IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT:

HON'BLE JUSTICE SUBRATA TALUKDAR
And
HON'BLE JUSTICE SUBHASIS DASGUPTA

FMA 696 of 2019
With
IA No. CAN 2 of 2018
(CAN 4548 of 2018)

Subhasis Bandyopadhyay
-Vs.-
Central Bank of India & Ors.

For the Appellant	: Mr. Ranajit Chatterjee, Mr. Aniruddha Mitra, Ms. Deblina Banerjee
For the Respondents -Bank.	: Mr. Soumya Majumder, Ms. A. Rao, Ms. P. Gandhi
Heard on	: 07/01/2021
Judgment on	: 27/04/2021

Subrata Talukdar, J:

The appellant, Mr. Subhasis Bandyopadhyay (for short *the appellant*) was working as Head Cashier under the Respondents/Central Bank of India (for short the Bank) at the New Alipore Branch. For alleged acts of defalcation of money through use of fictitious accounts and vouchers totalling to around Rs. 15.80 lacs during his tenure as Head Cashier of the Bank (*supra*), a Departmental

Enquiry(*DE*) was instituted by the Disciplinary Authority (*DA*) of the Bank against the appellant (hereinafter also referred to as the Charged Officer or, simply as the *CO*).

The *DE* eventually reached the conclusion of *Dismissal* of the appellant/*CO* from the service of the Bank.

Challenging the order of *Dismissal*, the appellant approached the Hon'ble Court through a Writ Petition principally, to completely set aside the *DE* culminating in the order of *Dismissal* and affirmed by the Appellate Authority (*AA*) of the Bank.

The Hon'ble Single Bench dismissed the writ petition by, *inter alia*, holding that the primary charge against the appellant/the writ petitioner/*CO* of defalcation of money stood proved from the documentary evidence on record, inclusive of two primary Management Exhibits namely, *MEX-9* and *MEX-10*. The appellant/*CO* did not dispute the authorship of *MEX-9* and *MEX-10* in the *DE* and also failed to rebut the same.

It would be relevant to mention at this juncture that both *MEX-9* and *MEX-10* are documents signed by the appellant admitting to his role in the fraudulent withdrawal of money from the accounts of other customers of the Bank. In the Charge Sheet (for short the *CS*), the details of all the fraudulent transactions performed by the *CO* corresponding to the period 6th March, 2010 to 8th February, 2013 totalling to over Rs. 15.80 lacs have been stated and the same is quoted below:-

> *"While working in the capacity of Head Cashier-II, New Alipore Branch during the period from*

23.03.2009 to 08.02.2013, Shri Subhasis Banerjee made various fraudulent transactions on different dates, (details of which are enumerated below) by using the password and User ID of other staff members (Officers & Clerical staff of the Branch and defrauded the Bank. Thus, he has tarnished the image of the bank in the eyes of public.

Shri Subhasis Banerjee opened one fictitious Savings Account No. 3063828098 on 06.03.2010 with New Alipore Branch with the initial amount of Rs. 1000/- in the name and styled as Mrs. S.M.Banerjee by submitting fake KYC documents. The initial amount of Rs. 1000/- was transferred from his OD against LIC A/C. No. 1824941999. Maker of the entry is Subhasis Banerjee (ID No. 055958) himself and Checker is R.N. Banerjee (ID No. 035562). The signatory of the said account is Shri Banerjee himself. The signature of the operator was verified/authenticated by Shri R.N. Banerjee (ID No. 035562). From the records it revealed that or different dates Shri Subhasis Banerjee had transferred the fund fraudulently from various inoperative accounts to the said fictitious SB A/C. No. 3063828098 by using the Password & User ID of other Officer & Clerical staff member of the Branch. He had withdrawn the amount from this account as well as through his OD against LIC A/C. No. 1824941999 & SB A/C. No. 1824942029 wherein he had transferred the funds from A/C. No. 3063828098. Shri Banerjee himself confirmed his above acts vide his letter dtd. 08/02/2013 and also vide a letter dtd. 08/02/2013 along with witness of the staff members of the branch.

