

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 1499 OF 2019

Sri Mridul Kumar Mitra

vs.

State Bank of India & Ors.

For the Petitioner : Mr. Samrat Sen, Sr. Advocate
Mr. Kallol Basu,
Mr. Bratin Kumar De
.....advocates

For the Respondents : Mr. S.K.Sinha,
Mr. S.Pal Choudhuri,
Ms. Diya Nandiadvocates

Heard on : 01.09.2022

Judgment on : 25.11.2022

Hiranmay Bhattacharyya, J.:-

1. The writ petitioner has prayed for setting aside the Appellate Order dated 26.10.2018, the Final Order of the Disciplinary Authority dated 27.04.2011, the Enquiry Report and the charge-sheet.
2. The writ petitioner was served with a charge-sheet dated March 8, 2011 while he was working as a Special Assistant at Uluberia

Branch of the State Bank of India (for short “SBI”). The charge against the petitioner was that he had acted with gross negligence and resorted to serious irregularities by issuing false counterfoils (agent’s copy) of Public Provident Fund (“PPF” in short) deposit transactions thereby helping the agents to claim commission fraudulently which tantamount to “Gross Misconduct” in terms of Section 5 (j) of Memorandum of Settlement of 10th April, 2002. An enquiry was ordered to ascertain the facts of the case and the Enquiry Officer by a Report dated 19.04.2011 held that one charge is absolutely proved; two charges have been conclusively proved; two charges have been proved and one charge has been partly proved. The Disciplinary Authority inflicted the punishment of “Dismissal Without Notice” against the petitioner. Petitioner preferred an appeal pursuant to the liberty granted by a coordinate Bench of this Court and the Appellate Authority, by an order dated October 26, 2018, rejected the appeal upon holding that the penalty imposed upon the writ petitioner is commensurate with the gravity of charges substantiated against him.

3. Being aggrieved against the order of the Appellate Authority refusing to modify the order of dismissal passed by the Disciplinary Authority, the writ petitioner has approached this Court.
4. Mr. Samrat Sen, learned Senior Counsel assisted by Mr. Bose and Mr. Dey, learned advocates appeared for the petitioner and

contended that principles of natural justice has been grossly violated in the instant case. By elaborating the aforesaid ground of challenge it was urged by the learned Senior Counsel that the petitioner was seriously prejudiced due to non-supply of the Internal Investigation Report and the duty list register for the relevant period. The petitioner was also denied the right to cross-examine the PPF customers who is alleged to have handed over the documents/complaints to the Branch Manager which formed the basis of the allegations against the petitioner. The learned Senior Counsel further contended that the Disciplinary Authority passed the final order without affording the petitioner any opportunity to give reply to the show cause notice issued by the Disciplinary Authority. It was submitted that the penalty should not have been imposed upon the petitioner as the Bank did not suffer any loss for the alleged transactions. Lastly it was contended that the punishment inflicted upon the petitioner is shockingly disproportionate as one Anjan Kumar Nag, who was also charged for identical allegations was awarded punishment of stoppage of two increments by the appellate authority. It was submitted that the High Court in exercise of its jurisdiction of Judicial Review may review the punishment in the line of Anjan Kumar Nag.

5. Mr. Sinha learned Counsel assisted by Mr. Pal Chaudhury, learned advocate appeared for the respondent-Bank and seriously disputed

the contentions raised by the learned Senior Counsel for the petitioner. He contended that the Enquiry Officer, after considering the evidences adduced by the respective parties, held that the charges have been proved. He submitted that the Disciplinary Authority passed the penalty order and the Appellate Authority did not interfere with the order of the Disciplinary Authority by passing a reasoned order. He contended that a bank officer is required to exercise higher standards of honesty and integrity and the plea of absence of any loss caused to the Bank is of no substance. He concluded by submitting that since the charges leveled against the petitioner are very serious in nature and the same has been established in a fact finding enquiry, this Court in exercise of its powers of Judicial Review may not interfere with the order of the Appellate Authority.

