) 3 SCC 583.

8. The learned counsel for the parties have been heard. Pleadings on record have been carefully perused. The records relating to the enquiry proceeding are also placed before the Court by the learned Standing Counsel for the Bank.

9. From the records, it is seen that a complaint was lodged by one

Smt. Sabitri Das regarding unauthorized withdrawal of money by the petitioner from her savings bank account maintained at the Branch. On the basis of the complaint lodged by the said Smt. Sabitri Das, there was a preliminary investigation which was instituted through the Branch Manager of a different Branch of the same Bank. From the records, it is seen that during the course of the enquiry, the preliminary investigation, there is categorical admission by the petitioner with regard to the allegations of withdrawal of amount from the savings account of the concerned employee by forging her signature. There is a communication also available addressed by the petitioner to the Chief Manager, SBI, Golaghat Branch dated 17.05.2010 where she admitted misusing the passbook of another customer namely one Shri Nabin Dutta who had given it to her for due updation. In the said communication, she expressed her remorse and assured that she will reform herself and not repeat the same again.

10. Pursuant to this investigation, the bank authorities instituted the disciplinary proceedings by issuing her show-cause. The show-cause dated 06.11.2010 was issued asking her to show-cause in respect of the following allegations:

“Allegation: I

That you withdrew the amounts on different dates as given below from saving bank account No. 10698275625 of Smt. Sabitri Das in your own ID and password, without the knowledge and authorization of the customer, which is gross misconduct on your part.

<i>Sl No</i>	<i>Account No</i>	<i>Date of Withdrawal</i>	<i>Amount withdrawn</i>	<i>Irregularities.</i>
<i>01</i>	<i>10698275625</i>	<i>13.09.2008</i>	<i>Rs. 10,000/-</i>	<i>Amount fraudulently withdrawn by forging the signature of the customer</i>
<i>02</i>	<i>-Do-</i>	<i>13.12.2008</i>	<i>Rs.25,000/-</i>	<i>-Do-</i>
<i>03</i>	<i>-Do-</i>	<i>18.03.2009</i>	<i>Rs.10,000/-</i>	<i>-Do-</i>
<i>04</i>	<i>-Do-</i>	<i>02.07.2009</i>	<i>Rs.28,000/-</i>	<i>-Do-</i>
<i>05</i>	<i>-Do-</i>	<i>31.08.2009</i>	<i>Rs.15,000/-</i>	<i>-Do-</i>
	<i>Total</i>		<i>Rs.88,000/-</i> <i>-</i>	

Allegation: II

When the complaint was lodged by Smt. Sabitri Das to the Chief Manager, Golaghat branch on 19.09.2009, on the same day you deposited Rs. 50,000/- in her saving bank account No. 10698275625. The said

deposit voucher was filled up by you, but signed as "S Das" by you in order to conceal your malafide acts.

Allegation: III

That on 13.05.2010, you tried to withdraw an amount of Rs. 18,000/- from the saving bank account No. 10698358376 of Shri Nabin Chandra Dutta, by forging the signature of the account holder. But due to the presence of mind and prompt action of paying cashier, Shri Paban Kumar Hazarika, your attempted was foiled, which is again a gross misconduct on your part.

Allegation: IV

That you as an employee of the Bank, your primary duty as an custodian of public money was to protech it against all odds, but on the contrary you misappropriate the customer's money as alleged in allegation-I and tried to misappropriate it as alleged in allegation-II which is a breach of discipline and amounts to gross misconduct.

Allegation: V

That by your act as alleged in allegation-I & III you tarnished the image of the Bank in the eyes of Smt. Sabitri Das and Shri Nabin Chandra Dutta in particular, and the public of Golaghat, in general.”

11. The petitioner submitted her reply to the show-cause on 26.11.2010 denying the allegations made. However, in her reply, she stated that she might have in respect of allegation No. 2 namely deposit of Rs. 50,000/- (Rupees Fifty Thousand Only) in the savings account of “S. Das” by signing in the deposit slip. The petitioner denied the allegation but also stated that she might have done the job to help the customer without any malafide intention. The enquiry report contained the findings of the Enquiry Officer, a copy of which was also furnished to the petitioner.

12. The grounds of challenge by the petitioner in respect of the enquiry proceedings are based on the premise that the findings in the enquiry proceedings are based on the conjuncture and surmises. According to the petitioner, the customer who was lodged the complaint and on whose complaint the preliminary enquiry and the disciplinary proceedings were initiated, failed to appear before the Enquiry Officer and was therefore never examined or cross-examined during the enquiry proceedings. The

documents which were produced were never proved. Consequently, there was no evidence before the Enquiry Officer to arrive at a conclusion that the charges have been proved against the petitioner.

