Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 2850 of 2012

Smt. Jhunu Thapa
Vs.
The State of West Bengal & Ors.

For the petitioner	:	Mr. Soumya Majumder Mr. Purnasish Ray Ms. Mayuri Ghosh
For the respondent Bank	:	Mr. P. C. Bhattacharyya Mr. Chandan Kumar Lal
Heard on	:	26.09.2023 & 03.10.2023
Judgment on	:	**3rd October, 2023.**

Raja Basu Chowdhury, J:

1. The present writ application has been filed, *inter alia,* challenging the order of dismissal dated 31st of July, 2010, thereby dismissing the petitioner from service.

2. It is the petitioner's case that the petitioner was appointed as a ledger keeper in Darjeeling District Central Co-operative Bank Ltd., at Kalimpong (hereinafter referred to as the "said Bank") in the year 1979. She had served in the said branch from 1979 to

1981. Subsequently, the petitioner was transferred to Darjeeling Branch of the said Bank and continued to serve there between 1981 to 1987. In the year 1987, she was designated as the Cashier-in-Charge of the said branch and served in the said post between 1987 to 1991. Later, the petitioner was transferred to the Kurseong branch and again to the Darjeeling branch in the month of October, 1992 where she served in the post of Ledger Keeper. In course of her employment with the bank, the petitioner was promoted to the post of Cashier and had served the Bank between 1992 to 2003. It is the petitioner's contention that she was lastly promoted on 5th July, 2003 to the post of Junior Officer and was posted at Sukhiapokhari branch, in the district of Darjeeling.

3. It is also the petitioner's contention that while working at the Sukhiapokhari branch, the petitioner was asked to perform the additional duties of Assistant Accountant in addition to her duties as cashier. Despite the fact that the petitioner had been working in the said Bank with utmost sincerity, devotion and diligence, in course of her employment, by an office order dated 6th of December, 2004, the petitioner was withdrawn from the post of cashier with immediate effect, and the Branch Manager was instructed to allocate the petitioner suitable office job.

4. Subsequently, the petitioner was served with a show-cause notice dated 25th of January, 2005 thereby, alleging that during her

tenure as cashier at the Darjeeling branch from 21st September, 2016 to 24th April, 2000, she had made payments in cash in 14 different cases aggregating Rs.18,81,036/-, without obtaining necessary pay orders from the appropriate authority and all payments were allegedly overdrawals. The petitioner was, thus, asked to show-cause within 10 days from the receipt of such notice why disciplinary action should not be taken against her. The petitioner had duly responded to the said show-cause, by a notice in writing dated 7th February, 2005, she had clarified that out of 14 cases highlighted only a few were cash payments and the others were either cheque payments or cheque collection cases. By such reply, she had further explained that whenever payments were made appropriate concerned officials were either on leave or were not present in the office and she had, on the basis of the verbal instructions issued by Mr. Suraj Mia, the then Branch Manager of the Bank, cleared the said cheques. Subsequently, the petitioner was served with a notice dated 5th May, 2005, whereby she was asked to be present for the enquiry to be held on 16th May, 2005. The petitioner not only appeared before the Enquiry Officer but had also offered her explanation.

5. By an office order dated 1st August, 2005, the petitioner was suspended. The petitioner had subsequently made a representation against the aforesaid suspension. Later, in December, 2005, the respondent Bank appointed Mr. J. P. Yadav,

a retired Assistant Registrar of Cooperative Societies, as an Enquiry Officer to conduct an enquiry against the petitioner on the basis of an inspection carried out by them. Simultaneously, with the appointment of the Enquiry Officer, the petitioner was served with a charge sheet dated 23rd of December, 2005, enclosing therewith the articles of charge. To morefully appreciate the charges levelled against the petitioner annexure-I to the articles of charge is extracted herein below:-

Annexure I
Article of charges.

"Statement of article of charges framed against Smt. Jhunu Thapa ex-cashier, Darjeling Branch of the Darjeeling District Central Co-operative Bank Ltd. Kalimpong (here in after called the DDCCB) (presently under suspension)

That: The said Smt. Jhunu Thapa while posted and working as Cashier of Darjeeling Branch from 1992 to 2003 COMMITTED the following offences which caused serious damage to the reputation and goodwill of the bank, and also caused immense financial loss to the bank.

