IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Subrata Talukdar

and

The Hon'ble Justice Krishna Rao

FMA 704 of 2021

with

IA No. CAN 1 of 2021

With

CAN 2 of 2021

Bangiya Gramin Vikash Bank & Ors.

Versus

Mangal Prasad Adhvaryu & Ors.

For the Appellants : Mr. Joy Saha
Mr. Tanish Ganeriwala
Ms. Aparajita Rao
.....Advocates

For the Respondent No. 1 : Mr. Arunava Ghosh
Mr. Arindam Ghosh
.....Advocates

Heard on : 06.05.2022

Judgment on : 15.07.2022

Krishna Rao, J.: This appeal is directed against the order passed by the Hon'ble Single Bench in WPA 9393 of 2020 dt. 7th January, 2021.

The Chairman of the appellant bank being the Disciplinary Authority of the respondent no.1 initiated a disciplinary proceeding against the respondent no.1 vide Charge sheet dt. 03.01.2005 with the following charges:-

(i) *That in connivance with the introducer and in clear abuse of your official position, you with ulterior motive allowed to open SB A/C No. 6979 on 10.09.1999 in the name of Swapan Mondal, & SB A/C No. 7062 on 09.02.2000 in the name of Suman Das respectively although both the persons impersonated as Swapan Mondal and Suman Das respectively mentioning incorrect residential address with the intension to make them eligible for grant of bank loan against pledge of fake Postal Certificates and illegally facilitated both of them to utilise the SB A/Cs. For withdrawal of the Bank Loan against fake Postal Certificate subsequently credited to the said SB A/Cs.*

(ii) *(a)That you in connivance with the Rural Development Office irregularly sanctioned and disbursed to the tune of Rs. 3, 69,000.00 (Rupees three lac sixty-nine thousand) on 17.09.1999 to a person who impersonated himself as Swapan Mandal mentioning incorrect residential address as IIill View, Asansol, Burdwan, against fake pledge of fake Postal Certificates and duplicate pledge fee receipts by willfully splitting the amount through 9 (nine) time nos. of loan accounts bearing LANK.A/C. Nos. 84 to 92 with the intension to keep the limit of each loan account under your discretionary power and to suppress the violation of discretionary power norms and defrauded the aforesaid sum from the Bank.*

In similar way, you irregularly sanctioned and disbursed a sum of Rs. 1,44,000.00 (Rupees one lac forty four thousand) on 21.01.2002 in favour of the said person by creating 2 (two) loan accounts bearing no.LANK- 207 & 208 and defrauded the aforesaid amount from the Bank.

(c) *In similar way you again irregularly sanctioned and defraued from Bank a sum of Rs. 1,66,500.00 (Rupees one lac sixty-six thousand five hundred) on 27.05.2002 in favour of the said person by creating 4 (four) loan accounts bearing no. LANK-219 to 222.*

(iii) *In similar way you irregularly sanctioned and disbursed in connivance with the Rural Development Officer a sum of Rs.*

5,94,000.00 (Rupees five lac ninety-four thousand) on 21.02.2000 to anoother person who impersonated himself as Suman Das mentioning incorrect residential address as IIill View, Asansol, Burdwan, against fake pledge of fake Postal Certificates and duplicate pledge fee receipts by willfully spitting the amount though 14 (fourteen) nos. of loan accounts vide no. LANK-112 to 125 with the intention to keep the limit of each loan account under your discretionary power and to suppress violation of your discretionary power norms and thereby defrauding a sum of Rs. 5,94,000.00 from the Bank.

(iv) *That knowing fully well that the Postal Certificates offered as security against the aforesaid loan accounts were fake you willfully did not record in the Despatch Register on 10.09.1999, 17.02.2000, 16.01.2002 & 24.05.2002 as to how and by whom those postal certificates were sent to the Issuing Post Office for verification and pledge in Bank's favour and thus you acted in utter disregard to the rules and norms thereby defrauding huge amount from the Bank.*

(v) *That knowing fully well that the Postal Certificates offered as security and pledged in favour of Bank were fake, you did not take initiative for recovery of Bank Loan by issuing demand notice/by personal contact even after expiry of stipulated repayment period of 24 (twenty-four) months in respect of LANK A/C Nos. 84 to 92 and 112 to 125 to conceal your guilt.*

