

Form No.J(2)

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

Present :

THE HON'BLE JUSTICE RAJA BASU CHOWDHURY

**WPA 26870 of 2013
with
WPA 2654 of 2013**

**Debajyoti Roy
Versus
Bangiya Gramin Vikash Bank & Ors.**

For the petitioner	:	Mr. Debabrata Saha Roy Mr. Indranath Mitra Mr. Subhankar Das Mr. Neil Basu
For the respondents	:	Mr. Md. Mokaram Hossain
Heard on	:	23.08.2023
Judgment on	:	23.08.2023

Raja Basu Chowdhury, J:

1. The petitioner claims that he was appointed and had joined as Scale-I officer in the Gour Gramin Bank on 13th December, 1985. Subsequently, he was promoted to the post of a Scale-II officer in the year 2004. While working at the said bank, by a notification dated 21st February, 2007, the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) amalgamated 5 (five) regional rural banks, sponsored by the UBI which, *inter alia*,

included the Gour Gramin Bank. Consequent upon the aforesaid notification and the amalgamation as aforesaid, the service of the petitioner stood transferred and was governed by the Bangiya Gramin Vikash Bank (respondent no. 1 herein), and the service conditions of the petitioner stood governed in terms of the service regulations of Bangiya Gramin Vikash Bank (Officers and Employees) Service Regulations, 2010 (hereinafter referred to as the “2010 Regulation”).

2. While in employment, the petitioner had been served with a charge sheet dated 3rd December, 2012, and was called upon to respond to the same, within the time specified therein. It was further recorded in the charge sheet that in the event the petitioner fails to respond, it shall be presumed that he has no reply to offer and the Bank/respondent no. 1 shall proceed to take action against the petitioner as they deem fit.
3. Upon receipt of such letter, the petitioner by a communication in writing dated 15th December, 2012 had requested the Disciplinary Authority to grant him some more time to respond to the chargesheet. Such request was, however, not acceded to by the Disciplinary Authority. Since then, by a letter dated 3rd January, 2013 the petitioner had requested for disclosure of certain documents for him to appropriately respond to the charges. In response to the petitioner’s communication, by letter dated 4th January, 2013, the General Manager (Vigilance) of the respondent

no. 1, while offering the petitioner, inspection of the documents enclosed to the charge sheet, informed that the response of the petitioner should reach by 31st January, 2013. Being aggrieved, *inter alia*, by the failure on the part of the respondents to make available copies of the documents as sought for, a writ application being WPA 2654 of 2013 was filed before this Hon'ble Court. On contested hearing, by an order dated 12th April, 2013, a Coordinate Bench of this Hon'ble Court, while extending the time for the petitioner to respond to the charges by a period of two weeks, without prejudice to his rights and contentions raised in the writ application, and while directing exchange of affidavits granted liberty to the respondents to proceed with the departmental enquiry so initiated against the petitioner. It was, however, made clear in the aforesaid order that no final order shall be passed without the leave of the Court.

4. The petitioner had since, within the time specified in the order passed by the Coordinate Bench of this Hon'ble Court as aforesaid, responded to the charge sheet whereupon, by a communication in writing dated 16th May, 2023 issued by the General Manager of the respondent no. 1, while acting as the Disciplinary Authority of the petitioner informed the petitioner of his decision to hold a disciplinary enquiry against him in respect of the charges, as the petitioner's response was found to be unsatisfactory. Since, the aforesaid letter was issued by the General Manager claiming himself

to be the Disciplinary Authority of the petitioner, the petitioner questioning his authority to act as the Disciplinary Authority had written a letter to the Chairman of the respondent no.1 on 27th May, 2013. In response to the petitioner's communication, the Chairman by a letter, which according to the petitioner was wrongly dated as 13th May, 2013, had clarified that the General Manager is the Competent Authority to deal with and exercise disciplinary actions in respect of and up to officer scale-II, in terms of the amended provisions of the 2010 Regulation, amendment whereof had been approved by the Board of Directors of the Bank and formalities complied with on 10th January, 2013.

5. Challenging the aforesaid letter and the authority of the General Manager to exercise powers of a Disciplinary Authority, the petitioner had filed another writ application being WPA 26870 of 2013. Since, the issue as regards giving effect to the amended provisions of the Discipline and Appeal Rules had cropped up, a Coordinate Bench of this Court on 23rd September, 2013, while directing the production of cause papers of WPA 2654 of 2013, directed the respondents to obtain instructions as to whether changes effected in the Discipline and Appeal Rules, had been published in the Official Gazette upon vetting by the ministry of law and justice.
6. From the records, it would appear that the aforesaid writ applications were not considered by this Court until 10th July, 2014,

when an adjournment was sought for on behalf of the petitioner. Still later, on 8th August, 2023 when the aforesaid writ applications came up for consideration, since, the respondents were not represented, this Court had directed the petitioner to serve a notice on the learned advocate representing the respondents and the matter was adjourned till 22nd August, 2023. On 22nd August, 2023, when the aforesaid writ applications came up for consideration, the respondents again remained unrepresented. The factum of service of notice as directed, would corroborate from the affidavit of service affirmed by the petitioner on 22nd August, 2023.

