

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/52/2019
IA NO: GA/1/2019(Old No:GA/1981/2019)

AVIK KUMAR SINHARAY
Versus
PUNJAB NATIONAL BANK AND ORS.

BEFORE:

The Hon'ble JUSTICE SAUGATA BHATTACHARYYA

For the Petitioner : Mr. Soumya Majumdar, Adv.
Mr. Md. Zohaib Rauf, Adv.
Ms. Shagun Baid, Adv

For the Punjab National

Bank : Mr. Rabindra Nath Majumder, Adv.
Mr. S.M. Obaidullah, Adv.

Heard On : 22.12.2021, 19.01.2022, 09.02.2022, 16.02.2022,
23.02.2022, 02.03.2022, 09.03.2022, 16.03.2022,
23.03.2022, 30.03.2022 & 06.04.2022

Judgment On : 08.06.2022

Saugata Bhattacharyya, J.:

1. The present writ petition is directed against the final order of punishment dated 30th December, 2017 issued against the petitioner who is a Senior Manager (IT) of Punjab National Bank, formerly United Bank of

India, (hereinafter referred to as the “said bank”), whereby the petitioner has been dismissed from service which shall be considered as disqualification for a future employment. The order of dismissal dated 30th December, 2017 was questioned before the appellate authority of the said bank and the appeal was dismissed by the appellate authority vide order dated 16th August, 2018 confirming the original order passed in the disciplinary proceeding. In the writ petition petitioner has thrown challenge to the charge-sheet dated 27th January, 2017, enquiry report dated 15th November, 2017 as well as order of dismissal dated 30th December, 2017 and the order of the appellate authority dated 16th August, 2018.

2. While petitioner was working as Senior Manager (IT), he was sent on deputation to Bangiya Gramin Vikash Bank (hereinafter referred to as “BGVB”) being regional rural bank sponsored by the said bank on 10th August, 2015. While working in BGVB according to the petitioner he lodged complaint on 4th April, 2016 under Whistle Blower Policy of the bank to draw attention of the vigilance authorities on bank loans fraud while sanctioning credit by some of the staff and officials of the said bank as submitted by Mr. Soumya Majumdar, learned advocate representing the petitioner. One of the officials named in such Whistle Blower complaint is respondent no.5 in the writ petition who is General Manager (HR) of the said bank. According to the petitioner such complaint dated 4th April, 2016 was made in order to purge the ongoing malpractices continuing in credit operation and loan monitoring department of the said bank which drew the petitioner to the wrath of the management of the bank resulting in suspension order of the petitioner on 30th July, 2016 followed by charge-sheet on 27th January, 2017 containing following charges:-

“During your tenure of service as sr. Manager-IT, Head Office and on deputation to Bangiya Gramin Vikash Bank, Head Office from 10.08.2015 till date, you had failed to maintain sanctity of Bank’s information and secrecy about affairs including financial activities of the Bank and thereby failed to

take all possible steps to ensure and protect the interest of the Bank and discharge your duties with utmost integrity, devotion and diligence in contravention of Regulations 3(1), 3(2), 3(3), 3(4), 7(2) and Regulation 4 of United Bank of India Officer Employees' (Conduct) Regulations, 1976 amounting to misconduct in terms of Regulation 24 of the said Regulations, you have committed the under mentioned irregular acts.

1) You have accessed to Bank's data Server/System Network without the consent of the authority and stolen the electronic data and information of the Bank and used the same dishonestly to cause harm to the reputation of the Bank.

2) You have created a fake e-mail Id in the name and title of Joy Shankar Bhattacharya and also used the name and e-mail Id for sending insinuatory and derogatory allegations against Bank Officials.

3) You have entered the office premises on 18.06.2016 at 8.45 A.M. which is unusual compared to your regular attendance time and were instrumental in changing the Central Processing Unit (CPU) of the computer set allotted to Sri. Saibal Routh, Manager with that allotted to you. Incidentally the house of your in-laws were searched on 17.06.2016 and some hard disk and router were seized by police authorities."

3. The petitioner replied to such charge-sheet vide letter dated 14th February, 2017 denying the charges levelled against him. The disciplinary authority having found such reply being unsatisfactory initiated the enquiry proceeding pursuant to such charge-sheet dated 27th January, 2017. Enquiry was held on several dates in the month of September 2017 and concluded on 22nd September, 2017. On conclusion of the enquiry, report dated 15th November, 2017 was prepared by the enquiry officer whereby the enquiry officer was of the opinion that all the three charges levelled against the petitioner was found to be proved. Based on such enquiry report final order of punishment dated 30th December, 2017 was issued imposing order of dismissal from service against the petitioner which was construed to be disqualification in future employment. Again such order of punishment

departmental appeal was preferred by the petitioner which was dismissed confirming the original order vide order dated 16th August, 2018.