(vi) *That by your above irregular acts Bank has sustained loss of Rs. 18,47,946.00(Rupees eighteen lac forty-seven thousand nine hundred forty-six) PLUS interest.*

(vii) *That you willfully and irregularly allowed Smt. Poli Thakur to open SB A/C No. 6835 on 25.05.1999 with the intent to make her eligible for Bank Loan against Pledge of Postal Certificates and subsequently you irregularly sanctioned & disbursed a sum of Rs. 3,57,900.00 (Rupees three lac fifty-seven thousand nine hundred) to said woman against 60 nos. of fake Postal Certificates through 9 Nos. of LANK A/Cs, vide No. 75 to 79 dated 29.05.1999, 152 to 154 dated 27.11.2000 & 205 dated 26.12.2001. All those accounts were liquidated on a single day on 21.10.2002 to hush up your irregularities.*

(viii) *That knowing fully well that Smt. Sebika Sharma of Pratapbagan, P.O. & Dist. Bankura, and Asstt. Teacher Mission Girl's High School, Bankura had an outstanding loan account (PLS-344) with our Bankura Branch as per MOU executed between the school authority and the bank you inviolation of Discriminatory Power*

Norms and in utter abuse of your official position sanctioned and disbursed a sum of Rs. 75,000.00 (Rupees seventy-five thousand) to her on 02.03.2001 vide PLS A/C -162.

(ix) That you in clear violation of your discretionary power norms and in abuse of your official position sanctioned and disbursed a sum of Rs. 26,000.00 (Rupees twenty-six thousand) on 03.05.2002 to Smt. Papia Adhvaryu, your wife vide LANK A/C No. 216 and you did not report the particulars of sanction of the said loan in your monthly D.P. Statement for the month of May, 2002 to conceal your aforesaid irregular act.

Therefore, in contravention of Regulations 17, 19 & 30 (1) of Mallabhum Gramin Bank (Staff) Service Regulation, 1980, the following charges are leveled against you:-

(I) Knowingly doing act to defraud the Bank;
(II) Knowingly doing act detrimental to the interest of the Bank and causing Financial loss for your personal gain.
(III) Knowingly abusing your official position for your personal gain:
(IV) Knowingly violating Discretionary Power Norm for personal gain;
(V) Committing breach of discipline.

Hence, you are directed to submit your written explanation within 15 (fifteen) days from the date of receipt of this letter stating therein as to why appropriate disciplinary action should not be taken against you for your above alleged misconduct. If your reply is not received within the stipulated period it will be presumed that you have no explanation to offer and the Disciplinary Authority shall be at liberty to take any action as may be deemed fit and proper without making any further reference to you.

Though the appellant Bank had initiated Disciplinary Inquiry against the respondent no.1 by issuing Charge sheet but the Appellant Bank had not served any documents as well as list of witnesses to the respondent and since after receipt of charge sheet, the respondent no. 1 time and again requested the bank for supply of documents

As the Appellant Bank had not supplied documents to the respondent no. 1 and accordingly the respondent no. 1 had filed a writ application before the Ld. Single Judge being WP. No.18587 (W) of 2011 and the said writ petition was disposed of on 22.12.2011 by passing the following order:-

> *"The writ petitioner, an employee of Bangiya Gramin Vikash Bank has been subjected to a departmental proceeding on certain charges. The departmental proceeding is in process and in this writ petition, the petitioner has made out his grievance that he has not been given copies of several documents, and particulars of such documents have been disclosed in a statement made Annexure P-8 to the writ petition. Some of the documents specified there have already been supplied. This is admitted. There is dispute as to the relevance of those documents, so far as the disciplinary proceeding is concerned.*
>
> *I am of the opinion, however, that the Enquiry Officer would be the appropriate authority to decide on that dispute. Let the petitioner file an application with the Enquiry Officer indicating briefly the relevance of each of the documents sought for. Thereafter upon giving an opportunity of hearing to the petitioner the Enquiry Officer shall take a decision on the relevance of such documents and on the basis of such decision, appropriate direction shall be issued for production of the documents or copies thereof. The petitioner shall make such representation for application within 10th January, 2012. Thereafter, till the final decision is arrived at by the Enquiry Officer on the question of production of those documents, the proceeding shall not be continued further.*
>
> *The writ petition stands disposed of in the above terms."*

