IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 26096 of 2012

Sushanta Kumar Mondal

Versus

Bangiya Gramin Vikash Bank & Ors.

Mr. Debabrata Saha Roy
Mr. Indranath Mitra
Mr. Subhankar Das

.....For the Petitioner

Mr. Baidurya Ghosal

.....For the Respondents

Heard on : 21.04.2022

Judgment on : 17.05.2022

Krishna Rao, J.: The petitioner has challenged the order passed by the Disciplinary Authority dt. 16.08.2011 and the order passed by the Appellate Authority dt. 24.08.2012.

The General Manager (Vigilance) Bangiya Gramin Vikash Bank (herein after referred as Bank) vide letter no. BGVB/HO/VIG/65/09 dated nil called for an explanation from the petitioner informing that during the course of investigation when the petitioner was posted at Herampore Branch from 22.07.1996 to 01.02.2003 had committed gross irregularities due to which huge amount of fraud has been perpetrated at the branch on number of occasions. The petitioner had submitted a detailed reply against the explanation as asked for by the bank.

The bank was not satisfied with the explanation submitted by the petitioner and the bank had issued Charge Sheet against the petitioner on 30.09.2009 by initiating disciplinary inquiry against the petitioner. On receipt of the charge sheet, the petitioner has submitted his reply. On being dissatisfied with the reply, the Disciplinary Authority had appointed Enquiry Officer and Presenting Officer to proceed with the inquiry initiated against the petitioner.

The enquiry officer had conducted enquiry proceeding on 21.12.2010 by examining the Presenting Officer as witness and during the proceeding the Defence Representative has categorically objected by informing the enquiry officer that without examining the concern witness the documents cannot be proved but inspite of the objection raised by the defence representative of the petitioner, on the same day the enquiry officer has closed hearing of the departmental enquiry.

On 04.01.2011 the presenting officer has submitted his summary argument and the defence representative of the petitioner has submitted his summary argument of defense. The enquiry officer has submitted his Enquiry Report of 18.04.2011 and on receipt of the enquiry report the petitioner has submitted his reply to the enquiry report.

On receipt of the enquiry report and reply, the Disciplinary Authority had passed an order of 16.08.2011 by imposing the following penalty upon the petitioner:-

> *"Reduction of Basic Pay to the initial stage in the time scale of pay of which he belongs to (Officer Scale-11), with retention of EPF, if any, with cumulative effect."*

Being aggrieved with the order of the Disciplinary authority, the petitioner had preferred an appeal before the appellate authority and the appellate authority vide order dt. 16.11.2011 had modified the order of the disciplinary authority by passing the following order:

> *"Reduction of Basic Pay by 7 (seven) stage in the time scale of pay which he belonged to (Officer Scale – II), with retention of EPF and stagnation increment, if any, with cumulative effect. The modified punishment is to be immediately followed by an innocuous posting for him."*

The petitioner had challenged the order of the disciplinary authority and the appellate authority before this Court by filing a writ application being W.P. No. 3257 (W) of 2012 and the Coordinate Bench of this Court has disposed of the writ application on 31.07.2012 by passing the following order :-

"It has been argued before me that photocopies of certain documents were relied on by the disciplinary authority but these documents were not proved by the author thereof. This point was taken before the appellate authority. In the order of the appellate authority, however, I do not find this issue has been addressed to. In these circumstances, I quash the order of the appellate authority dated 16th November, 2011 and remand the appeal for fresh hearing. Such proceeding shall be completed within a period of eight weeks from the date of communication of this order. Till fresh decision is taken by the appellate authority, the punishment imposed by the appellate authority shall be retained subject to final decision of the appellate authority taken in pursuance of this order.

The writ petition stands disposed of in the above terms.

I make it clear that I have not addressed the issues raised in this writ petition on merit, and the only issue I have addressed to is the ground on which I am remanding the matter to the appellate authority. It would be for the appellate authority to consider the case of the petitioner afresh on merit."