4. Mr. Majumdar appearing for the petitioner has submitted that the disciplinary authority has failed to substantiate all the three charges against the petitioner based on the materials placed before the enquiry officer. The purport of charge no.1 is petitioner accessed to Bank's data server/system/network without the consent of the authority and stolen electronic data and information of the bank and the same was unscrupulously used tarnishing reputation of the said bank cannot stand based on the fact that deposition of the Management Witness (MW-2) namely, Saibal Routh who deposed in negation while answering the query of the petitioner during the course of enquiry whether it was possible for the petitioner (CSO) to access the server/system/network/electronic data of the said bank while working in BGVB. The contention of the petitioner was he was not working in the said bank rather working on deputation in head-office of BGVB in Murshidabad at the material point of time therefore, the allegation of unauthorized access to the data server of the said bank was not possible and the same was corroborated by the deposition of Management Witness no. 2.

5. On the allegation of creation of fake e-mail Id in the name of Joy Shankar Bhattacharya and transmitting insinuatory and derogatory emails against the said bank from such e-mail Id amounts to misconduct in terms of Regulation 24 of United Bank of India Officer Employees' (Conduct) Regulations, 1976 (hereinafter referred to as "Regulations of 1976") it has been submitted on behalf of the petitioner that by no stretch of imagination creation of another e-mail Id which is not the e-mail Id of one Joy Shankar Bhattacharya can be termed as generating fake e-mail Id. According to the petitioner one has to disclose his self-particulars for the purpose of creating an e-mail Id and only display name can be differently written.

6. In third charge allegation was made that the petitioner entered the office premises on 18th June, 2016 at 8.45 a.m. which is unusual in view of the official time of attendance and the petitioner entered unauthorisedly to the head-office in BGVB, Murshidabad in order to change the Central Processing Unit (CPU) of the computer set allotted to one Sri. Saibal Routh, Manager with that allotted to the petitioner and according to the disciplinary authority such act is related to recovery of hard-disk and router on search being made by the police authorities on 17th June, 2016 in the house of petitioner's in-laws. According to the petitioner the date mentioned in charge no. 3 was 18th June, 2016 whereas said Saibal Routh on the said date was not working in the head-office of BGVB in Murshidabad which is corroborated from the deposition of said Saibal Routh before the enquiry officer that before joining the head-office in Murshidabad on 22nd June, 2016 he was on deputation for a period of twenty days. In addition thereto according to the petitioner if attendance register of the head-office of the BGVB in Murshidabad for the period from 4th April, 2016 to 22nd June, 2016 would have been produced before the enquiry officer on demand made by the petitioner the situation would have been more clear with regard to the veracity of the allegation as contained in charge no. 3. According to the petitioner there was no material either on production of relevant documents or on the deposition of the witnesses before the enquiry officer which could lead to prove the charges levelled against him and the enquiry officer failed to assign reasons in support of the conclusion made in his report declaring all the three charges are proved. It has also been submitted on behalf of the petitioner that he had no knowledge of the enquiry proceeding on 16th September, 2017 and 18th September, 2017 and on 22nd September, 2017 management witnesses were absent in order to protect them from cross-examination.

7. After furnishing the enquiry report dated 15th November, 2017 to the petitioner the petitioner replied to such report vide letter dated 29th December, 2017 expressing his disagreement with the observation and findings made by the enquiry officer and prayed for cancellation of suspension order as well as permitting him to resume his duty. On receipt of such reply letter dated 29th December, 2017 the disciplinary authority found the same unsatisfactory and issued final order of punishment dated 30th December, 2017 dismissing the petitioner from the post of Senior Manager (IT). The order of punishment was questioned before the appellate authority but the original order was upheld by the appellate authority vide order dated 16th August, 2018. On behalf of the petitioner it has been submitted that the order of punishment was issued by the disciplinary authority, Cachar, Assam whereas the draft order was prepared in the Head Office at Kolkata and H.R. department which was manned by GM-HR being the respondent no. 5. In support of such submission petitioner has drawn attention of this court to pages 202 and 203 of the writ petition revealing email letters exchanged on 30th December, 2017 in between the offices at Cachar and head office at Kolkata and finally on the same date that is on 30th December, 2017 the draft final order was sent to the petitioner. It has been submitted on behalf of the petitioner that seat of the disciplinary authority was at Cachar whereas final order of punishment was prepared in the head office at Kolkata in HR department which is headed by the GM-HR being the respondent no. 5 and based on such event according to the petitioner it is contended that such act on the part of the bank authorities smacks of personal bias and only to punish the petitioner for making complaint under Whistle Blower Policy against the staff and officials of the bank including the respondent no. 5 and accordingly prayer has been made for setting aside of the charge sheet, enquiry report, final order of punishment and the order of the appellate authority.

8. According to the petitioner he made complaint against the staff and officials of the bank upon finding some illegalities in credit operations and

loan monitoring department in terms of revised Whistle Blower Policy which is applicable to the said bank. As per such revised policy since the petitioner made whistle blower complaint it is necessary not to disclose any details or clue relating to his identity but at the same time a complaint must not be anonymous/pseudonymous. Such requirement under the revised Whistle Blower Policy led the petitioner to create another e-mail Id for lodging complaint to the authorities under the revised Whistle Blower Policy.