After the order passed by the Ld. Single Judge dt.22.12.2011, the Enquiry Officer looked into the representation of the respondent no.1 and has passed a detailed order on 30th October, 2012. The documents sought for by the respondent no. 1 which were considered relevant for the purpose of his defence, have been directed to be supplied by the prosecution. Certain documents were found not to be relevant and no direction for supply of the same was made. A third category of documents finds reference in the said order of the Enquiry Officer. Those are documents which are untraceable and, therefore, the Enquiry Officer had no occasion to consider its relevance to the charges.

The respondent no. 1 being aggrieved with the order of the Enquiry Officer had preferred a writ application being WP No. 12133 (w) of 2013 and the said writ petition was disposed of on 12.06.2013 by passing the following order:-

> *"In so far as the documents which are not traceable are concerned, I am of the view that the enquiry officer cannot be faulted for not having considered its relevancy. That would have required looking into the documents. If at all the petitioner is aggrieved by non-supply of the documents which could not be traced and placed before the enquiry officer, he may pursue his remedy under Section 19(3) of the Act in accordance with law. Regarding the documents which have not been found to be relevant, I find no reason to exercise writ powers at this stage. It shall be open to the petitioner to raise his grievance in respect thereof at a proper stage, if at all he is inflicted with any penalty upon conclusion of the disciplinary proceedings. However, the petitioner is entitled to limited relief in respect of the documents which allegedly have been supplied to him, as recorded by the enquiry officer in the impugned order but have in fact not been supplied. It has been gathered from Mr. Ali that documents listed against requisition numbers 5, 8, 10(a), 22(a)-(d) & 22 (h) have not been supplied. The respondents shall ascertain as to whether the petitioner's claim is correct or not. If it is found all such documents have been supplied to the petitioner, the acknowledgement made by him endorsing the receipt thereof shall be furnished to him. If such endorsement acknowledging receipt is not traceable, it has to be deemed that the petitioner has not been supplied copies of such documents and in such case, the respondents shall make available to the petitioner copies of all such documents. Without supply of such documents, the enquiry shall not proceed.*
>
> *Let this direction be complied with as early as possible but not later than a month from date of its receipt. Only after the petitioner is furnished with proof of supply of the said documents or the documents itself, shall the enquiry proceed.*
>
> *The writ petition stands disposed of."*

In spite of the order passed by the Ld. Single Judge dt. 12.06.2013 the Appellant Bank had not supplied the documents to the respondent no. 1 and when the respondent no. 1 was superannuated from his service on 30.06.2020, the appellant bank had supplied documents to the respondent no. 1 on 4th July, 2020 i.e. just after 4 days of his superannuation.

The respondent No. 1 had filed writ application praying for dropping of the Disciplinary Proceeding initiated against the respondent No.1 being Memo No. MGB/HO/(I&V)/13/2005 dt 3rd January 2005 and subsequent notices dt. 3rd June 2020,18th July 2020 and 26th August 2020 issued by the Appellant Bank.

The Hon'ble Single Bench had disposed of the writ application filed by the respondent no.1 on 7th January, 2021 by passing the following order which is impugned in the instant appeal;

> *"Accordingly, the prayer of the Bank for fixing a time frame to conclude the disciplinary proceeding is disallowed by the court.*
>
> *In view of the above, the instant writ petition is disposed of by directing the Chairman of the Bank to take necessary steps for disbursal of the superannuation dues of the petitioner, strictly in accordance with law, within a period of twelve weeks from the date of communication of a copy of this order.*
>
> *The disciplinary proceeding which was initiated against the petitioner in the year 2005 shall be deemed to have been dropped by the Bank.*
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> *The learned advocate appearing for the Bank prays for stay of operation of the order. As the Bank has been given enough time for releasing the superannuation dues of the petitioner, there is no immediate need for staying the operation of the order. Accordingly, the prayer for stay is refused.*
>
> *WPA No. 9392 of 2020 is disposed of."*