13. That being so, the disciplinary authority also could not have relied upon the findings of the enquiry officer and in the absence of any evidence in support of the allegations levelled against the petitioner, the disciplinary authority ought not to have accepted the findings of the Enquiry Officer and thereby could not have rendered a finding against the petitioner for imposition of the major penalty of removal from service without notice.

14. It is well settled that the disciplinary proceedings is a quasi-judicial proceedings. Although strict rules of evidence and procedure may not be applicable to disciplinary proceedings, nevertheless, the salutary principles in respect of proof of document and or statements made by witnesses will have to be followed in any disciplinary proceedings. In the facts of the present case, from the records produced before this Court, it is seen that during the preliminary investigation conducted by the Bank on the complaint filed by the Bank customer's Smt. Sabitri Das, there are

replies stated to have been submitted by the petitioner admitting to the mischief that she is caused. However, for reasons best known to the disciplinary authority, these documents were never confronted to the petitioner during the disciplinary proceedings that had ensued after the conclusions of the preliminary enquiry/investigation. Although, the petitioner has denied the allegations levelled against her, in her reply to the show-cause notice, in response to the allegation No. 2, she stated as under:

“Allegation 2

As far as the filling up of voucher is concerned, I, as a banker, might do the job to help the customer without any malafide intention. Therefore, I deny the allegation.”

15. There is also an admission by the petitioner in respect of presentation of the withdrawal slip at the Bank in case of the other customer Shri Nabin Chandra Dutta which, however, was rejected by the concerned employee of the bank on the ground that the signature on the form and that available with the bank records in respect of the said customer Shri Nabin Chandra Dutta does not tally. However, there is no explanation as to whether such a course of action of presenting and

withdrawal slip on behalf of a customer was ordinarily permitted as per the procedure laid down. It is also not stated as to whether the statement of the petitioner is also vague and as to where the concerned customer had handed over the withdrawal slip to the petitioner and as to what arrangement the customer had made with the petitioner for receiving the amount that he had sought for withdrawal from the Bank.

16. From the records, it further seen that by communication dated 17.05.2010, the petitioner had addressed a letter to the Chief Manager, SBI whereby the petitioner confessed to her guilt. In the said communication, there is an admission by the petitioner that in so far as the customer Mr. Nabin Dutta was concerned, his passbook was handed over to her by the customer for updation but she misused it and for that she is very sorry and realized that she had committed wrong. She prayed to the authority to excuse her and she promised that she will reform herself and change her mind and never repeat this type of action again in future.

17. This particular document was exhibited amongst others during the enquiry proceedings to which the petitioner did not offer any explanation.

Rather the defence representative appearing on behalf of the petitioner requested the Enquiry Officer not to take the document into account.

18. In reply to the second Show-cause notice issued by the Bank to the petitioner prior to imposition of the penalty by the disciplinary authority. It is seen that the petitioner has stated that the Bank suffered no loss. From a conjoint reading of these replies submitted by the petitioner, it appears that there was no specific denial of the allegations made by the petitioner in her reply. That apart, there is not a whisper of the replies and the statements made by the petitioner admitting to the allegations made against her during the preliminary investigation conducted.

19. Ordinarily, writ Court is not to interfere with the findings arrived at during the course of the disciplinary proceedings, if the same is based on some evidence. The law in this regard is very clear that the writ Court will interfere in any disciplinary proceedings if the same is not conducted as per the procedure prescribed, or is in violation of the principles of natural justice or that the person initiating the disciplinary proceedings is not authorized to do so. The sufficiency or adequacy of the evidences adduced in a disciplinary proceeding in a realm not required to be entered

into by a writ Court save and except in the circumstances as discussed above.

20. This restriction may also not be applicable in a case whereupon examination of the materials available before the Court, it can be held that there was absolutely no evidence or any evidence which a man of ordinary prudence will refuse to accept. Under such circumstances, it is open to the writ Court to interfere with the findings arrived at by the disciplinary authority.

21. A question may arise as to whether the statements and the replies given by the petitioner in the preliminary investigation will have relevance in deciding with the correctness of the disciplinary proceedings including the enquiry conducted against the petitioner.

22. In *Nirmala J Jhala (Supra)*, the Apex Court was seized of a matter where several materials which were available in the preliminary enquiry was relied upon in the disciplinary proceedings and the Apex Court held that such course of action is not permissible as the delinquent employee was never given a opportunity to participate in the preliminary enquiry and the materials adduced were without his knowledge.

23. However, in the facts of the present case, it is seen that certain documents which were relied upon by the authority during the preliminary investigation/enquiry was also referred to during the enquiry proceedings. The petitioner was duly confronted with these documents to which the petitioner did not offer any explanation save and except stating that these documents cannot be relied upon for the purposes of the enquiry.

