

Court No. 22
08.7.2022
(Item No. 2)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 4576 of 2018

Sujit Kumar Sarkar
VS
Bangiya Grami Vikash Bank & Ors.

Mr. Debabrata Saha Roy
Mr. Indranath Mitra
Mr. Subhankar Das
..... for the petitioner
Mr. Baidurya Ghosal
Ms. Avipsha Dutta Roy
..... for the respondents

This writ petition was filed assailing a direction dated July 31, 2015 passed by the **Chairman & Disciplinary Authority of Bangiya Gramin Vikash Bank** (for short Bangiya Gramin Bank) for holding De Novo Enquiry arising out of the charge sheet dated April 23, 2012 against the writ petitioner.

The writ petitioner at the relevant point of time was working as a Branch Manager of Bangiya Gramin Vikash Bank, Hatiara Branch and was designated as a **Scale-II Officer**. An enquiry proceeding was initiated against the petitioner alleging involvement in respect of a financial defalcation which was actually caused by one **Tapas Mondal** who was designated as a **“Part Time Sweeper”**. The enquiry proceeding was held in accordance with law and the petitioner did not allege any procedural infirmity in so far as the said enquiry proceeding was concerned. On February 18, 2015 the enquiry report was filed and the

observation made therein against the petitioner is set out herein below:

“The undersigned is of opinion is that due to aforesaid unauthorized, negligent, reluctant functioning and severe supervisory lapses at the part of CSO as well as his over reliance and unjustified faith on Sri Mondal, Rs.15,33,750/- (Rupees Fifteen lac thirty three thousand seven hundred fifty) had been siphoned out by Sri Mondal.”

Subsequently for initiation of a necessary disciplinary proceeding having found the petitioner guilty in the enquiry proceeding, a reference was made under the said enquiry report dated February 18, 2015, **Annexure P-19** to the writ petition, before the Disciplinary Authority. Upon received the said reference arising out of the enquiry proceeding the Chairman & Disciplinary Authority by its impugned direction dated July 31, 2015, **(Annexure P-21)** to the writ petition directed to hold a De Novo Enquiry with the following observation:

“On perusal of the enquiry report dated 18.02.2015 submitted by the Enquiry Officer and your submission dated 10.04.2015 in this regard, I was, on application of mind came to the conclusion that the proceeding conducted by the Enquiry Officer in this case visa-a-vis his report in this regard was found deficient. An opportunity has been given to you to

bring the domestic enquiry to its logical conclusion by way of holding de-novo enquiry. Enquiry Officer & Regional Manager, Murshidabad Region has been directed to hold the de-novo enquiry vide letter dated 01.07.2015.”

The said impugned direction dated July 31, 2015 is under challenge.

Mr. Indranath Mitra, learned counsel appearing for the petitioner referring to **Bangiya Gramin Vikash Bank (Officers and Employees) Service Regulation, 2010, Annexure P-1** to the writ petition submitted that, **Regulation 2(g)** defines “Competent Authority”, means the Chairman, in respect of Officer. He submitted that, the petitioner being a Scale-II Officer was covered by this Regulation of 2010. Subsequently with effect from November 20, 2013 as was notified under the relevant Gazette notification, **Annexure P-15** to the writ petition, he submitted that, the General Manager was designated as “Competent Authority” for officer of Scale-II, of which cadre the petitioner belonged to. Referring to the said Gazette notification he submitted that, the said notification was named as **Bangiya Gramin Vikash Bank Service (Amendment) Regulations, 2013** and the same had come into force on the date of its publication in the official Gazette, which was on November 20, 2013. In view of operation of the said 2013 amended Regulation, he

submitted that, the reference of the Enquiry Officer referring the issue before the Disciplinary Authority dated February 18, 2015 was bad in law and consequently the impugned decision dated July 31, 2015, **Annexure P-21** to the writ petition, issued by the Chairman and the Disciplinary Authority was wholly without jurisdiction and bad in law. He further submitted that, from a perusal of the enquiry report it would appear the charges were not proved against the petitioner.

He then submitted that, in view of the above, this impugned decision of the Disciplinary Authority dated July 31, 2013 should be set aside, as on the relevant date the Disciplinary Authority being the Chairman, was lacking with inherent jurisdiction to take such decision.

It was submitted that, the Chairman & Disciplinary authority when directed for holding de novo enquiry proceeding, it seemed that he was not satisfied with the result of the enquiry proceeding and he had a different view altogether. In such case the Chairman & disciplinary Authority was obliged to give his reasons for taking a different view and the delinquent petitioner should have been granted an opportunity to deal with such different view of the Chairman & disciplinary Authority. By not doing so he had also acted in an illegal and arbitrary manner. The Chairman & Disciplinary Authority had no

power to direct to hold de novo enquiry proceeding simplicitor without assigning any reason.

Mr. Mitra further submitted that De Novo Enquiry means the entire earlier proceeding including charge sheet issued earlier stood quashed. It was not permissible to proceed against the delinquent on the basis of the charge sheet issued earlier. In support, he relied upon a judgment of the Hon'ble Supreme Court in the matter of **Chairman-Cum-Managing Director, Coal India Limited And Others Vs. Ananta Saha And Others reported at (2011) 5 Supreme Court Cases 142.**

Mr. Baidurya Ghosal, learned counsel appearing for the respondents Bank submitted that, the charge sheet was issued on April 23, 2012 framing the charges against the petitioner and the same was a continuous process. Charges continued against the petitioner. He submitted that, when the charge sheet was issued, the petitioner was governed at the relevant point of time under the 2010 Regulation and not under the Amended 2013 Regulation. Hence, he submitted that, the Chairman was the appropriate authority with proper jurisdiction under the said 2010 Regulation and the impugned decision dated July 31, 2015 taken by the Chairman & Disciplinary Authority was just, proper and lawful and there was no flaw in it.

Mr. Ghosal, learned counsel further submitted that, they were guided by the instruction of the Chief Vigilance Officer issued from time to time. The relevant instruction of the Chief Vigilance Officer was of June 19, 2015, where under, the impugned decision was taken by the Chairman & Disciplinary Authority dated July 31, 2015 for De Novo Enquiry.

After considering the submissions made on behalf of the parties and on perusal of materials on record, it is clear to the mind of this Court that, since the reference to the Disciplinary Authority was made on February 18, 2015 and the impugned direction was made on July 31, 2015 which were subsequent to the said 2013 Regulation, the relevant Regulation applicable on the issue was the amended Regulation of 2013 which defined the Competent Authority being the General Manager for the post of Scale-I and Scale-II Officer of the Bangiya Gramin Vikash Bank. The petitioner admittedly belonged to the cadre of Scale-II Officer and as such it was the General Manager who would be the appropriate Disciplinary Authority and not the Chairman. In so far as the instruction of the Chief Vigilance Officer is concerned, as submitted on behalf of the respondents, the same could at best be taken as an administrative instruction which should not and cannot prevail upon the statutory Regulation.

In so far as the submission of the petitioner that to hold a De Novo Enquiry meaning the entire earlier proceeding including the charge sheet issued earlier should not be applicable, in the facts and situation of this case.

Thus the ratio of the said judgment in the matter of **Ananta Saha (Supra)** would not apply.

As informed by Mr. Mitra, learned counsel, the petitioner had already been superannuated on February 28, 2018. He had received the pensionary benefits and his own contribution on account of Provident Fund but in view of the pendency of the said disciplinary proceeding he had not received the other allied terminal benefits.

Be that as it may, since the Chairman did not have the jurisdiction and authority to hold the relevant Disciplinary Proceeding and to issue the said impugned decision dated July 31, 2015 for holding De Novo Enquiry, the said decision of the Chairman dated July 31, 2015, **Annexure P-21** to the writ petition stands set aside and quashed. Consequently whatever steps had been taken pursuant to the said decision to hold De Novo Enquiry also stand set aside and quashed.

The Enquiry Officer/Authority will be free to proceed by making reference of the issue before the appropriate jurisdictional Disciplinary Authority in accordance with law without any fetter.

It is, however, made clear that this Court has not gone into the merits of the charges framed against the petitioner or any observations made thereupon in any manner whatsoever.

In the event, the matter is referred before the appropriate jurisdictional Disciplinary Authority, the same shall come to its logical conclusion upon following the strict compliance of the legal procedure within a period of six months from the date of reference.

On the above terms the writ petition being **WPA 4576 of 2018** stands allowed. All connected applications are also disposed of accordingly.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)