9. With regard to the steps taken against the petitioner by the said bank authority attention has also been drawn to one letter dated 30th May, 2018 written on behalf of the RBI addressed to the chief vigilance officer of the bank advising him to review the departmental proceeding conducted against the complainant (petitioner) and the CVO was requested to furnish his comments on the independence of the enquiry conducted against the petitioner. In another email letter dated 29th August, 2018 written on behalf of the RBI it was disclosed that in response of chief vigilance officer of the bank it was admitted that in certain instances there was truth in the complainant's (petitioner) allegations and as an illustration it was narrated that the incident of transmitting final punishment order of the petitioner from the department headed by an officer against whom complaint was filed by email and such incident was found to be true by the CVO. It also appears from such letter dated 29th August, 2018 that transferring of the petitioner to bank's Regional Rural Bank (RRB) was de hors the bank's extant policies. In this regard it was also stated in the letter dated 29th August, 2018 relating to review of independence of the discipline process and the note obtained from the Assistant General Manager (DSIR) was found by the RBI an ill informed and uncalled for stance. In an another letter dated 19th September, 2018 on behalf of the Ministry of Finance, Government of India the Managing Director of the said bank was informed based on perusal of the comment of CVO that the said bank has proactively tried to determine the identity of the complainant (petitioner) through the police and has subsequently dismissed him from service through disciplinary action in a

non-vigilance case. It further appears from letter dated 7th November, 2018 written by the General Manager (HR) on behalf of the said bank addressed to the concerned authority of Ministry of Finance, Department of Financial Services wherefrom it appears in twenty eight cases based on the complaint of the petitioner disciplinary action against the officers and staff of the bank were initiated. Placing reliance on these letters dated 30th May, 2018, 29th August, 2018 of the Reserve Bank of India and letter dated 19th September, 2018 and letter of the Bank dated 7th November, 2018 it has been submitted on behalf of the petitioner that initiation of disciplinary proceeding and departmental enquiry based on which issuance of impugned order of dismissal is glaring instance of administrative malice and personal bias against the petitioner for having objected to fraudulent activities in processing loan accounts and sanctioning loans. Upon placing reliance on those two letters dated 30th May, 2018 and 29th August, 2018 on behalf of the Reserve Bank of India notice of this court has been drawn to section 35 A (1) of the Banking Regulation Act, 1949 and it has been submitted that it is within the domain of the Reserve Bank of India to ask for certain clarifications as indicated in those two letters from the respondent bank.

10. At the end reliance has also been placed on order dated 10th December, 2019 passed by the criminal court on a criminal proceeding being GR1016/2016 whereby upon allowing an application u/s 239 Cr.P.C. the petitioner was discharged from the criminal case instituted against him based on the complaint lodged on behalf of the said bank. According to the petitioner placing reliance on such order dated 10th December, 2019 it has been submitted that the nature of charges levelled against the petitioner in the disciplinary proceeding and criminal proceeding is more or less same and having been discharged from the criminal proceeding vide order dated 10th December, 2019 it can be concluded that such order of the criminal court discharging the petitioner has a bearing on the disciplinary proceeding initiated against the petitioner.

11. In support of the submissions made on behalf of the petitioner following judgments have been relied upon during course of hearing:-

- i) **(2006) 4 SCC 713 paragraph 26 (Narinder Mohan Arya vs. United India Insurance Co. Ltd. & Ors.)**
- ii) **(2017) 2 SCC 308 paragraph 7 (Allahabad Bank & Ors. vs. Krishna Narayan Tewari)**
- iii) **(1981) 1 SCC 722 paragraph 20 (Ajay Hasiya & Ors. vs. Khalid Mujib Sehravardi & Ors.)**
- iv) **(2020) 3 SCC 86 paragraph 16 to 18 (Rajneesh Khajuria vs. Wockhardt Ltd. & Anr.)**
- v) **(2007) 4 CHN 712 paragraph 12 (Uniworth Resorts Ltd. & Ajay Prakash Lohiya vs. Ashoke Mittal & Ors.)**

12. Per contra Mr. Rabindra Nath Majumder, learned advocate representing the said bank has submitted that the petitioner being the Senior Manager (IT) has failed to maintain sanctity of the bank's information and secrecy about the affairs including financial activities of the bank thereby failed to take all possible steps to ensure and protect the interest of the respondent bank which contravenes Regulation 3(1), 3(2), 3(3) and 3(4), 7(2) and Regulation 4 of the said Regulations of 1976 which amounts to misconduct. According to the respondent following the relevant provisions charge-sheet was issued and enquiry was conducted by extending opportunity to the petitioner to make deliberation upon strict observance of rule of natural justice. It is contended that from the records of enquiry it further appears that the petitioner was provided reasonable opportunity to defend his case.

13. It has further been informed to this court on behalf of the said bank that the petitioner participated in the enquiry proceeding only pursuant to the order passed by this court on a writ petition being W.P. 21662(w) of 2016 dated 30th August, 2017 wherein it was specifically directed by the coordinate Bench that in case petitioner fails to turn up in the enquiry proceeding without any just cause being shown to the respondent, the respondent bank would be at liberty to proceed ex-parte with the proceeding.

14. It has been contended on behalf of the bank that pursuant to such order of the coordinate Bench dated 30th August, 2017 enquiry proceedings were held on 6th September, 2017, 12th September, 2017, 14th September, 2017, 15th September, 2017, 18th September, 2017 and 22nd September, 2017. However, petitioner was present on 6th September, 2017, 14th September, 2017, 15th September, 2017 and 22nd September, 2017. According to the bank in spite of giving notice on date of enquiry on 12th September, 2017 by email on 7th September, 2017 he did not turn up on 12th September, 2017. Mr. Rabindra Nath Majumder, learned advocate representing the Bank has also submitted before this court that the petitioner misbehaved with the enquiry officer and did not cooperate with the enquiry and went to the extent of insisting the enquiry officer to delete certain portions of the minutes of the proceeding of the enquiry and insert the objections of the petitioner in such proceeding and on compliance of such conditions petitioner would put signature on the minutes of the proceeding. According to the bank authority such behavior of the petitioner was aimed at to frustrate the enquiry proceeding. In this regard attention of this court has been drawn to the relevant part of the enquiry report wherein conduct of the petitioner was recorded while recording the proceeding of the enquiry on 15th September, 2017. In addition thereto upon placing reliance on the relevant part of the enquiry report it is submitted by Mr. Rabindra Nath Majumder that the petitioner refused to cross-examine the management witnesses. Furthermore it is also submitted that on 16th

September, 2017 enquiry officer, presenting officer and management witness were waiting for the petitioner to conduct enquiry but the petitioner did not attend the proceeding on the said date though he was intimated on 15th September, 2017 that the enquiry proceeding would be conducted on 16th September, 2017. For holding enquiry on 18th September, 2017 notice was attempted to be served upon the petitioner but the same could not be served since the petitioner was not available at his residence. Ultimately on 22nd September, 2017 when petitioner remained present before the enquiry officer the enquiry proceeding was concluded and the report of enquiry dated 15th November, 2017 was submitted wherein the enquiry officer came to the finding that the charges were proved against the petitioner.

15. On the complaint dated 4th April, 2016 of the petitioner under Whistle Blower Policy it has been submitted by Mr. Rabindra Nath Majumder that it is not the duty of the petitioner being the officer of the bank to bring it to the notice of the vigilance on alleged irregularities in credit operation system since the petitioner was not the vigilance officer thereby he has exceeded his jurisdiction by making such complaint.

16. On charge no. 3 it has been specifically submitted that the entry of the petitioner on 18th June, 2016 at 8.45 a.m. in the head office of BGVB Murshidabad went against the petitioner and being the officer of the bank he is not supposed to enter into the head office before the schedule time of arrival. On complaint of the petitioner under the Whistle Blower Policy it has already been recorded by this court the submission made on behalf of the bank that the petitioner is not supposed to make such complaint against the bank authorities. It has further been submitted that the comments made by the petitioner in such complaint is insinuatory and derogatory in nature and creation of e-mail Id in the name of one Joy Shankar Bhattacharya who is a retired employee of the said bank and an RTI activist clearly goes to show that petitioner committed misconduct. According to the bank authorities in

view of above conduct of the petitioner there is no discrepancy in the report of the enquiry officer dated 15th November, 2017.

17. On behalf of the bank it has further been submitted in support of such report of the enquiry officer dated 15th November, 2017 that strict rule of evidence does not require to be observed in an enquiry in disciplinary proceeding. According to the bank it is a settled law that writ court does not sit in appeal over the findings of the enquiry officer unless such findings suffer from perversity or based on no evidence and in the present case there is nothing on record to suggest that the findings of the enquiry officer are perverse therefore there is no illegality in the order of the enquiry officer wherein it has been concluded that charges are proved against the petitioner.

18. Lastly on the order of discharge dated 10th December, 2019 passed on the criminal case initiated against the petitioner it has been submitted by Mr. Rabindra Nath Majumder that such order of discharge ought not affect the impugned order of punishment dated 30th December, 2017 since it is the settled position of law the test in criminal proceeding and disciplinary proceeding are different, one is based on preponderance of probability another is based on the finding whether the offences registered against the delinquent is proved and if proved what sentence would be imposed on the delinquent. Therefore the discharge of the petitioner in the criminal proceeding does not ipso facto exonerate the petitioner from disciplinary proceeding.

19. In support of the case made out on behalf of the respondent bank following judgments are relied upon:-

i) **AIR 1992 SC 1981 paragraph 5 (Nelson Motis vs. Union of India & Another)**

- ii) **(2003) 3 SCC 583 paragraph 16 (Lalit Popli vs. Canara Bank & Ors.)**
- iii) **(1998) 4 SCC 310 paragraph 9 and 12 (Union Bank of India vs. Vishwa Mohan)**
- iv) **(2003) 4 SCC 364 paragraph 14 (Chairman and Managing Director, United Commercial Bank & Ors. vs. P.C. Kakkar)**
- v) **AIR 1964 SC 477 paragraph 7 (Syed Yakoob vs. K.S. Radhakrishnan & Ors.)**
- vi) **one unreported judgment dated 6th March, 2019 passed on W.P. No. 7286(w) of 2018 (Bishnupada Patra vs. United Bank of India & Ors.)**

20. This court has considered the rival submissions made on behalf of the parties to the writ petition and perused the relevant documents available on records.

21. This court is tasked to find out whether taking note of the charge-sheet dated 27th January, 2017 the findings of the enquiry officer in the enquiry report dated 15th November, 2017 can be arrived at based on the materials available before the said enquiry officer and the depositions made by the witnesses during the course of departmental proceeding. As it has been pointed out on behalf of the petitioner by placing reliance on relevant part of the proceeding of the departmental enquiry that while cross-examining Management Witness (MW-2) in answer to the question put by the petitioner that whether from BGVB access to server/system/network of UBI is possible or not and it was replied by the said MW-2 as "NO". It appears from the facts that at the material point of time petitioner was working on deputation in BGVB, therefore considering the reply of MW-2 during cross-examination to the aforesaid question put to him it appears that allegation under charge no.1 that the petitioner accessed to bank's data server/system/network without consent of authority and stolen electronic

data and information of the bank and used the same dishonestly to cause harm to the reputation of bank is not substantiated. In consideration of such response of MW-2 during cross-examination on behalf of the respondent bank attention has been drawn to the reply of the writ petitioner to the question of the presenting officer that who was the superior authority of the MW-2 and the same was replied by the petitioner that petitioner himself was the superior authority. Though it is contended on behalf of the respondent bank that since the petitioner was the superior authority of MW-2 the reply of MW-2 during cross-examination to the aforesaid question of the petitioner may not be relied upon. This court has failed to understand that simply because MW-2 was working under the petitioner it cannot be concluded that under compulsion such reply was given by MW-2 to the question put to him by the petitioner. It does not appear that said MW-2 was under any compulsion to answer the question of the petitioner during cross-examination which may improve the case of the petitioner.

22. The above facts as it appears from the relevant part of the enquiry proceeding were not taken into consideration by the enquiry officer while making inference that charge no.1 was found to be proved. The enquiry officer as it appears from the relevant part of the enquiry report concentrated himself on some management evidences, i.e., ME-6 and ME-13 without going into the fact whether access to the data server was at all possible by the petitioner, as alleged, while working in Murshidabad branch of BGVB specially when it was deposed by MW-2 that such access is not possible. Simply, the petitioner lodged complaint against some bank officials does not prove that petitioner had accessed to the data server/system/network of the said bank authority.

23. In charge no.2 it was alleged against the petitioner that he created fake e-mail id using name of one Joy Shankar Bhattacharya and used such e-mail id for sending insinuatory and derogatory allegations against the

bank officials. It appears that the petitioner in spite of having one e-mail id created another e-mail id bhattacharyajskol@rediffmail.com and according to the bank using such newly created e-mail id insinuatory and derogatory allegations were made against the bank officials. As per explanation offered on behalf of the petitioner during the course of hearing the said newly created e-mail id cannot be termed as fake e-mail id as alleged by the disciplinary authority. Since creation of e-mail id requires full particulars of the person creating it therefore there is no scope of creating false e-mail id. According to the petitioner if printouts of extracts of e-mail account would have been properly considered by the enquiry officer correct identification details could have been elicited. It appears from the discussion on charge no.2 contained in the enquiry report that the enquiry officer concluded against the petitioner relating to creation of fake e-mail id since the petitioner was having another e-mail id and inclusion of part of name of one Joy Shankar Bhattacharyya in the newly created e-mail id by the petitioner.

24. If the charge no.2 is taken as a whole it appears that said charge consists of two aspects – one is creation of fake e-mail id and another is sending insinuatory and derogatory allegations against the bank officials. At the relevant part of the discussion in the enquiry report on charge no.2 it does not appear that any meaningful consideration has been made by the enquiry officer that how the complaint of the petitioner can be termed as insinuatory and derogatory specially when it transpires from one letter dated 29th August, 2018 written on behalf of the RBI wherefrom it appears that in CVO's response it was admitted that in certain instances there was truth in the complaint of the petitioner. In addition thereto in the letter dated 7th November, 2018 of the General Manager (HR) on behalf of the bank addressed to the concerned authority of Ministry of Finance, Department Financial Services it was stated that in 28 cases based on complaint of the petitioner disciplinary action against the officers and staff of the bank were initiated. It also appears from paragraph 9 of the affidavit-in-opposition used on behalf of the bank that based on the complaint lodged by the petitioner

there was initiation of disciplinary proceedings in 28 cases and some of which were culminated into giving caution or censure to some of the officers and staff. It is also admitted in said paragraph 9 that Umesh Kumar Ray being respondent no.5 against whom petitioner lodged complaint under the Whistle Blower Policy was censured by the Disciplinary Authority-cum-Executive Director of the said bank.