It is evident from the above that fraudulent transaction through the SB A/C. No. 3063828098 of Mrs. S.M. Banerjee have been made by Shri Subhasis Banerjee.

On 08.02.2013 when one such SB Account holder of SB A/C No. 1824900859, Shri Dipendra Narayan Deb came for updating the Pass Book, he found from the Pass Book that Rs. 200000/- had been withdrawn from his account. After pointing out the said discrepancy in the Pass Book, Shri Banerjee prepared the Transfer Vouchers (Debit & Credit) for Rs. 200000/-, Debit A/C. No. 3063828098 of Mrs.

> *S.M. Banerjee & Credit No. 1824900859 of Shri Dipendra Narayan Deb and posted the vouchers in the system and approached the Branch Manager for authorization of the entries in the system. Branch Manager then detected that the said transactions are fraudulent. Immediately on detection of the said fraudulent transactions. Shri Banerjee rremoved the vouchers.*
> *Thus, by the acts as stated above, Shri Banerjee has tarnished the image of the bank which is prejudicial to the interest of the Bank in violation of provision of Memorandum of Settlement, Disciplinary Authority and Procedure dtd. 10.04.2002 for Workmen."*

The Hon'ble Single Bench therefore, held that since the appellant/ the writ petitioner/ *CO* did not retract from the admission attributed to him on a consideration of *MEX-9* and *MEX-10* (supra) read in the light of the facts discussed in the Enquiry Report, no interference is called for in the quantum of punishment which, the Hon'ble Single Bench found to be commensurate to the gravity of charges.

Challenging the judgement and order of the Hon'ble Single Bench dated 10th of June, 2016 in *WP 18608 (W) of 2014* dismissing the writ petition, the present appeal has been filed. The Grounds of Appeal, *inter alia*, read as follows:-

> *"E. For that the Bank's witness (MW2) being the Deputy Manager of the branch/Bank, deposed at the enquiry that the alleged confession (MEX-10) was not signed by the Appellant in his presence and the Ld. Judge committed error in ignoring the said fact;*
> *F. For that on the one hand, request made by the Defene Representative for examination of MEX-10 by a handwriting expert was turned down by the Enquiry Officer, and on the other, neither was inspection of the document allowed, nor the same proved in evidence, but the Ld. Judge placed heavy*

reliance on the said purported admission of the Appellant.

H. For that the Ld. Judge erred in brushing aside the contention of the appellant that denial of inspection of the 24 documents sought for by him by letter dated 23.07.2013 and, in particular, MEX-9 and MEX-10, being alleged letters of confession issued by the Appellant, had caused serious prejudice to the Appellant and vitiated the enquiry;

I. For that apart from the two purported letters of confession, the appellant had inter alia, asked for inspection of the instruments/vouchers by means whereof funds were allegedly withdrawn from the said account of Sm. S.M. Banerjee but inspection of even these vital documents was not granted;

O. For that the Ld. Judge ignored the fact that even after such assurance, the documents were not produced on behalf of the bank, even after assurance given by the Presenting Officer, on the plea that the same were not available in the branch;

V. For that it is settled law that neither the Enquiry Officer nor the Disciplinary Authority or Appellate Authority can shift the burden of proof to the charged employee under any circumstances, as has been sought to be done in the instant case, and yet this dubious course resorted to by the Bank has been approved by the Ld. Judge."

Mr. Chatterjee, Ld. Counsel appearing in support of the appeal, submits that in addition to the lacuna in the *DE* connected to non-admissibility, non-production and non-verification of essential documents, the facts of this case point to the collective guilt of other officers of the Bank then working in its said Branch. It is argued that the handling of customer accounts as well as the circulation of passwords cannot be limited to the appellant alone. The *DE* ought to have, with due diligence, examined the role of the other officers. It is submitted that the other officers working at the said branch of the Bank were only *Censured* while the appellant alone has been meted out the severest punishment of *Dismissal*.

On his argument that the *DE* stood vitiated by non-production and non-verification of essential documents, Mr. Chatterjee relies upon the authority of *1995 (1) SCC 404.* It is submitted that the alleged admission of the appellant *vide MEX-9* and *MEX-10* (supra) was required to be proved in the *DE.* Learned Counsel for the appellant points out that in the absence of absolute proof establishing the appellant to be the author of *MEX-9* and *MEX-10*, the appellant, assuming but not admitting a finding of guilt, at the highest deserves a treatment equal to that of his *Censured* colleagues and not, a harsh distinctive punishment of *Dismissal* from service. In support of his above noted argument, Mr. Chatterjee relies on the authorities of *2009 (2) SCC 570* and *2019 (13) SCC 723*.

It is submitted that the onus of proof in the *DE* cannot be shifted following the law laid down in *2009 (2) SCC 570*. Arguing that the appellant/the *CO* cannot be singled out for the severest of punishment following the principles laid down in *2007 (2) SCC 206*, Mr. Chatterjee relies upon the authority of *2017 (2) SCC 308* at *Paragraph 7* to underscore that the *Hon'ble Court shall* remedy instances of grave breach of natural justice.

Learned Counsel for the appellant accordingly prays for setting aside the entire proceedings in the *DE* culminating in the order of *Dismissal* from service, including the affirmation of such proceedings by the *AA*.

Mr. Majumdar, Learned Counsel appearing for the Respondents/the Bank, submits that the evidence, particularly *MEX-9* and *MEX-10* relied upon in the *DE,* is clinching. It is submitted that the appellant/*CO* did not resile from such admission, although granted the opportunity to do so. No contrary evidence or, rebuttal of *MEX-9* and *MEX-10* was offered by the appellant/*CO* in the *DE*.

The very nature of the official duties entrusted to the appellant/*CO* speaks of the primacy of documentary evidence and the need to rebut it. Therefore, Mr. Mazumdar submits, the allegation of violation of natural justice in the *DE* is a red herring.

It is argued by Learned Counsel for the Bank that the objections raised by the Defence Representative *(DR*) in the *DE* have been dealt with by the *EO* in detail. It is submitted that since the appellant/*CO* did not deny his authorship *qua MEX-9* and *MEX-10*, the issue ought not to be allowed to be reopened in Writ Proceedings.

Mr. Majumdar submits that it is not the case of the appellant/*CO* that he was denied the opportunity to controvert *MEX-9* and *MEX-10* at all, resulting in perversity and extreme prejudice. To the contrary, the *DE* arrived at the finding on application of mind to the evidence on record that the appellant/*CO* had acted in a manner so as to betray the position of trust held by him as Head Cashier of the Bank. In such view of the matter the punishment of *Dismissal* is not unjust.

Having heard the parties and considering the materials placed, this Court must notice that the Hon'ble Apex Court while pronouncing its verdict *In Re: State Bank of India and Others vs. Bidyut Kumar Mitra* *and Others* reported in *2011 (2) SCC 316* had, *inter alia*, held that it is incumbent upon the delinquent Officer to plead prejudice arising out of non-supply of documents in the departmental proceedings at the earliest. The delinquent officer, not having complained of prejudice connected to the documentary evidence relied upon against him in the enquiry, cannot be allowed to do so at the subsequent stage of challenge to the findings of the administrative authority which were upheld right upto the appellate stage, now before the Writ Court.

In the considered view of this Court, the findings of the Hon'ble Apex Court in *2011 (2) SCC 316* (*supra*) apply with greater vigour to the facts of the present case since the appellant/ *CO* has not made out a case of complete denial of knowledge of the existence of *MEX-9* and *MEX-10* as well as a case of having retracted in the *DE* from such admission. To the mind of this Court this not a case of *no-evidence* at all.

This Court therefore does not find that the plausible view taken by the administrative authority based on the evidence on record requires to be substituted by another view. Neither does this Court find the decision making process to be flawed, nor the punishment imposed shocking to its conscience.

For the above reasons the appeal fails.

FMA 696 of 2019 along with **IA No. CAN 2 of 2018 (CAN 4548 of 2018)** stand thus **dismissed.**

There will be no order as to costs.

Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Subhasis Dasgupta, J.) **(Subrata Talukdar, J.)**