7. Although, both the aforesaid writ applications were taken up for hearing together, however, after hearing the petitioner, on 22nd August 2023, the matters were adjourned.

8. Today, the writ applications have come up for further consideration. Mr. Saha Roy, learned advocate appearing for the petitioner, by placing reliance on the 2010 Regulation, submits that the same was framed by the Board of Directors of the respondent no.1 in exercise of powers vested in them by Section 30 of the Regional Rural Banks Act, 1976 and was published in the Official Gazette on 15th November, 2010. By referring to Regulation 2(g) of the 2010 Regulation, it is submitted that the Competent Authority, has been defined to mean and include the 'Chairman' in respect of officer, and 'General Manager' in respect of employee. By placing reliance on Regulation 39 of the 2010 Regulation, he submits that in the event

major penalties are to be inflicted, no order imposing such penalty specified in the said Regulation shall be made, except by an order in writing signed by the Competent Authority, and no such order shall be passed without the charge or charges being framed in writing and given to the officer and after holding the enquiry, by giving the officer concerned a reasonable opportunity to answer the charges and to defend himself.

9. Mr. Saha Roy has also placed before this Court, the provisions relating to delegation of power by the Competent Authority. By placing reliance on the aforesaid regulation, it is submitted that the General Manager could not have exercised powers of a Disciplinary Authority of the petitioner. It is submitted that the letter dated 3rd December, 2012 not only disclosed the charges levelled against the petitioner but also required the petitioner to respond to the same for the authorities to take appropriate action. At that stage, no decision had been taken by the respondent no. 2 to hold an enquiry against the petitioner. It was only upon receipt of the petitioner's response that a decision was required to be taken by the Disciplinary Authority to either, hold an enquiry against the petitioner or to drop the charges. In this case, such decision had been taken by a person who is incompetent to exercise such authority.
10. Although, the Chairman, by its communication in writing dated 13th May, 2013 had purported to, *inter alia*, claim that the General Manager had been conferred with the authority to act as a

Disciplinary Authority by reasons of the amendment to the 2010 Regulation, yet according to Mr. Saha Roy, the amendment could not have been given effect to before the same was gazetted. Since, the amended Regulation was only published in the Official Gazette on 20th November, 2013, no effect thereof could be given prior thereto. Having regard to the aforesaid, it is submitted that since, a decision to hold an enquiry against the petitioner was taken by a person who was incompetent to take the same, the entire enquiry proceeding stands vitiated.

11. In support of his contention, he has placed reliance on the following judgments of the Hon'ble Supreme Court:-

- ***A. K. Roy and Another v. State of Punjab and Others***, reported in **(1986) 4 SCC 326**
- ***G. Vallikumari v. Andhra Education Society and Others***, reported in **(2010) 2 SCC 497**
- ***Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and Others v. Director General of Civil Aviation and Others***, reported in **(2011) 5 SCC 435**

12. It is still further submitted that although, despite direction of this Court on 12th April, 2013 no affidavit-in-opposition has been filed, the respondents, however, while acting on the basis of the said order, had continued with the enquiry against the petitioner. Despite, the Hon'ble Court specifically restraining the respondents from passing the final order, the respondents had, in utter violation thereof, purported to dismiss the petitioner from service by passing the final order dated 5th November, 2014, issued by the General Manager of the respondent no1.

13. It is only upon the petitioner citing the order passed by the Co-ordinate Bench of this Hon'ble Court on 12th April, 2013, that the authorities, permitted the petitioner to continue in service. The petitioner is not aware whether the final order dated 5th November, 2014 has actually been recalled. Copies of the aforesaid letter dated 5th November 2014, under cover whereof the final order dated 5th November 2014 was served, as relied on by the petitioner is taken on record. It is submitted that subsequently by issuing a communication in writing dated 1st October, 2022, which was followed by another communication in writing dated 16th March, 2023, the petitioner had been informed by the General Manager of the respondent no. 1 that although, the enquiry had been completed on 5th November, 2014, yet the final order could not executed due to intervention of the High Court in WPA 2654 of 2013 and the direction dated 12th April, 2013. Having regard to the same, the petitioner has been informed that in conformity with Regulation 45(3)&(4) of the 2010 Regulation with the subsequent amendment of 2013, the petitioner shall cease to be in service with effect from 31st March, 2023. However, the disciplinary proceeding having been initiated against him, the same shall continue as if he is in service till the final verdict is passed by the Hon'ble High Court in WPA 2654 of 2013.