25. In view of the aforesaid events it appears to this court that the enquiry officer as well as the bank authority instead of being obsessed with creation of another e-mail id at the instance of the petitioner for lodging complaint against some of the officials of the bank could have appraised the contents of the complaint lodged by the petitioner when such complaint of the petitioner led to initiation of disciplinary proceeding against 28 officials and staff of the said bank at least it can be perceived that such complaint is not fake and such complaint cannot be brushed aside by terming the same as insinuatory and derogatory.

26. It has further been argued on behalf of the petitioner in order to answer the query of the court as to what led the petitioner to lodge complaint from the newly created e-mail id instead of using his existing e-mail id. It has been clarified that the said bank being established under Central Act and as such, comes under the purview under the Central Vigilance Commission and in terms of the extant Whistle Blower Policy petitioner tried not to disclose details or clue relating to his identity.

27. The aforesaid aspects which are related to charge no.2 ought to have been taken into consideration while examining the veracity of the said charge but on perusal of the report of the enquiry officer it appears that the same are missing. The enquiry officer simply concluded in connection with charge no.2 against the petitioner based on creation of another e-mail id

which contains the name of one Joy Shankar Bhattacharyya instead of considering the contents of the complaint made by the petitioner against some officials and staff of the said bank under the Whistle Blower Policy which led to initiation of disciplinary proceedings against officials and staff coupled with admission of the Chief Vigilance Officer of the bank that in certain instance there was truth in the petitioner's complaint as contained in the letter dated 29th August, 2018 of RBI.

28. In charge no.3 it was alleged that on 18th June, 2016 much before the usual time of attendance in the morning petitioner entered into the head office of BGVB in Murshidabad at 8.45 a.m. in order to change the Central Processing Unit (CPU) of the computer allotted to one Saibal Routh (MW-2) with that allotted to the petitioner. During enquiry petitioner demanded attendance register of said Saibal Routh for the period from 4th April, 2016 to 22nd June, 2016 which according to the petitioner was a relevant document in connection with the said charge no.3. In spite of making such request it has been contended on behalf of the petitioner that copy of the attendance register for the period from 4th April, 2016 to 22nd June, 2016 was not supplied to him. Reliance has also been placed on the answer of MW-2 to the question of petitioner as to how many days said Saibal Routh (MW-2) was on deputation before joining the head office on 22nd June, 2016. It was replied by the said MW-2 for 20 days he was on deputation meaning thereby on 18th June, 2016 being the date which has been referred to in charge no.3 said Saibal Routh was not working in the head office of BGVB in Murshidabad rather he was on deputation in another branch. It is not discernible from the aforesaid facts as to how question of changing CPU of the computer set allotted to said Saibal Routh on 18th Jun, 2016 can arise since said Saibal Routh was not working in the concerned branch on the said date. Taking note of the nature of the allegation in charge no.3 it appears to this court that the copy of the attendance register of BGVB head office Murshidabad for the period as demanded by the petitioner could facilitate the petitioner to defend his stand before the enquiry officer and as

such, as per appreciation of this court copies of said attendance register could have played a vital role in determining the veracity of charge no.3. However, such copies of the attendance register for the period as demanded by the petitioner were not supplied to him which had vitiated the decision making process in connection with charge no.3.

29. This court also fails to understand how the incident of raiding house of the in-law's of the petitioner on 17th June, 2016 has nexus with the allegations contained in said charge no.3; at least from the materials produced before the enquiry officer during the course of enquiry and the discussion of the said enquiry officer in his report dated 15th November, 2017 fails to establish a bridge in between allegations under charge no.3 with reference to the incident of changing the CPU of the computer set allotted to another officer of the said bank with that of the petitioner and the search being carried out in the in-law's house of the petitioner on 17th June, 2016 by the police authorities and the seizure of some hard disk and router by the police authorities.

30. On perusal of the relevant part of the enquiry report concerning charge no.3 goes to show that attempt has been made by the enquiry officer to correlate the alleged incident of changing of CPU by the petitioner with the raid being conducted in petitioner's in-law's house on 17th June, 2016 but it appears no such direct link was established in between these two incidents therefore the finding of the enquiry officer with regard to charge no.3 also appears to be erroneous.