6. Heard the learned advocates for the parties and perused the materials placed.
7. It has been strenuously urged by the learned counsel for the petitioner that the petitioner was seriously prejudiced for non-supply of Internal Investigation Report. It has been rightly observed by the Appellate Authority that Internal Investigation Report only which enables the employer to decide whether to initiate a disciplinary proceeding against an employee and it is mandatory to supply a copy of the same when the same is relied

upon in the disciplinary proceeding to prove the charges against the delinquent employee. The Appellate Authority, being the final fact finding authority, after examination of the records observed that the prosecution has not relied upon the Internal Investigation Report to prove the charges against the charge sheeted employee. Such factual finding of the appellate authority, however, could not be controverted by the petitioner before this Court. Therefore, this Court is of the considered view that the principles of natural justice have not been violated for non-supply of the said report as the petitioner cannot be said to have been prejudiced in any manner.

8. The appellate authority also returned a factual finding that the duty list register for the relevant period was supplied to the petitioner and the said register was exhibited as DEX-4 and the same was also relied upon by the charge sheeted employee/petitioner and his Defence Counsel in course of the enquiry. Therefore, the allegation of non-supply of duty list register is without any basis.
9. It was vehemently contended by the learned Counsel for the petitioner that the entire disciplinary proceeding got vitiated due to denial of right to cross-examine the PPF customers who handed over some documents to the Branch Manager.

10. Record reveals that the Branch Manager, who deposed as PW-1, had written letters to various PPF A/c holders to meet with him with their PPF counterfoils and enquired from them as to whether they had engaged PPF agents for depositing the amount. The PPF A/c holders replied by writing letters that they had not engaged any agent to deposit in their PPF A/c.
11. The Hon'ble Supreme Court of India in the case of **Director General Indian Council vs. Anil Kumar Ghosh** reported at **(1998)7 SCC 79** held that if the delinquent got an opportunity to peruse the documents, the principles of natural justice cannot be said to have been violated.
12. In the case on hand, the letters and documents submitted by the PPF customers were made available to the petitioner and the defence counsel and they were given opportunity to examine the same. Such documents were tendered in evidence by the Branch Manager who deposed as PW-1 and the documents were marked as Exhibits. Thus the principles of natural justice cannot be said to have been violated in the instant case.
13. It was urged on behalf of the petitioner that since the petitioner was not given any opportunity to rebut the materials gathered behind his back, it amounts to gross violation of the principles of natural justice. For the purpose of answering the aforesaid legal issue raised by the petitioner, it will be profitable to refer to the

decision of the Hon'ble Supreme Court in the case of **K.L. Tripathi vs. State of Bank of India reported at (1984) 1 SCC 43**, cited by the petitioner, wherein it was held that when on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order in the absence of any formal opportunity to cross examine. Three Hon'ble Judges of the Supreme Court in paragraph 32 and 33 held thus -

"32If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no dispute regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly."

"33. The party who does not want to controvert the veracity of the evidence from record or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases."

14. Neither the petitioner nor any of the defence witnesses have disputed the factual assertion made by the PPF A/c holders that they have not engaged any agent for depositing the amount in their PPF A/cs. Therefore, by applying the ratio laid down in **K.L. Tripathy** (supra), this Court holds that denial of the opportunity to cross examine the PPF customers *per se* did not vitiate the proceedings before the Enquiry Officer as no prejudice was caused to the petitioner.
15. Now it is to be considered as to whether penalty could have been imposed upon the petitioner when no loss was caused to the Bank.
16. The charge against the petitioner was that he has acted in gross negligence and resorted to serious irregularities by issuing false counterfoils (agent's copy) of PPF deposit transactions thereby helping the agents to claim commission fraudulently. The petitioner was not charged for defrauding the Bank.
17. The Hon'ble Supreme Court of India in **K.L. Tripathi** (supra) cited by the petitioner, in paragraph 45 of the reports held that whether Bank was defrauded or not is not relevant when he was charged mainly for the conduct which suggested that he acted improperly and in violation of the principles on which sound banking business should be conducted.
18. The Hon'ble Supreme Court of India in the case of **State Bank of India and Another vs. Bela Bagchi reported at (2005) 7 SCC**