After initiation of the Disciplinary Proceeding against the respondent no. 1, the Appellant Bank had also initiated a criminal proceeding against the respondent no. 1 and others for the offence under section 468/469/471/420/407/120B/406/409/34 IPC and accordingly the respondent no. 1 had faced trial before the Ld. Court of Additional Sessions Judge, 2nd Court, Bankura and on completion of trial the Ld. Additional Sessions Judge had acquitted all the accused persons including the respondent no.1 by passing the following order :-

> *"Having regard to the discussion made here in above, I do not find any cogent and substantive evidence in support of the charge framed against the accused persons namely 1, 2 & 3 who were Bank employees. Particularly, there is no iota of evidence to infer that they had acted having malafide intention for their own illegal gain in granting the loan to accused Sadhan Mondal and Suman Mondal rather it is crystal clear from the evidence of Bank employees whose evidence I discussed in the body of my Judgment that all loan have been sanctioned to accused Sadhan Mondal and Suman Das against pledging of NSC and KVP by accused no.1 by observing all rules, norms and procedures of bank.*
>
> *Therefore, I am constrained to hold that the police has implicated them in this case having no materials only on the basis of written complaint submitted by PW-1, Sairfur Rahaman Hazari, the then Branch Manager of the alleged bank reasons best known to them as a result, the said three accused persons have been suffered for last 13 years mentally and physically having no fault on their part.*
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> *As regards, accused Manik Sarkar, it is painful to note that he was also implicated in this case having no sufficient materials against him.*
>
> *As regards, accused Swapan Mondal and Suman Das, it is found that the prosecution has failed to establish the charge against them that the alleged NSC & KYP (F Series) which they pledged with the bank in taking loan were from the Burnpur Sub Post Office and the same were forged by placing cogent evidence. As regards, accused Niranjan Lohar, it is shameful and shocking to note that he was arrested in this case on the allegation for helping the accused Swapan Mondal and Suman Das in opening bank account in the alleged bank by introducing them with malafide intention for his illegal gain but nothing was proved by the prosecution against him by cogent evidence.*

In view of the discussions and fact and circumstances of this case, attending circumstances available in record, I do not find any cogent materials/ evidence to hold that accused persons committed the offence as alleged. Therefore, I am constrained to hold that the prosecution has miserably failed to establish the charge of the accused persons beyond shadow of doubt and thus; they are deserved to get an order of acquittal.

Hence,

ORDERED

that accused persons namely 1. Mangal Adhuvaryu, 2. Prabhat Kumar Sen, 3. Satyendra Nath Banerjee, 4. Manik Kumar Sarkar, 5. Swapan Mondal @ Sudhir Bhandari, 6. Suman Das @ Md. Salim and 7. Niranjan Lohar are found not guilty for committing offence punishable u/s 468/469/471/420/407/120B/406/409/34 of IPC.

They are acquitted u/s 235 (1) of Cr.P.C and released from bail bonds respectively at once.

Seizure alamats except NSC and KVP be destroyed on expiry of appeal period and the said seized NSC and KVP be returned from who seized."

Mr. Joy Saha, Ld. Senior Counsel appearing on behalf of the Appellant Bank submits that in compliance of the order passed by the Hon'ble Single Bench dt. 12.06.2013 the Bank had supplied documents to the respondent no.1 on 4th July, 2022 and the Bank is ready to complete the enquiry within stipulated time.

Mr. Saha submits that even after numerous requests of the appellant, the respondent avoided participating in the departmental proceedings. Ld. Senior Counsel relied upon the notices dt. 3rd June, 2020 and 18th July, 2020 and submits that instead of participating in the enquiry, the respondent No. 1 had threatened the disciplinary authority with initiation of contempt proceeding.

Mr. Saha further submits that the respondent admits that the relevant documents which are necessary to carry out the departmental proceedings were served upon the respondent No. 1 on 30.06.2020.

Mr. Saha further submits that the respondent was initially an employee of Mallabhum Gramin Bank and on 21st February, 2007, five rural banks were merged with the Appellant Bank. As the respondent was originally not an employee of the appellant and as such the task of merging the five banks with the Appellant Bank was complicated, cumbersome and time consuming due to which records of the proceedings had to be collected from another bank, therefore there was a justifiable delay in providing documents to the respondent.