24. The Apex Court in *Nirmala J Jhala (Supra)*, in the facts of that case interfered with the enquiry proceedings as the preliminary enquiry report was relied upon during the disciplinary enquiry proceedings. This is primarily because the petitioner was never given the opportunities of participating in that preliminary enquiry. Consequently, the Apex Court held that where the disciplinary proceedings have been initiated findings in the preliminary enquiry which was held will have no relevance once a proper disciplinary proceedings as per the Rules is initiated.

25. In the present case although certain documents which were referred to under the preliminary enquiry, were relied upon during the disciplinary proceedings in question, the petitioner was given an

opportunity to rebut the same. These documents were not denied by the petitioner including the letter reading to the admission of the petitioner relating to the misuse of the passbook of the customer. The law in respect of disciplinary proceedings is well settled by the Apex Court. It is not a criminal trial and the disciplinary proceedings will follow the principle of preponderance of probabilities. The charges are not required to prove beyond reasonable doubt as is required in a criminal trial. The entire purpose of the disciplinary proceedings is to determine the truth in respect of the charges levelled against the delinquent employee. The interference of writ Court in judicial review in respect of disciplinary proceedings is well settled. It is only in very limited parameters that ordinarily a writ Court will interfere in judicial proceedings.

26. Salutory principles culled out by the Apex Court in the case of Deputy General Manager (Appellate Authority) and Others Vs Ajai Kumar Srivastava reported in (2021) 2 SCC 612 reiterates that the limits for judicial review under Article 226 or Article 32 or Article 136 of the Constitution of India circumscribed in matters of disciplinary enquiries conducted by departmental or Appellate authorities. The Apex Court in the Judgment after examining the earlier judgments of the Apex Court

rendered, reiterated the principles for exercise of judicial review under inter alia Article 226 of the Constitution of India. The Apex Court held that in respect of disciplinary enquiries conducted or alleged misconduct against public servant, the Court is to examine and determine the following:-

“25. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the Court is to examine and determine: (i) Whether the enquiry was held by the competent authority; (ii) Whether rules of natural justice are complied with; (iii) Whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion”.

27. It was held that strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegations against the delinquent must be established by some evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against a delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in Departmental enquiry proceedings. A Constitutional Court while exercising jurisdiction under

Article 226 would not interfere with the findings of fact arrived at in departmental enquiry proceedings except in a case of malafides or perversity, namely, where there is no evidence to support a finding or where a finding is such that no man reasonable and with objectivity would have arrived at those findings. No interference is called for so long there is some evidence to support the conclusion.

28. In view of such categorical statements made by the petitioner, it cannot be said that the same has to be totally ignored or that it cannot be taken into consideration during the enquiry proceedings. These replies made by the petitioner in the preliminary enquiry or the circumstances under which she had made, are not pleaded in the writ petition. It is not the pleaded case of the petitioner that these replies were made by the petitioner under duress or coercion or that these documents are not genuine. As such, on total appreciation of the facts and circumstances in respect of the present proceedings, it cannot be said that the enquiry proceedings was conducted de hors the Rules and/or in violation of the Principles of natural justice. Whether the evidence adduced before the enquiry officer was sufficient enough to prove the charges against the petitioner is, in the peculiar facts and circumstances of the case, an area,

which this Court in Judicial Review is not required to delve into. It is also trite to mention here that not causing financial loss to the Bank is not a ground of defence which will be available to a delinquent employee of a Bank in such disciplinary proceedings. The petitioner is not a Messenger or a Grade-IV employee in the Bank. It is true that the petitioner is not employed in a managerial capacity but she was also not a Grade-IV employee or a casual staffer. She was working or she was employed as a Senior Assistant in the Bank and is required to undertake functions and responsibilities as may be assigned to her. Therefore, as an employee of the Bank besides her responsibility towards the superior officers, she also has a responsibility to maintain the trust amongst the members of the public more particularly amongst the customers of the Bank. Reference may be made to the case of *Partha Pradeep Dutta (Supra)* and *Boloram Bordoloi Vs. Lakhimi Gaolia Bank and Ors*, reported in (2021) 3 SCC 806, wherein it was held that an employee of the Bank occupies a position of trust. Law does not require causing actual loss to the Bank. It is the dereliction of duty which matters.

29. Such standards are also required to be maintained by all employees of the bank more particularly employees who are involved in customer

handling and bank transactions. Admittedly, the petitioner was working as a Senior Assistant. Therefore, in the facts of the case, where the petitioner admitted to her misconduct in her communications addressed to the bank authorities, it does not call for interference of the disciplinary proceedings initiated against her or the punishment imposed.

30. In view of the above discussions, the Judgments referred to by the learned Sr. counsel for the petitioner does not come to his aid and are therefore not relevant for the purposes of the present proceedings.

31. In view of the discussions above, the writ petition stands dismissed.
No order as to cost.

32. Records be returned back to the respondent counsel.

JUDGE

Comparing Assistant