435, cited by the respondent, held that a Bank officer is required to exercise higher standards of honesty and integrity and if the charges against the employee are serious, the plea about absence of loss is without substance. The Hon'ble Supreme Court held thus-

“15. A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik [(1996) 9 SCC 69 : 1996 SCC (L&S) 1194] , it is no defence available to say that there was no loss or profit which resulted in the case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance.”

19. A Division Bench of this Court in the case of **Golam Gilani vs. State Bank of India** reported at **2012(2) CHN (Cal) 541**, cited by the respondent, relied upon the decision in the case of **Bela Bagchi**

(supra) and rejected the contention of the employee that no punishment could be imposed as the Bank did not suffer any loss.

20. In the case on hand the charges substantiated in the fact finding enquiry are serious in nature and it was found that the petitioner who was an employee of the Bank acted improperly and failed to discharge his duties with honesty and integrity that is required from such an employee. Therefore, by applying the aforesaid well-settled legal principles that every officer/employee of the Bank is required to take all steps to protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence, this Court is unable to accept the contention of the petitioner that no penalty could be imposed as the Bank did not suffer any loss due to the alleged misconduct of the petitioner.
21. The learned Counsel for the petitioner would contend that the Disciplinary Authority passed the penalty order without issuing any show cause notice and the order of such authority is a non-speaking one.
22. The appellate authority after considering the materials on record arrived at a finding of fact that the disciplinary authority, before passing the final order of penalty, had given an opportunity to the petitioner to submit his comments on the proposed penalty. Such factual finding also could not be controverted by the petitioner before this Court.

23. After going through the order of the Disciplinary Authority this Court, however, finds that the same is not supported by adequate reasons. On an appeal being preferred against such order, the Appellate Authority elaborately dealt with contentions of the petitioners and upon considering the materials on record held that the petitioner is unable to submit anything that might have extenuated all the charges substantiated against him. Such finding of the Appellate Authority is backed by cogent reasons and the same also do not suffer from any perversity. When an appeal is filed against the order of the Disciplinary authority, the appellate authority has co-extensive power to arrive at a final decision after reappreciating the evidence. Therefore, the unreasoned order of the disciplinary authority has been subsequently cured by the Appellate authority by supplying cogent reasons.
24. The Hon'ble Supreme Court of India in the case of **B.C.Chaturvedi vs. Union of India** reported at **(1995) 6 SCC 749** held that the Court in its power of Judicial Review does not act as an appellate authority to reappreciate the evidence for arriving at its own findings. The Hon'ble Supreme Court in paragraph 12 of the said reports held thus-

“Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of

misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re- appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

25. The petitioner failed to satisfy this Court that the authority conducted the proceedings against the petitioner in violation of the principles of natural justice or the statutory rules. The conclusions and the findings arrived at by the authorities cannot be said to be based on no evidence. In view thereof, this Court is of the considered view that there is no infirmity in the decision making process inasmuch as the findings of the appellate authority refusing to interfere with the order of the disciplinary authority that the charges against the petitioner has been substantiated is concerned.