After the order passed by the Coordinate Bench of this Court, the appellate authority had passed the following order on 24.08.2012:-

"2. Sri Sushanta Kumar Mondal (CSO), in his appeal petition, pleaded that during the departmental enquiry the Bank has not been able to produce a single witness to substantiate the allegations leveled against him in the charge sheet. Since the documents which were produced were not endorsed or examined by any witness, those documents carried no evidence value in the eyes of law, he added. Sri Mondal stated that during the initial stage of his tenure of 3 ½ years at that branch, since he has found nothing that could arise suspension about the integrity of the co-employee, a kind of trust was developed in the branch and the cashier took the scope of the situation and defrauded the Bank in a manner which he (CS0) could not apprehend. He (CSO) had agreed that Bank has sustained loss to the tune of Rs. 237500/- (Rupees two lakh thirty seven thousand five hundred) only, since the modus operandi adopted by the actual culprit could not be intercepted by him. The CSO had alleged that the Disciplinary Authority, while imposing punishment on him, has not considered his submissions and arguments as recorded in the enquiry proceedings and only concurred with the Enquiry Officer and thereby, failed to satisfy the requirement of Principle of Natural Justice. The Disciplinary Authority has proceeded with foreclosed mind and pre-determined notion deflecting the course of justice.

3. It is observed that hearing were held on 06.01.2010, 22.04.2010, 23.09.2010 & 21.12.2010 in active presence of CSO & his Defense Representative. As per records, Sri Mondal (CSO) was allowed to get access of the original documents which were relied upon while framing the Charge Sheet, as has been sought by him and he had verified those documents by appearing in person at Head Office of the Bank on 25.06.2009. It appears from the records that relevant original documents pertinent to the period mentioned in the aforesaid Charge Sheet were produced before the enquiry held on 21.12.2010, though not witnessed. It is noticed that CSO confessed in writing that sub-cash book was usually written by the cash book writer after 5-7 days from the date of actual transaction and regular checking of the sub-cash book by the Officer-in-Charge (CSO) was not in practice at that branch. It is observed that Bank has been defrauded by the erring cashier-in-charge of the branch (since has been dismissed from service) taking the opportunity of supervisory lapses day after day on the part of the Branch Manager (CSO), resulted in suffering loss to the extent of Rs. 237500/- (Rupees two lakh thirty seven thousand five hundred) only by the Bank. Therefore, being the Manager of the branch, CSO had acted in a negligent manner and failed to protect the interest of the Bank for which he was entrusted with by the Bank.

The Hon'ble Directors of the Board revisited the entire matter in pursuance of the kind order dated 31.07.2012 of Hon'ble High Court at Calcutta and considering all aspects of matter mentioned here-in-above, Appellate Authority of the Bank finds the reasons and arguments placed in his appeal petition of Sri Mondal, do not have any conviction and merit which calls for any modification in the punishment imposed by the Appellate Authority of the Bank, and accordingly, Appellate Authority uphold the order as follows:

"Reduction of Basic Pay by 7 (seven) stages in the time of pay which he belonged to (Officer Scale- II), with retention of FPP and Stagnation increment, if any, with cumulative effect. The modified punishment is to be immediately followed by an innocuous posting for him."

Mr. Debabrata Saha Roy with Mr. Indranath Mitra representing the petitioner submits that this Court vide order dt. 31.07.2012 had quashed the earlier order of the appellate authority on the ground that the appellate authority had not addressed the points taken by the petitioner in his appeal and remanded the appeal to the appellate authority for taking a fresh decision but the appellate authority again without considering the points raised by the petitioner had passed the same order.

Ld. Counsel for the petitioner further submits that neither the disciplinary authority nor the appellate authority considered that the documents relied by the authority cannot be taken into consideration as none of the connected witnesses with regard to the said documents were examined.

Ld. Counsel for the petitioner submits that on 21.12.2010, the enquiry officer had conducted examination of witnesses and the enquiry officer has examined the presenting officer as witness which is unknown under the law.

Ld. Counsel for the petitioner further submits that the presenting officer in his examination submitted that:

> *"We produced the documents in original of Cash Book, Sub Cash Book, GL, Safe Guide, Attendance Register in connection with the charge as mentioned therewith in charge sheet."*

Though the presenting officer has stated that he had produced the original documents but the enquiry officer had not exhibited any of the documents and how the enquiry officer has taken into consideration of the said documents.

Ld. Counsel for the petitioner further submits that the defence representative of the petitioner during the proceeding has submitted that the documents which have been produced before the enquiry are claimed to be original by the presenting officer but none of the documents were led by any witness which has got any evidentiary value as per norms. It is further submitted that no documents were supplied to the petitioner.

