

25.01.2021
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ns Ct.04

F.M.A. 1689 of 2018

**Punjab National Bank of India.
Vs.
Gour Gopal Mondal & Ors.**

Mr. Rabindranath Majumder for appellant.

Mr. Debabrata Saha Roy,
Mr. Pingal Bhattacharya for respondents.

This appeal is against judgment dated 2nd August, 2017. The appeal is ready for hearing and taken up.

Mr. Majumder, learned advocate appears on behalf of appellant and draws attention to impugned judgment dated 2nd August, 2017. First, he places the following paragraph extracted therefrom:

“....This is also a case where there is no evidence to establish the charges framed against the petitioner. Thus, it is a case of perverse finding. The enquiry officer could not appreciate the well drawn distinction between mere identification of documents and proof of their contents. Description of what a document contains is no proof of its content which may establish a charge against the petitioner.”

He then wants to place the entire judgment.

On query from Court Mr. Saha Roy, learned advocate appearing on behalf of respondent/writ petitioner submits, impugned judgment should be confirmed for correct finding of perversity, to set aside the disciplinary proceeding. It would appear from pages 61 to 66 that documents marked Management Exhibits (ME) were only identified by Management Witness (MW) but not proved. Then Enquiry Officer (EO) tendered MW to Presenting Officer (PO) for cross examination! It will also appear from those pages that PO had put two questions to his client being Chargesheeted Officer (CSO), he not being a witness.

On query from Court, Mr. Saha Roy submits, point regarding discovery and inspection of documents, was not taken in the writ petition. As such, he submits based on regulation 9, on the first day of the enquiry the documents were produced, the proceeding conducted and concluded. His clients were entitled to an adjournment on not having pleaded guilty. Mr. Majumder submits, this point as was not taken in the writ petition, waiver should be construed. Mr. Majumder also relies on the following in the record of enquiry proceeding, to submit, respondent did not pray for or seek adjournment.

“E.O. asked the CSO whether he would like to make any statement at this stage. CSO replied that he would not like to do so.

As none of the sides had any document to place or any witness to initiate the

enquiry proceedings ended with the following orders:-

Regulation 9 is reproduced below:-

“If the officer employee does not plead guilty, the inquiring authority shall adjourn the case to a later date not exceeding 30 days or within such extended time as may be granted by the inquiring authority.”

The procedure applicable mandates adjournment, on the charged officer pleading not guilty. Page 61 in the paper book is record of enquiry proceedings held on 25th July, 2014. Following from said record is reproduced below:-

“At the outset, the Enquiry Officer (EO) read out the charge sheet, a copy of which was handed over to the CSO. On being asked by the EO whether the CSO understood the contents of the charge sheet and accepted the charges leveled in the said charge sheet, the CSO replied that he understands the contents but denies the charges. The EO asked the CSO whether he needed any Defence Representative (DR) to defend his case at the enquiry; the CSO informed that Sri Susanta Kumar Chakraborty, Manager, (Audit & Inspection Department), Paschim Medinipur Region will act as his DR

for which necessary authorisation letter was submitted.

Then the EO asked the Presenting Officer (PO) to present the case before the enquiry. The PO submitted a list of Management Documents (Exhibits)/ & Management Witness and following documents:"

It will appear from extract of the proceeding that at instance of EO, PO presented the case. Thereupon Defence Representative (DR) presented the case in defence and the enquiry proceeding ended, to be followed by report. The regulation mandates adjournment on proceeding with the enquiry, at instance of CSO not pleading guilty. The adjournment is necessarily to be seen as required for the benefit of CSO, to prepare his case in defence upon not having accepted guilt. We have perused the record of enquiry proceeding but have not been able to find that the enquiry was proceeded with and concluded on a statement of CSO recorded, as having declined to have the proceeding adjourned. It is of no consequence that EO had asked CSO, at the stage of conclusion of the proceeding, whether CSO would like to make any statement. That was not an offer of adjournment, to be seen as compliance of mandate of regulation 9. This adds weight to the finding in impugned judgment that the documents were merely identified and not proved. When the bank had embarked on an enquiry proceeding, to the

end of awarding major penalty, care should have been taken to conduct the proceedings as per letter of the regulations.

For above additional reasons, impugned order is confirmed. The appeal is dismissed.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)