26. With regard to the observation of the Appellate authority, in the order impugned that the penalty imposed on the petitioner is commensurate with the charges substantiated against him, it is the contention of the petitioner that Anjan Kr. Nag who was a special assistant of the SBI of the same Branch was also charged with the same offence but was awarded lesser punishment than the petitioner. The learned advocate for the petitioner would contend that the penalty inflicted upon the petitioner is discriminatory.
27. The petitioner has annexed the copy of the penalty order and the appellate order passed in the case of one Anjan Kumar Nag, who according to the petitioner, stands on the same footing and therefore the petitioner would contend that he is entitled to equal treatment with that of Anjan Kumar Nag.
28. The learned Senior Counsel for the petitioner placed reliance upon several decisions of the Hon'ble Supreme Court in the case of **Director General of Police and Others vs. G. Dasayan** reported at **(1998)2 SCC 407** and **Rejendra Yadav vs. State of M.P and Others** reported at **(2013) 3 SCC 73** in support of his contention that when a person charged with identical allegations was inflicted with lesser punishment, the petitioner cannot be discriminated against by awarding a higher punishment for similar allegations.

29. The respondent Bank, in its Affidavit-in-Opposition, specifically denied that Anjan Kumar Nag and the petitioner stand on the same footing.
30. The Hon'ble Supreme Court in Rajendra Yadav (supra) held that the doctrine of equality applies even among persons who are held guilty. The Hon'ble Supreme Court in paragraph 9 of the said reports held thus –

“9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed.”

31. The Supreme Court in the said report also took note of the decision of Supreme Court in G. Dasayan (supra) and another decision in the case of **Anand Regl. Coop. Oil Seedsgrowers' Union Ltd. vbs. Shaileshkumar Harshadbhai Shah** reported at **(1998) 2 SCC 407** and was pleased to set aside and quash harsher punishment inflicted on the appellant of that case on the ground that a comparatively lesser punishment was inflicted on a co-delinquent.
32. Though there is no quarrel to the aforesaid legal proposition that the doctrine of equality of treatment is applicable also in the case of a person held guilty of identical allegations, yet before arriving at a final decision that the punishment of the petitioner is

discriminatory, it is to be first decided as to whether the petitioner and Anjan Kumar Nag stand on equal footing.

33. At this stage it would be pertinent to consider whether this Court should substitute its own conclusions on penalty and impose some other penalty keeping parity with the punishment awarded to Anjan Kumar Nag on the facts of this case.
34. The Hon'ble Supreme Court of India in the case of **B.C. Chaturvedi vs. Union of India** reported at **(1995) 6 SCC 749** held the High Court, while exercising the power of judicial review, cannot normally substitute its own conclusions on penalty and impose some other penalty. It was further held that if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.
35. It does not appear from the order of the appellate authority that the petitioner placed the materials in support of his contention that he has a right to be equally treated with Anjan Kumar Nag in the matter of imposition of penalty. Submission on point of law in such regard does not appear to have been advanced before the

appellate authority. In the light of the observations in **B.C. Chaturvedi** (supra) this Court, therefore, feels that a direction should be passed upon the appellate authority to reconsider only the penalty imposed after considering the materials that may be submitted by the petitioner in terms of this order.

36. This Court shall now deal with the other decisions cited by learned Advocate for the petitioners.

37. In **Union of India & Ors. vs. Jalaluddin Ansari & Others** reported at **2007 SCC Online Cal 921**, the question that arose for determination was whether the employer was justified in terminating the service of the employee by relying upon the report of the Judicial Enquiry Commission by not affording an opportunity to the employee to cross-examine the witnesses before the Commission. In the said reported decision, the order of termination was passed simply on the basis of the report given by the Commission and the relevant rules governing the service of such employee were also found to have been violated. The aforesaid decision has no manner of application to the case on hand and it has been held by this Court by placing reliance upon the decision of the Hon'ble Supreme Court in K.L. Tripathi (supra) that when the statement of the PF Account Holders are not undisputed, denial of the right to cross-examine of such account holders does not vitiate the enquiry.