31. In view of above discussion on the findings of the enquiry officer on those three charges such findings appear to be perverse and erroneous. It is trite that the enquiry officer is required to arrive at findings on the charges levelled against the delinquent employee (petitioner) which demonstrates

application of mind of the enquiry officer and based on reasoning which forms the bridge in between allegation of the disciplinary authority and the findings arrived at by the enquiry officer. Unfortunately, in the present case it appears on perusal of the enquiry report dated 15th November, 2017 that the enquiry officer has failed to establish a bridge of reasoning in between such allegations and findings which went against the petitioner. On borrowing inspiration from the view expressed by the Apex Court in the judgment reported in **(2017) 2 SCC 308 (Allahabad Bank & Ors. vs. Krishna Narayan Tewari)**, paragraph 7, it can safely be concluded that the respondent authority recorded finding that is unsupported by evidence therefore this court being the court of judicial review can exercise jurisdiction to examine the matter and grant relief in the present case on interfering with disciplinary enquiry or the resultant orders passed by the competent authority on the basis of the enquiry report. Non-application of mind by the enquiry officer or the disciplinary authority, non-recording of reasons in support of the conclusion arrived at by them can form the ground on which the writ court is justified in interfering with order of punishment. It has been decided in **Allahabad Bank (Supra)** that the writ court can certainly interfere with the decision of the disciplinary authority/findings of the enquiry officer when such authorities did not appear to have properly appreciated the evidence nor recorded reasons in support of conclusion. To add insult to injury the appellate authority instead of recording its own reasons independently appreciating the matter on record simply reproduced the findings of the disciplinary authority. Therefore, the enquiry officer, the disciplinary authority and the appellate authority have faltered in the discharge of their duties resulting in miscarriage of justice warranting interference of this court in the decision making process as well the decision taken by the authorities based on such erroneous findings of the enquiry officer.

32. The principle enunciated by the Apex Court in **Allahabad Bank (Supra)** squarely applies in the present case. In continuation of the test which is being carried out invites this court to find out whether the findings

of the enquiry officer which formed basis of the decision of the disciplinary authority and subsequent decision of the appellate authority can qualify the test of reasonableness. This court also finds it apt to rely upon the judgment of a coordinate Bench of this court reported in **(2007) 4 CHN 712 (Uniworth Resorts Ltd. & Ajay Prakash Lohiya vs. Ashoke Mittal & Ors.)** paragraph – 12, wherein the coordinate Bench albeit in the context of necessity to assign reasons in support of the conclusion arrived at by the judicial authority has succinctly concluded that the reasoning forms the bridge in between the facts of case and conclusion arrived at by the adjudicating authority. The disciplinary authority being the quasi-judicial authority is expected to follow this principle while arriving at a finding against an employee which led to dismissal of the petitioner from his service denying right to livelihood.

33. The reliance has been placed on the judgment of the Apex Court reported in **(2006) 4 SCC 713 (Narinder Mohan Arya vs. United India Insurance Co. Ltd. & Ors.)**, paragraph 26 of the said judgment is reproduced below:

“26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the enquiry officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the

enquiry. (See State of Assam v. Mahendra Kumar Das.) (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. (See Khem Chand v. Union of India and State of U.P. v. Om Prakash Gupta.) (3) Exercise of discretionary power involves two elements—(i) objective, and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element. (See K.L. Tripathi v. State Bank of India.) (4) It is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action is the basis. (Sawai Singh v. State of Rajasthan.) (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject-matter of the charges is wholly illegal. [See Director (Inspection & Quality Control) Export Inspection Council of India v. Kalyan Kumar Mitra.] (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances. (See Central Bank of India Ltd. v. Prakash Chand Jain, Kuldeep Singh v. Commr. Of Police.)”

34. In **Narinder Mohan (Supra)** the rule of the writ court in interfering with the decision of the disciplinary authority when challenge is thrown by the punished employee has been enunciated clearly despite limited jurisdiction of the court of judicial review. It has been held therein that the writ court while deciding on the finding of the enquiry officer or the decision

of the disciplinary authority can certainly look into the aspect whether in a domestic enquiry fairness in the procedure being the part of principle of natural justice is maintained or not. It has also been observed by the Apex Court that it is not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fair play in action ought to be the basis. On consideration of such view expressed by the Apex Court in paragraph 26 of **Narinder Mohan (Supra)** it appears to this court that the principle narrated by the Apex Court does apply in the present case taking note of the fact that the enquiry officer arrived at adverse finding on the charges levelled against the petitioner without being able to explain the nexus in between the allegation of the employer and the finding of the enquiry officer which vitiates the decision making process and the very decision itself. Since the impugned decision of the appellate authority dated 16th August, 2018 is based on such decision of the disciplinary authority and also the findings of the enquiry officer certainly appellate authority's decision cannot stand the test of reasonableness and fairness.

35. Though attempt has been on the part of the respondent bank to distinguish the principle enunciated by the Apex Court in **Allahabad Bank (Supra)** on making submission that the disciplinary authority is not required to give reasons being not judicial persons. Such submission of the respondent bank pales into insignificance in view of the decisions of the Apex Court as contained in paragraph 7 of **Allahabad Bank (Supra)** and paragraph 26 of **Narinder Mohan (Supra)**.