14. By referring to the aforesaid documents which are also taken on record, he submits that despite the order passed by this Court on

12th April, 2013, the respondents have passed the final order and are awaiting final outcome of this proceedings for execution thereof. In the facts as stated, he submits that since, the proceeding stands vitiated by reasons of the General Manager exceeding his authority in assuming the mantle of the Disciplinary Authority of the petitioner, the entire proceeding should be declared *non est* and be set aside.

15. *Per contra*, Mr. Hossain, learned advocate appearing for the respondent/Bank, who is present today submits that the interim order should be vacated and the respondents should be permitted to pass a final order in this matter. He submits that the 2010 Regulation has already been amended and the same had been gazetted on 20th November, 2013. There is no irregularity on the part of the General Manager in claiming himself to be the Disciplinary Authority of the petitioner and/or in passing the final order. He, however, submits that he should be given further opportunity to respond.

16. Heard the learned advocates appearing for the respective parties and considered the materials on record.

17. In this case, I find that the petitioner has been served with a charge sheet, whereby the following charges have been levelled against him for having contravened Regulations 18 and 20 of the 2010 Regulations. Particulars of the charges are extracted hereinbelow:

“i) Doing acts detrimental to the interest of the Bank.

ii) Sanctioning and disbursing of loans violating the Norms/Lending Policy of the Bank.

iii) Exposing the Bank to huge financial loss.

iv) Abusing your official position for your personal gain.

v) Discharging your official duties in negligent and casual manner.

vi) Committing breach of trust.

vii) Committing breach of discipline.”

18. It is noticed that the petitioner was afforded an opportunity to respond to the allegations within the time specified therein. However, action in that regard was proposed to be taken upon receipt of such response. The said letter had been issued by the Chairman of the respondent no. 1 in his capacity as a Disciplinary Authority of the petitioner. As such, there cannot be any irregularity in initiation of disciplinary proceedings. It, however, appears that the subsequent communication had been issued by the General Manager (Vigilance). Being aggrieved, *inter alia*, with the failure on the part of the respondents to supply the petitioner with relevant documents, a writ application has been filed. However, pursuant to the order dated 12th April, 2013, the petitioner appears to have responded to the charge sheet, by addressing the letter to the Chairman of the respondent no. 1, in his capacity as the Disciplinary Authority of the petitioner.

19. The petitioner is aggrieved by the decision taken by the General Manager by his letter dated 16th May, 2015 of having found the response given by the petitioner to be unsatisfactory and to hold an enquiry against the petitioner. I find that the charge sheet had been issued in terms of 2010 Regulation. It would also appear from the said 2010 Regulation that the Competent Authority, who has been defined in the said Regulation, is alone competent and is authorised to proceed against a delinquent, who may be an officer or an employee of the Bank. Regulation 2(g) of the 2010 Regulation defines the Competent Authority, which means and includes the 'Chairman' in respect of officer, and 'General Manager' in respect of employee. Having regard to the aforesaid 2010 Regulation, it can be concluded that it is the Chairman who as the Competent Authority, alone, was authorised to act as the Disciplinary Authority of the petitioner. Although, the Chairman by issuing a clarification dated 13th May, 2013, had purported to claim that the General Manager had been conferred with the authority to act as a Disciplinary Authority of the officers of the Bank on the basis of the amendment to the 2010 Regulation, which had been approved by the Board of Directors of the Bank and formalities complied with on 10th January, 2013, yet the said amendment appears to have been published in the Official Gazette on 20th November, 2013.
20. From a perusal of the copy of said Regulation of 2010 as produced by the petitioner, it would appear that the same had been

framed in exercise of powers conferred by Section 30 of the Regional Rural Bank Act, 1976 after consultation with the United Bank of India, the National Bank for Agriculture and Rural Development and with the previous sanction of the Central Government.

21. Regulation 1(2) of the said Regulation of 2010 provides that the same shall come into force on the date of its publication in the Official Gazette. The said Regulation of 2010 appears to have been published in the Gazette of India on 15th November, 2010. Having regard to the aforesaid, for the aforesaid amendment to take effect, the same had to be published in the Official Gazette.

22. As would appear from the order dated 23rd September, 2013, the Coordinate Bench of this Hon'ble Court, had called upon the respondent/Bank to obtain instruction as to whether the changes effected in the Discipline and Appeal Rules had been published in the Official Gazette. The respondent/Bank, despite being aware of the aforesaid situation, permitted the proceedings to continue. No affidavit-in-opposition in either of the writ applications has been filed. I find that the Hon'ble Supreme Court in the case of **A. K. Roy and Anr.** (Supra), in paragraph 10 of its judgment has specifically observed as follows:-

“10

Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the legislature in enacting Section 20(1) was to confer a power on the authorities specified

therein which power had to be exercised in the manner provided and not otherwise.”