Ld. Counsel for the petitioner submits that only one day the enquiry officer had examined the presenting officer as witness of the instant case and on the same day the enquiry was closed evidence without examining any further witnesses to the documents and without giving any opportunity of hearing to examine the petitioner and his witnesses.

Ld. Counsel for the petitioner submits that the appellate authority has not considered the said aspect of the matter and had passed the impugned order.

Ld. Counsel for the petitioner relied upon the judgment reported in (2009) 2 SCC 570 (Roop Singh Negi –versus- Punjab National Bank & Ors.) and (2010) 2 SCC 772 (State of Uttar Pradesh & Ors. –versus- Saroj Kumar Sinha) and submitted that Enquiry Officer is not supposed to be a representative of the department/disciplinary authority and the enquiry officer should not act as a prosecutor as well as a judge.

Mr. Baidurya Ghosal representing the respondent bank submits when the bank had called for an explanation from the petitioner, vide reply dt. 16.07.2011 the petitioner has admitted the misconduct committed by the petitioner.

Ld. Counsel for the bank further submits that in reply to the charge sheet the petitioner has admitted by stating the following:-

> *"I am really shocked and surprised to receive the letter asking for my reply against certain charges leveled against me for some irregularities alleged to have been committed by me during my tenure at the Bank's Herampore Branch vide your letter no. BGVB/HO/VIG/274/2009 dated 30.09.2009. I have already submitted my explanation in the matter through a letter dated 16.07.2009 and I prayed before you for my exoneration from all the allegations leveled against me for the fraudulent acts committed by some other employee. The above mentioned letter has come to me as a great shock to my morale.*
>
> *Sir, while denying all the charges, I like to place my humble submission point wise before your honor for your kind and sympathetic consideration.*
>
> 1. *Due to pressing volume of works and serious dearth of personnel prevailing at the branch during my tenure, I could not make it possible to check each and every entry simultaneously with providing multifarious services to the clienteles. I had to rely upon my co-employees in many areas of functioning of the branch. In the cases referred in the para-1 of the above mentioned charge sheet, I had relied upon my co-employee, who had been entrusted with the task of recording the vouchers of transactions in the cash book after making respective receipts and payment from and to the parties and the safe guide register as well.*
>
> *Sir, I do admit that a substantial amount of loss has been caused to the Bank and I express my deep sorrow for the loss caused to the bank. But, Sir, I did not willfully do anything to the detriment of the interest of the bank, I acted honestly, diligently and on good faith relying upon a co-employee, who took the scope of the situation and defrauded the bank in a manner, which I could not apprehend."*

Ld. Counsel for the bank further submits that as the petitioner has admitted the facts with regard to the loss sustained by the bank and as such the enquiry officer has held that there is no requirement to examined further witnesses.

Ld. Counsel for the respondent bank further relied upon the letter of the petitioner dt. 15.06.2009 wherein the petitioner has requested the disciplinary authority to allow the petitioner to inspect the original documents and vide letter dt. 23.06.2009, the petitioner was allowed to inspect the documents.

Ld. Counsel for the bank further submits that the petitioner has admitted the charges and thus there is no requirement of examine further witnesses to prove the case of the petitioner.

Heard the Ld. Counsel for the parties, perused documents available on record and the judgment relied by the counsel for the petitioner.

At this stage, it would be appropriate to notice the charges that had been framed against the petitioner which are as under:

> "**1.** *While remaining in charge of Herampore Branch, you did not check the cash book with receipt and payment vouchers. in 51 no. occasions (date wise details are shown in Annexure-A which is a part and parcel of this charge sheet). Actual cash receipt and payment on those dates were not reflected in cash book and closing cash balances on those dates were shown deficit by Rs. 237500/- (Rs. Two lakh thirty seven thousand five hundred only) in total through manipulation of books and records and those balances were certified by you in cash book and safe guide register and as a result Bank has sustained loss to that extent.*
>
> **2.** *In 36 no of occasions, sum total of receipt side of cash book was deflated against actual cash received and a sum or Rs. 134500/- (Rs. one lac thirty four thousand five hundred only) was shown less received through manipulation of cash book. The difference amount of actual cash received and deflated sum total was defalcated. You being the Branch Manager of Herampore Branch during the subject period did not check the sum total of receipt side of cash book as also the entries made therein against relevant vouchers. You certified the manipulated figures*

recorded in cash book under your signature (details enclosed in Annexure-B which is a part and parcel of this charge sheet).