Mr. Saha further submits that there is no requirement of law that the list of witnesses should be supplied along with the charge sheet.

Mr. Saha submits that the allegation against the respondent is that the respondent was involved in granting loan on the basis of fraudulent certificates which are the documentary evidence already supplied to the respondent.

Mr. Saha by relying upon Regulations 44 and 45 of the Bangiya Gramin Vikash Bank (Officers and Employees) Service (Amendment) Regulation, 2018 submits that an employee against whom departmental or judicial proceeding has been initiated before the date of his retirement shall not be eligible to commute a fraction of his provisional pension under the Regulations during the pendency of such proceedings.

Mr. Saha referred to Sections 211 and 212 of the Code of Criminal Procedure and submits that the Bank had supplied charge sheet to the respondent and documents have been also supplied to the respondent. As per the charge sheet and documents specific charge is made out against the respondent and to prove the said charges the appearance of the respondent is necessary to proceed with the departmental enquiry initiated against the respondent.

Mr. Saha relied upon the judgment in the case of *L. Ashok Kumar -versus- The Commissioner of Municipal Administration reported in 2011 SCC Online Mad 2311* and submits that delay itself cannot be the sole ground for quashing the disciplinary proceeding and the facts of the case must be looked into.

Mr. Saha further relied upon the judgment in the case of *State of West Bengal- versus- Anwar alias Anwar Rehman reported in 2000 SCC Online Cal 7* and submits that if an investigating officer by accident or by design omits to forward the relevant documents/statements of witnesses to the Court along with the police report, it cannot be said that the charge sheet is incomplete or that no cognizance can be taken by the Court on the basis of such charge sheet.

Mr. Arunava Ghosh, Ld. Senior Counsel representing the respondent, submits that the Disciplinary Authority had issued charge sheet against the respondent on 03.01.2005 but along with the said charge sheet the appellants have not supplied any documents and list of witnesses to the respondent. The respondent had made several correspondence with the appellants for supply of documents but no documents were supplied to the respondent and accordingly the respondent had filed a writ petition before the Hon'ble Single Bench for supply of documents. The Hon'ble Single Bench *vide* Order dt. 22.12.2011 had directed the petitioner to make a representation to the Enquiry Officer and the Enquiry Officer was directed to take a decision for production of documents and till such time the proceeding shall not be continued further.

Mr. Ghosh further submits that in compliance of the order passed by the Hon'ble Bench the Enquiry Officer had passed an order on 30.10.2012 and being aggrieved with the order of the Enquiry Officer the respondent had again preferred a writ application and the Hon'ble Single Bench had disposed of the writ petition on 12.06.2013 and directed the Enquiry Officer to supply the available documents to the respondent and without supply of such documents, the enquiry shall not be proceeded.

Mr. Ghosh further submits that inspite of the order passed by the Hon'ble Single Bench the appellants have not supplied documents to the respondent and after four days of the superannuation of the respondent, the appellants have served documents to the respondent on 4th July 2021.

Mr. Ghosh submits that the Hon'ble Single Bench *vide* Order dt. 12.06.2013 had categorically directed that without supply of documents, enquiry shall not be proceeded. However, without supplying the documents the Enquiry Officer had issued notice to the respondent on 03.06.2020 by fixing the date of enquiry on 18.06.2020 and 19.06.2020 by violating the order dt. 12.06.2013.

Mr. Ghosh further submits that after initiation of the disciplinary enquiry the appellants have also initiated a criminal proceeding against the respondent along with others and *vide* Judgment dt. 20.09.2016 the respondent along with others have been acquitted from the said criminal case.

Mr. Ghosh further submits that the suspension of the respondent was withdrawn and promotion of the respondent was kept in a sealed cover.

Mr. Ghosh further submits that the appellants have issued charge sheet in the year 2005 without any documents and time and again the Hon'ble High Court had directed the appellants to supply documents to the respondent but only after four days of the superannuation of the respondent, the appellants have supplied the copies of documents to the respondents when there is no relationship of employer and employee between the appellant and the respondent in existence.

Mr. Ghosh submits that during the pendency of the criminal case against the employees of the appellant along with the respondent, four employees were given full pensionary benefits including commutation of pension and another Branch Manager namely, Shyam Sundar Lakshman, was allowed Provisional Pension during pendency of the departmental proceeding.

Mr. Ghosh submits that since 03.01.2005 till 30.06.2020, i.e. till the date of superannuation of the respondent, the appellants have not supplied documents to the respondent and after four days of superannuation i.e.04.07.2020, the appellants have supplied documents and accordingly the respondent had filed the writ petition to which the Hon'ble Court had rightly passed an order.

Heard the Ld. Counsel for the parties had considered it, documents available on record, the judgment impugned as well as the judgments referred to by the appellants.

When the respondent was holding the post of Branch Manager of the appellant Bank, on 03.01.2005 a charge sheet was issued against the respondent. The appellants have not supplied any documents to the respondent along with charge sheet and even after the request made by the respondent the appellants have not served any documents. In the meantime the appellants have also made a complaint to the police authority and a criminal case was also registered against the respondent and others. On initiation of criminal case the respondent was placed under suspension on 16th July 2003. Subsequently, the suspension was revoked on 11th March, 2006.

As the Appellant Bank had not supplied documents to the respondent, the respondent approached the Hon'ble Single Bench and the Hon'ble Court had directed to supply documents and till the production of documents the proceeding shall not be continued further. Inspite of the direction passed by the Hon'ble Single Bench, documents were not supplied to the respondent and again the respondent had approached the Hon'ble Single Bench and *vide* Order dt.12.06.2013 the Hon'ble Single Bench had again directed to supply documents and without supply of documents, the enquiry shall not be proceeded with.

It is an admitted fact that since 03.01.2005 till the date of superannuation no documents were supplied to the respondent inspite of specific directions passed by the Hon'ble Single Bench on two occasions and after four days of the superannuation, i.e. on 4th July, 2020, the Appellant Bank had supplied documents to the respondent.

The respondent had also faced the criminal trial before the Ld. Court of Additional Sessions Judge, 2nd Court, Bankura on the similar allegation and the said case was disposed of on 29.09.2016 wherein the respondent and others have been acquitted from the said case on the ground that the Ld. Court did not find any cogent and substantive evidence in support of the accused persons, namely 1, 2, and 3 who were the Bank employees. The accused no. 1 is the respondent no. 1 herein. The Ld. Court had also held that there is no iota of evidence to infer that the accused had acted with malafide intention for their own illegal gain in granting the loan to one Sadhan Mondal and Suman Mondal. Rather, it is crystal clear that from the evidence of the Bank employees whose evidence had been discussed in the body of the Judgment that all loans have been sanctioned to accused Sadhan Mondal and Suman Mondal against pledging of NSC and KVP by the respondent no.1 by observing all rules, norms and procedure of the Bank.

It is also revealed from the record that though the Appellant Bank had issued charge sheet to the respondent on 03.01.2005, but no list of witnesses was served to the respondent.

The respondent superannuated from his service on 30.06.2020 and the respondent had requested the appellant for release of all pensionary benefits but the request of the respondent was rejected on the ground of pendency of disciplinary proceedings.

The Ld. Counsel for the appellants relied upon the judgment reported in *2011 SCC Online Madras 2311* and *2000 SCC Online Cal 7* but the said judgment is not applicable in the instant case as the appellants have initiated the departmental proceeding against the respondent in the year 2005 and since then the respondent requested the appellants for supply of documents and several orders were also passed by the Hon'ble Single Bench. However inspite of the same, documents were not served to the respondent and only when the respondent superannuated from his service on 30.06.2020 the appellants have supplied documents to the respondent on 4th July 2020, i.e. after a period of more than 15 years.

The Honble Supreme Court in the case reported in *AIR 2010 SC 3131 (State of U.P. & Ors. -versus- Saroj Kumar Sinha)* held that :-

> *"36. The proposition of law that a government employee facing a department enquiry is entitled to all the relevant statement, documents and other materials to enable him to have a reasonable opportunity to defend himself in the department enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in the case of State of Punjab vs. Bhagat Ram MANU/SC/0447/1994 : (1975) 1 SCC 155:*
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> *The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the*

synopsis was adequate to acquaint the respondent with the gist of the evidence.

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken."

37. We may also notice here that the counsel for the appellant sought to argue that respondent had even failed to give reply to the show cause notice, issued under Rule 9. The removal order, according to him, was therefore justified. We are unable to accept the aforesaid submission. The first enquiry report dated 3.8.2001, is clearly vitiated, for the reasons stated earlier. The second enquiry report can not legally be termed as an enquiry report as it is a reiteration of the earlier, enquiry report. Asking the respondent to give reply to the enquiry report without supply of the documents is to add insult to injury. In our opinion the appellants have deliberately misconstrued the directions issued by the High Court in Writ Petition 937/2003. In terms of the aforesaid order the respondents was required to submit a reply to the charge sheet upon supply of the necessary document by the appellant. It is for this reason that the High Court subsequently while passing an interim order on 7.6.2004 in Writ Petition No. 793/2004 directed the appellant to ensure compliance of the order passed by the Division Bench on 23.7.2003. In our opinion the actions of the enquiry officers in preparing the reports ex-parte without supplying the relevant documents has resulted in miscarriage of justice to the respondent. The conclusion is irresistible that the respondent has been denied a reasonable opportunity to defend himself in the enquiry proceedings.

38. In our opinion, the appellants have miserably failed to give any reasonable explanation as to why the documents have not been supplied to the respondent. The Division Bench of the High Court, therefore, very appropriately set aside the order of removal."

The Appellant Bank tried to explain the delay in supply of documents to the respondent in time by arguing that initially the respondent No. 1 was the employee of Mallabhum Gramin Bank but in the year 2007, five local banks were merged with the Appellant Bank due to which delay was caused for collection of documents. This Court is of the opinion that the explanation offered by the Bank cannot be accepted as charge sheet was issued on 03.01.2005 much prior to the merger of the banks and, on two occasions, the respondent had approached the Hon'ble Single Bench but the appellants have neither taken the said plea before the Hon'ble Single Bench nor have supplied documents in compliance with the order passed by the Hon'ble Single Bench in the year 2011 and 2013.

Though it is settled law that there is no bar to proceeding with the departmental proceeding inspite of the fact that the Charged Officer is acquitted from the criminal proceeding, in the instant case, the allegation of disciplinary proceeding and criminal proceeding are same. The Ld. Additional Sessions Judge has conducted a full fledged trial and in his final Judgment and Order had categorically held that:-

> *"Having regard to the discussion made here in above, I do not find any cogent and substantive evidence in support of the charge framed against the accused persons namely 1, 2, & 3 who were Bank employees. Practically, there is no iota of evidence to infer that they had acted having malafide intention for their own illegal gain in granting the loan to accused Sadhan Mondal and Suman Mondal rather it is crystal clear from the evidence of Bank employees whose evidence I discussed in the body of my Judgment that all loan have been sanctioned to accused Sadhan Mondal and Suman Das against pledging of NSC and KVP by accused no. 1 by observing all rules, norms and procedures of bank.*
>
> *Therefore, I am constrained to hold that the police has implicated them in this case having no materials only on the basis of written*

complaint submitted by PW-1, Saifur Rahaman Hazari, the then Branch Manager of the alleged bank reasons best known to them as a result, the said three accused persons have been suffered for last 13 years mentally and physically having no fault on their part."

Considering the above, this Court is of the view that no purpose would be served if the appellants are allowed to continue with the proceeding after the lapse of 15 years from the initiation of disciplinary proceeding against the respondent No. 1.

In the backdrop of the above case this Court is of the view that the Judgment and Order passed by the Hon'ble Single Bench in WPA 9392 of 2020 dt. 7th January, 2021 does not require any interference.

FMA 704 of 2021 with **CAN No. 1 of 2021** with **CAN No. 2 of 2021** stand accordingly **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment 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.

(Subrata Talukdar, J.) **(Krishna Rao, J.)**

Later:

Counsel for the appellants prays for stay of operation of the Order.

Counsel for the respondents raises objection.

Prayer made by the Counsel for the appellants for stay is refused.

I agree.

(Subrata Talukdar, J.) **(Krishna Rao, J.)**