38. The decision of the Hon'ble Supreme Court in the case of **R.K. Vashist vs. Union of India & Ors. reported at (1993) Supp (1) SCC 431** has no manner of application to the case on hand as in the said reported decision, copy of the enquiry report was not supplied prior to imposition of penalty of dismissal.
39. In **United Bank of India vs. Biswanath Bhattacharya reported in 2022 SCC Online SC 108** it was held that a confessional statement or a statement admitting the guilt is admissible only against the persons who have authored the confession. In the case on hand, such issue does not arise for consideration and therefore, the said decision is of no assistance to the petitioner in this case.
40. Learned Advocate for the petitioner relied upon the following decisions to demonstrate that the Enquiry Officer ought not to have refused to supply the copy of the Internal Investigation report stating the same to be a privileged document.

I – Henry Greer Robinson vs. State of South Australia from the Supreme Court of South Australia; reported at XXXIV The Law Weekly, 1931, Page 575

II – R.M.D. Chamarbaghwalla vs. Y.R. Parpia reported at AIR 1950 Bom 230;

III – Sri. Raj Kamal Johri vs. State of West Bengal & Ors. reported at AIR 2014 Cal 209;

IV – State of Punjab vs. Sodhi Sukhdev Singh reported at AIR 1961 SC 493;

41. The aforesaid decisions cited by the petitioner is to highlight the circumstances as to when and in what manner privilege can be claimed for non-production of evidence.
42. Since, this Court has already held that the Internal Investigation reports were not relied upon by the Enquiry Officer and, therefore, no prejudice was caused to the petitioner, the aforesaid decisions are of no assistance to the petitioner in the case on hand.
43. The decision in the case of **Akkineni Raja Gopala Rao vs. The Election Commissioner, (Prl. District Munsif) Vijayawada and 6 others reported at 1955 SCC Online AP 38**, deals with the election dispute and, therefore, the same do not have any manner of application to the case on hand.
44. In **Central Bank of India limited vs. Prakash Jain reported at AIR 1969 SC 983** the challenge was with regard to the refusal to accord approval to an order of dismissal under Section 33(2) (b) of the Industrial Disputes Act. In the said reported decision it was held that the Tribunal was justified in withholding its approval of the order of dismissal as the findings recorded by the Enquiry Officer were found to be perverse. The said decision is distinguishable on facts.

45. In the case of **State of West Bengal vs. Ashutosh Roy in WBST 590 of 2010** the extent of powers of the West Bengal Administrative Tribunal of Judicial Review was in issue. The said decisions do not have any manner of application to the facts of this case.
46. There is no quarrel to the proposition of law laid down by the Hon'ble Supreme Court of India in the case of **Anil Kumar vs. The Presiding Officers and Others reported at (1985) 3 SCC 378** that the report of the Enquiry Officer must be reasoned one. In the case on hand, this Court has already held that the Enquiry Report as well as the order passed by the appellate authority with regard to charges substantiated against the petitioner is a reasoned one and therefore, the said decision is of no assistance to the petitioner in the case on hand.
47. In the case of **Rinku Kundu vs. State of West Bengal & Ors reported at 2005 3CHN 136** the Coordinate Bench of this Court while dealing with the provisions of the West Bengal Kerosene Control Order, 1968, was pleased to set aside the order of cancellation of licence as a summary procedure was followed therein. The said decision is distinguishable on facts and therefore, has no manner of application to the case on hand.
48. For the reasons as aforesaid the portion of the order of the appellate authority refusing to interfere with the finding of the

disciplinary authority that the charges against the petitioner has been substantiated is not interfered with by this Court. Liberty is granted to the petitioner to submit a representation along with documents in support thereof before the appellate authority within a period of two weeks from the date of receipt of a copy of this order for reconsideration of the penalty imposed on the ground of parity. If such representation is submitted within the time limit specified hereinbefore, the appellate authority shall reconsider only the penalty imposed in the light of the observations mentioned hereinbefore by passing a reasoned order after giving an opportunity of hearing to the petitioner and to communicate such order. The entire exercise shall be completed as expeditiously as possible but positively within a period of four weeks from the date of receipt of such representation.

49. With the above observations and directions, the writ petition stands disposed of.
50. There shall be however, no order as to costs.
51. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita)