

21.01.2021.  
Item nos. 40.  
Court No. 13  
ap

**W.P.A. No. 10441 of 2020**

Smt. Rashmoni Hela  
Versus  
State Bank of India & Ors.

Mr. Samrat Sen, ld. Sr. Advocate,  
Mr. Chiranjib Sinha,  
Mr. Dyutiman Banerjee.

...For the petitioner.

Mr. S. Pal,  
Mr. S. Pal Choudhuri.

..For the respondents.

The writ petitioner is a Group “C” employee of the State Bank of India and is governed by the Bipartite Settlement dated April 10, 2002.

The petitioner is aggrieved by an order dated 7<sup>th</sup> November, 2020 issued by the disciplinary authority ordering de novo enquiry.

The brief facts of the case are that by a letter dated 7<sup>th</sup> April, 2020, the petitioner was suspended from service and a charge-sheet was issued to her. An enquiry officer was appointed and the said enquiry officer after receiving some evidence both oral and documentary submitted an enquiry report.

Counsel for the petitioner submits that the enquiry report was not received by his client and she was in the dark as to the fate of the disciplinary proceeding against her until she received the impugned order.

Learned Senior Counsel for the petitioner, Mr. Samrat Sen, would argue before this Court that the terms of the Bipartite Settlement did not provide for any de novo enquiry. He would submit that the disciplinary authority acted in excess of jurisdiction by seeking to go outside the findings of the enquiry officer and calling for further evidence to be recorded. He further submits that there is also violation of the principles of natural justice, inasmuch as, he was not heard before the last order was passed.

In support of the twofold grounds taken, Counsel for the petitioner relies upon three decisions. Firstly that of a Single Bench of this Court in the case of **Sanjib K. Sen – Vs. – Director (Admn), Government of India, Department of Supply Directorate General of Supplies and Disposals (Vigilance Dept.)** reported in **1974 (2) Service Law Reporter 478**. He relies upon paragraph 5 in which the Court held that a second enquiry at the instance of the delinquent employee should not be permitted. The next decision relied upon by Mr. Sen in the case of **Calcutta Municipal Corporation & Ors. – Vs. – S. Wajid Ali & Ors.** reported in **1992 (2) CLJ 232**. He relies upon paragraphs 9 and 10 of the said decision where it was held that the relevant Rules of the Calcutta Municipal Corporation did not permit holding

of a fresh or further or de novo enquiry once a charged employee has been exonerated by the enquiry officer.

Mr. Sen, in all fairness, has also placed the decision of the Hon'ble Supreme Court in the case of **K.R. Deb – Vs. – The Collector of Central Excise, Shillong** reported in **AIR 1971 SC 1447**.

In the said case, however, the CCS(CCA) Rules of 1957 particularly paragraph 15 was examined and it was found that the said Rules do not bar a second enquiry or a further enquiry if the disciplinary authority found that there were some defects in the enquiry. Paragraph 13 of the said judgment is relevant in this context.

The decision of the Division Bench in the case of Calcutta Municipal Corporation (supra) was rendered in the context of the Rules of the CMC and were not relevant in the facts of the case.

The decision in the case of Sanjib Sen (supra) was a case where the prayer for a second enquiry was made by the charged employee. The decision is not relevant here.

This Court does indeed find that Rule 12 of the Bipartite Settlement appears to be silent on the question of the power of the disciplinary authority to remand the matter back for further enquiry or even a de novo enquiry if the disciplinary authority finds that

there were defects and the procedure adopted by the enquiry officer.

This Court has carefully heard Mr. Sen as well as Mr. Pal appearing on behalf of the Bank.

The Law with regard to departmental enquiries has now been more or less settled by the Hon'ble Supreme Court of India. From strict compliance of the principles of natural justice, the Law has traveled and evolved into the situation where the Hon'ble Supreme Court has already held that a limited compliance of the principles of natural justice is sufficient in the given facts and circumstances of a case. The principal factors that should weigh before a Court are as to whether any act or omission in course of enquiry has prejudiced the charged employee.

This Court has found that the actions of the disciplinary authority could not by any stretch of imagination be deemed to have prejudiced the writ petitioner.

The argument advanced by Mr. Sen amounts to stating that once an enquiry officer comes to a finding as regards the absence of proof against an employee, the same becomes conclusive and sacrosanct and cannot be reopened and further certain and special rights accrued to her akin to the principles under the Evidence Act and the Code of Civil Procedure.

It is now well settled that the strict Rules of the Evidence Act or much less the Code of Civil Procedure are not applicable to a departmental enquiry. What is applied are the concerned Rules and the principles of natural justice.

One must also consider the facts in hand in the light of the decision of the Hon'ble Supreme Court of India in the case of ***State Bank of Patiala – Vs. – S.K. Sharma*** reported in ***(1996) 3 SCC 364***. In the said decision, the Hon'ble Supreme Court has laid down in no uncertain terms that non-compliance with a Rule or any principles of natural justice would ipso facto not render a quashi judicial proceeding, particularly the departmental enquiry void or illegal. The employee concerned is required to demonstrate what prejudice if at all he has suffered by reason of the employer's action.

In the instant case, this Court sees no prejudice whatsoever to the writ petitioner except the delay in conduct of the enquiry. The petitioner could definitely, however, argue that she is prejudiced by reason of long period of suspension.

The order of the disciplinary authority is modified only to a limited extent that the enquiry shall be reopened before the enquiry officer permitting the Bank as well as the writ petitioner to disclose

additional documents and to examine further witnesses of their respective sides.

The enquiry shall be completed after sufficient opportunity of examination and cross-examination of the witnesses by one side of the other.

The enquiry officer shall receive written briefs from the presenting officer as well as the writ petitioner and submit enquiry report afresh to the disciplinary authority.

The entire exercise shall be completed by the enquiry officer within a period of two months from the date of communication of a copy of this order. The disciplinary authority shall thereafter take steps as prescribed under the Bipartite Settlement.

The evidence already recorded before the enquiry officer shall remain on record and be considered by the enquiry officer and Disciplinary Authority along with the new evidence to be recorded.

Since the exercise as ordered by this Court is being conducted without any fault on the part of the writ petitioner, she shall be entitled to full salary and remuneration from the date on which the enquiry report was submitted and until final orders are passed by the disciplinary authority afresh. All arrears in this regard must be paid to the writ petitioner within seven days from the date of communication of this order.

It is submitted by the writ petitioner that the report of the enquiry officer already submitted before the disciplinary authority has not been received.

Counsel for the Bank shall make available to the Counsel for the petitioner a copy of the enquiry report already submitted and interfered with by the disciplinary authority within a period of seven days from date.

It is submitted by the Counsel for the Bank that pursuant to the impugned order dated 7<sup>th</sup> November, 2020, a further enquiry was held.

Any steps taken post the order dated 7<sup>th</sup> November, 2020 shall stand set aside and shall not form part of the records of the enquiry.

With the aforesaid observations, the instant writ application shall stand disposed of.

There will be no order as to costs.

All parties are directed to act on a server copy of this order on usual undertakings.

***(Rajasekhar Mantha, J.)***