36. On the other hand reliance has been placed on the judgment of the Apex Court reported in **AIR 1964 SC 477 (Syed Yakoob vs. K.S. Radhakrishnan & Ors.)** paragraph 7, which deals with restrictions and limitations of a court of judicial review in interfering with the decision of the disciplinary authority. It has been decided by the Apex Court in the said

paragraph 7 that interference of writ court can be made for correcting errors of jurisdiction committed by inferior courts or tribunals. The writ court can also exercise jurisdiction when the court or tribunal acts illegally or improperly and when the procedure adopted in dealing with the disputes opposed to principles of natural justice. It was further decided by the Apex Court in the said judgment that while examining the decision of the tribunal the writ court is required to exercise its supervisory jurisdiction and is not entitled to act as appellate court. In the same breath the Apex Court in paragraph 7 of **Syed Yakoob (Supra)** has also observed that on finding of fact recorded by the tribunal writ of certiorari can be issued if it is shown that in recording similar finding the tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Placing reliance on such limited scope of inference by the writ court on the ground of admitting inadmissible evidence or erroneous refusal to admit admissible evidence read with the observations made by the Apex court in the subsequent judgment in **Narinder Mohan (Supra)** (paragraph 26) and **Allahabad Bank (Supra)** (paragraph 7) this court can safely make inference based on the discussion made in the preceding paragraphs on erroneous conclusion arrived at by the enquiry officer in the enquiry report dated 15th November, 2017 which fails to demonstrate and establish link in between the adverse conclusion of the enquiry officer and the charges levelled against the petitioner unleashing lack of fairness, reasonableness and the decision of the authority is based on non-application of mind.

37. Question has also arisen in view of the order of the Chief Metropolitan Magistrate, Calcutta dated 10th December, 2019 whereby petitioner was discharged from the criminal proceeding initiated against the petitioner pursuant to an FIR lodged on behalf of the bank authority on similar allegations that the petitioner had accessed the bank's data server/system/network without the consent of the authority and made complaint against the officials of the bank on creating fake e-mail Id in the

name of one Jay Shankar Bhattacharya, whether the finding of the enquiry officer in connection with the disciplinary proceeding can survive or not. The order dated 10th December, 2019 of the Chief Metropolitan Magistrate, Calcutta has been brought on record by filing supplementary affidavit in connection with the present writ petition. On behalf of the bank reliance has been placed on judgments of the Apex Court reported in **AIR 1992 SC 1981 (Nelson Motis vs. Union of India & Another)** (paragraph 5) and **(2003) 3 SCC 583 (Lalit Popli vs. Canara Bank & Ors.)** (paragraph 16). In paragraph 5 of **Nelson Motis (Supra)** it has been held that disciplinary proceeding can be continued in spite of acquittal of the employee in the criminal case since the nature and scope of criminal case is very different from that of a departmental proceeding in the context where acts which led to the initiation of departmental proceeding were not exactly the same which were the subject-matter of the criminal case. In addition thereto paragraph 16 of **Lalit Popli (Supra)** has distinguished approach and objective in criminal proceeding and the disciplinary proceeding and laid stress on the well settled principle that standard of proof, mode of enquiry and the rules governing the enquiry and trial are conceptually different. In the present case on perusal of charge-sheet dated 27th January, 2017 issued in connection with the disciplinary proceeding and the relevant part of the order of the criminal court dated 10th December, 2019 whereby petitioner has been discharged from the criminal case invites this court to compare whether the charges framed by the disciplinary authority and allegations contained in FIR lodged against the petitioner are similar or not. It appears that the allegations/charges in both the proceedings are not different. Therefore, while deciding the validity and legality of the decision of the disciplinary authority as well as appellate authority based on enquiry report whereby petitioner has been dismissed from service this court has found it fit to also consider said order of the criminal court dated 10th December, 2019. Notwithstanding being aware of difference in standard of proof, mode of enquiry and the rules governing the enquiry and trial in criminal proceeding and disciplinary proceeding it appears to this court considering

the nature of charges/allegations in both the proceedings are similar therefore the order of discharge passed by the criminal court assumes overwhelming significance.

38. Accordingly, report of the enquiry officer dated 15th November, 2017, order of dismissal dated 30th December, 2017 and the order of the appellate authority dated 16th August, 2018 stand set-aside. The concerned authority of the respondent bank is directed to reinstate the petitioner forthwith with 50% back-wages from the date of his dismissal from service till date of reinstatement. With the above direction the writ petition stands allowed. Connected application, if pending, is disposed of. However, there shall be no order as to costs.

39. Urgent Photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)

Later:

After delivery of the judgment, Mr. R.N. Majumder, learned counsel representing the respondent-Bank has prayed for stay of operation of this judgment.

Such prayer made on behalf of the respondent-Bank is considered and refused.

(Saugata Bhattacharyya, J.)