3. *In 17 no. of occasions, sum total of payment side of cash book was inflated against actual cash payment and a sum of Rs. 103000/- (Rs. one lac three thousand only) was shown excess paid through manipulation of cash book. The difference amount of actual cash payment and inflated sum total was defalcated. You being the Branch Manager of Herampore Branch during the subject period did not check the sum total of payment side of cash book as also the entries made therein against relevant vouchers. You certified the manipulated figures recorded in cash book under your signature (details enclosed in Annexure-B which is a part and parcel of this charge sheet).*

4. *You did not verify the entries made in sub cashbook with the corresponding entries of cash book.*

5. *Fictitious debit entries were inserted in sub cash book through some savings a/c nos. to compensate the shortage of cash was defalcated directly from Bank's fund. You did not check the sub cash book with vouchers and cash book and failed to detect such unfair means as adopted for preparing manipulated books and records resulting defalcation of Bank's fund.*

6. *Actual cash payment vide payment vouchers were not recorded in cash book and by showing excess amount paid therein, cash was defalcated. You, being the Branch Manager did not check cash book vouchers and failed to detect such fraud as committed.*

7. *You did not introduce and maintain the cash scroll and token register at the branch to record the actual cash receipt and payment as a preventive measure with a view to avert probability of any financial irregularity.*

8. *You being the Branch Manager of Herampur Branch, during your tenure, did not reconcile the balance of savings account and your such inaction paved the way of defalcation of huge Bank's fund directly from cash. You also submitted Balance reconciliation report to controlling office prepared in falsely manner which did not reflect the actual position of the Branch.*

> **9.** *You submitted GLB report to controlling office based on manipulated figures drawn from General ledger which did not reflect the actual position of the Branch.*
>
> *In view of forgoing facts, the following charges in contravention of Regulations 17 & 19 of Bangiya Gramin Vikash Bank (Officers and Employees) Service Regulations, 2007 are leveled against you.*
>
> *i) Doing act detrimental to the interest of the Bank.*
> *ii) Exposing the Bank to financial loss in abusing your official position.*
> *iii) Doing act in a negligent manner."*

On perusal of the aforesaid charges shows that all the charges based on official documents. In the charge sheet two documents were enclosed being Annexure "A" consisting of two pages and Annexure "B" consists of two pages. In the charge sheet no list of witnesses is enclosed.

In the reply the petitioner though have denied the charges but had admitted that a substantial amount for loss has been caused to the bank and had expressed his deep sorrow for the loss caused to the bank. In the reply the petitioner had tried to shift the allegation upon the co-employee of the bank. The petitioner has not challenged the veracity of the documents relied by the disciplinary, wherein the petitioner had admitted the documents by saying that:-

> *"As I had no doubt over the veracity of the GLB Report. I submitted the said report to the controlling office based on G.L. Book prepared and maintained at the branch and I had no knowledge of the alleged manipulation caused to the GLB of the Branch by the writer of the particular book of account."*

On perusal of record specifically the proceeding dt 21.12.2010 (Annexure P-7 page 59-61 of the writ application) of the enquiry officer it reveals that the presenting officer had produced the documents in original of Cash Book, Sub Cash Book GL, Safe Guide, Attendance Register in connection with the charge as mentioned therewith in charge sheet. The said documents are not the part of the charge sheet and in the said proceeding, the Defense Representative categorically submitted that:

> *"D.R:-Documents which have been produced before the expiry are claimed to be o original by the P.O but none of the exhibits were led by any writer which has got any evidence Value as per norms. The Presenting Officer has not also examined those exhibits in support of the charges which ampli proofs that P.O. has got no points in his hands to establish the allegations leveled against CSO. P.O. has also failed miserable to establish a single charge from against the C.S.O. exhibits of the documents and that must have to be examined by valid witness only. The P.O. has only elaborated the statements of allegation in his own way which has no value of elements to establish the charges. Mere presentation of a number of documents without getting those examined by valid witnesses carries no value. Hence I pray before you to please set aside the charges and exonerate the C.S.O from all the charges which are found to be baseless, concocted, fabricated and vague.*
>
> *D.R:- Sir, I have come here to disprove the charges leveled against the C.S.O. and I will take every scope from the weakness of the presentation. I am not supposed to enrich the knowledge level of the P.O. and simultaneously surprised to note that any P.O. friend is aware of the term examination which is primary tenure of a departmental enquiry. However, the said nothing new that the documents as claimed to be original and procured from the Management. It is obvious that the authority which has framed charges has entirely relied upon interim documents but that dos't mean that the documents are sacrosanct and above examination."*

It reveals from the proceeding dt. 21.12.2010, the enquiry officer had ignored the point raised by the defense representative with regard to the documents and had closed the proceeding for examination of the witnesses without giving an opportunity of hearing to the petitioner by examining himself or producing documents and witnesses on his behalf.

The documents relied by the presenting officer was not the part of the charge sheet and the same was only produced by the presenting officer during enquiry and were not exhibited. No person who is the author or connected with the said documents have been examined to prove the said documents.

In case of State of Uttar Pradesh and Others –versus- Saroj Kumar Sinha (2010) 2 SCC 772 (para 28)

> *"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents."*

In case of Roop Singh Negi –versus- Punjab National Bank (2009) 2 SCC 570 (Para 14)

> *"14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said*

> *documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”*

The appellate authority in the impugned order recorded that “As per records Shri Mondal (CSO) was allowed to get access of the original documents which were relied upon while framing the Charge Sheet, as has been sought by him and he had verified those documents by appearing in person at Head Office of the bank on 25.06.2009. It appears from the records that relevant original documents pertinent to the period mentioned in the aforesaid charge sheet were produced before the enquiry held on 21.12.2010, though not witnessed.”

As per the aforesaid finding of the appellate authority the petitioner had inspected documents on 25.06.2009 but the charge sheet is dated 30.09.2009 and the said documents were not made as part of charge sheet and the appellate authority admitted that the documents were produced before the enquiry on 21.12.2010 without examining any witness and thus how the documents came in the hand of the presenting officer and how the documents were produced in the enquiry without supply and inspection of the documents by the petitioner. The Counsel for the respondent had also relied upon the letter dt. 15.06.2009 and 23.06.2009 and submitted that the petitioner had inspected the documents but the date of inspection is prior to supply of charge sheet.

During the proceeding dt. 21.12.2010, the defense representative categorically raised objection and submitted that the documents which have been produced before the enquiry are claimed to be original by the presenting officer but none of the documents were led by any witness which has got any evidentiary value as per norms but neither the Disciplinary Authority nor the Appellate Authority have considered the said objection raised by the petitioner.

In view of the above, this Court is of the view the Disciplinary Authority and the Appellate Authority miserably failed to give any explanation as to why the documents have not been supplied to the petitioner and how the said documents have been relied upon by imposing penalty upon the petitioner.

It is settled law that under Article 226 of the Constitution of India to interfere with an order of punishment passed after holding of a departmental proceeding is narrow and limited though it may be it is to be acknowledged that the jurisdiction under Article 226 would permit interference by this Court in respect of findings of the Enquiry Officer and the conclusion of Disciplinary authority arrived at on that basis in a case where the weight of the evidence is opposed to the conclusion recorded rendering the same ex-facie erroneous or perverse.

Taking into consideration of the facts and circumstances of this case, this Court has no hesitation in coming to the conclusion that the petitioner had been denied a reasonable opportunity to defend himself in the inquiry and the finding of the Enquiry Officer and the decision of the Disciplinary authority and Appellate authority is perverse. The order of the Disciplinary Authority dt. 16.08.2011 and the order of the Appellate Authority dt. 24.08.2012 are set aside and quashed.

However, the respondent bank is at liberty to continue with inquiry against the petitioner from the stage of supply of documents to the petitioner and shall conclude within six months from the date of communication of the order. The petitioner is directed to cooperate with the Inquiring Authority and shall not avoid to appear before the Inquiring Authority as per the date, if any, fixed by the Inquiring Authority.

In case, the respondent bank failed to continue the inquiry by supplying copy of documents within four weeks from the date of communication of this order, it will be deemed that the inquiry initiated against the petitioner is withdrawn.

WPA No. 26096 of **2012** is thus **allowed.**

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.

(Krishna Rao, J.)