23. A similar view has been taken by the Hon’ble Supreme Court in the case of ***Joint Action Committee of Air Line Pilots’ Association of India (ALPAI) and Others*** (Supra), in paragraph 27.

The same is reproduced hereinbelow:

“27. Similar view has been reiterated by this Court in Commr. of Police v. Gordhandas Bhanji [1951 SCC 1088 : AIR 1952 SC 16] , Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia [(2004) 2 SCC 65 : AIR 2004 SC 1159] and Pancham Chand v. State of H.P. [(2008) 7 SCC 117 : AIR 2008 SC 1888] observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.”

24. Having regard to the aforesaid, since, the Chairman of the respondent no.1, at the relevant point of time when the charge-sheet was issued and when the reply to the charge-sheet was received by the authorities, was the only authority vested with the power to act as a Disciplinary Authority of the petitioner, no person other than the Chairman could have taken a decision to continue with the disciplinary proceeding by holding an enquiry against the petitioner. In the facts as noted above, the satisfaction of the General Manager to hold an enquiry against the petitioner cannot be said to be the satisfaction of the Chairman, within the meaning of the 2010 Regulation. Although, the Chairman of the respondent no.1 had

attempted to clarify the decision taken by the General Manager, *inter alia*, by contending that by reasons of the amendment of the 2010 Regulation, the General Manager had been authorized to exercise the powers of Disciplinary Authority, I am afraid the same is unacceptable as the same also does not comply with Regulation 1(2) of the said amended Regulation which specifically mandates that the aforesaid amendment shall come into force on the date of publication in the Official Gazette. I find that by the Gazette Notification dated 20th November, 2013, the Bangiya Gramin Vikash Bank Service (Amendment) Regulations, 2013 were published.

25. Having regard to the same, it cannot be said that the aforesaid amendment could be made applicable prior to publication of such Regulations in the Gazette of India. The amended regulation also does not provide that the aforesaid amendment shall come into effect retrospectively. Having regard to the same, the aforesaid amendment cannot come in aid of the respondents to justify the decision taken by the General Manager of the respondent no. 1 as regards satisfaction of the Disciplinary Authority to hold an enquiry against the petitioner. Since, the satisfaction to hold an enquiry goes to the very root of the matter, all consequential steps taken by the respondents cannot also be sustained. In any event, no final order could have been passed without the leave of this Court.

26. In the conspectus of facts as noted above, the final order and the disciplinary proceeding from the stage of satisfaction to hold the enquiry by the General Manager, by issuance of the letter dated 16th May, 2013 stand quashed and set aside.
27. Although, Mr. Saha Roy, by placing reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***State of A.P. v. N. Radhakishan***, reported in **(1998) 4 SCC 154**, in particular on paragraph 19 thereof, submits that after a prolonged delay, no enquiry proceeding can be continued against the petitioner, the facts in this case are different. In this case admittedly, the General Manager on an erroneous premise had taken the decision to hold the enquiry, though the charge sheet was issued by the Chairman. As such the initiation of the proceeding cannot be said to be bad or *non est*. Further the writ applications were pending for almost a decade. It is not a case of delay in concluding the enquiry. In this case the enquiry was concluded on 5th November, 2014, but for the subsisting interim order, no final order could be given effect.
28. In the given facts as aforesaid, I am of the view that since, the aforesaid disciplinary proceeding has been set aside from the stage of satisfaction of the Disciplinary Authority to proceed against the petitioner, an opportunity should be afforded to the respondents to re-consider the said issue from such stage and if after re-consideration of such issue the Chairman is of the view that the enquiry can be proceeded with against the petitioner, in such event

the entire disciplinary proceeding should be completed within a period of three (3) months from the date of communication of this order.

29. In the event, no final decision is taken by the Competent Authority or the disciplinary proceeding is not concluded within the time specified hereinabove, the petitioner shall be disbursed his entire retiral dues and the disciplinary proceeding shall be declared as closed. Needless to note since, the disciplinary proceeding had been initiated in terms of the 2010 Regulation, all decisions as regards satisfaction of the Disciplinary Authority to continue with the disciplinary proceeding by holding an enquiry against the petitioner must be taken by the Chairman of the respondent no. 1.

30. With the above directions and observations, the writ applications being WPA 26870 of 2013 & WPA 2654 of 2013 are accordingly ***disposed of.***

31. There shall be no order as to costs.

32. All parties shall act on the basis of the server copies of the order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)

Saswata
Assistant Registrar (Court)