01. Gross irregularity by way of making payment to the account holders WITHOUT any pay order from the competent authority.

02. By utilizing a group IV staff of Darjeeling Branch to act as cashier without any instructions from the competent authority which caused immense financial loss to the bank.

03. Gross negligence of duty causing huge monetory loss to the bank.

> *04. Loss of confidence of the Bank on the said Smt. Jhunu Thapa ex-cashier, Darjeeling branch (under suspension)."*

6. Immediately upon receipt of the charge sheet, the petitioner filed her written statement whereupon an enquiry was conducted against the petitioner by the Enquiry Officer. Upon conclusion of the enquiry by a notice in writing dated 4th of March, 2006 issued by the Chief Executive Officer of the respondent bank, the petitioner was called upon to show-cause as to why the petitioner shall not be dismissed from service.
7. In response to the said show-cause, by a letter dated 11th of March, 2006, the petitioner defended herself. Despite, receipt of the reply given by the petitioner to the show-cause, the Chairman of the respondent bank by a further communication in writing dated 13th of March, 2006 informed the petitioner that the response given by the petitioner to the show-cause issued by the Bank on 4th of March, 2006 was considered in the Board of Directors' meeting held on 13th of March, 2006, and after due deliberation the same was found to be untenable and unsatisfactory and accordingly it was resolved to issue a further show-cause notice on the petitioner asking her to explain why she shall not be dismissed from service of the Bank. The petitioner had duly responded to the said show-cause notice and once again clarified her position. By such reply, the petitioner

also requested the Chairman of the bank to afford her with an opportunity to appear before the members of the Board of Directors of the Bank, for her to give appropriate clarification to any doubt or question that may arise in connection with her response.

8. Following receipt of the aforesaid show-cause, by a communication in writing dated 23rd of March, 2006, the petitioner was informed that the Board of Directors of the Bank had unanimously resolved to dismiss the petitioner from service and accordingly, the petitioner was dismissed from service with effect from 22nd day of March, 2006.

9. Since the aforesaid dismissal order was served without even affording the petitioner with an opportunity to consult the enquiry report, the petitioner had challenged the order of dismissal by filing a writ application before this Hon'ble Court which was registered as WP No. 11722(W) of 2006. A Coordinate Bench of this Hon'ble Court by an order dated 30th March, 2010, taking into consideration the factum of non-service of the enquiry report on the petitioner and in the light of the judgment delivered by the Hon'ble Supreme Court in the case of ***Managing Director of ECIL v. B. Karunakar,*** reported in **(1993) 4 SCC 727** was, *inter alia*, pleased to set aside the order of dismissal dated 23rd March 2006 and further directed the concerned respondents to

conclude the disciplinary proceeding upon supplying the petitioner with a copy of the enquiry report.

10. Pursuant to and in terms of the order passed by the Coordinate Bench of this Hon'ble Court, the Chief Executive Officer of the respondent bank by a communication in writing dated 16th of April, 2010 supplied the petitioner with the copy of the enquiry report. Subsequently, by a communication in writing dated 10th of May, 2010, the petitioner was called upon to submit a representation to the enquiry report. The petitioner had since, by communication in writing dated 18th of May, 2010, categorically highlighted the fact that from the enquiry report it is found that the petitioner had been made responsible only with regard to 5 transactions, out of the 16 transactions, mentioned in the article of charges. In the light of the aforesaid, the petitioner afforded her explanation to the 5 cheques transactions, for which responsibility was thrust on the petitioner. It was categorically indicated by the petitioner in her response that out of aforesaid 5 transactions, 4 were cheques transfers issued to the BDO Bijanbari, while only other cheque which was issued to a private party, was on the basis of the direct advice issued by his superior officer and that the account holder had the sufficient balance in the account.

11. Records reveal that upon receipt of the petitioner's communication by a notice in writing dated 25th of March, 2010,

the Chairman of the Bank had found the petitioner to be responsible for serious irregularities as pointed out in the charge sheet in relation to the payment of cheques identified in the said communication. By such communication the petitioner was called upon to show-cause why she shall not be dismissed from the service of the Bank. The petitioner had duly responded to the said show-cause and ultimately by a communication in writing dated 31st of July, 2010, the petitioner was informed by the Chief Executive Officer of the Bank that the Board of Directors of the bank in its meeting held on 29th of June, 2010, having found the response of the petitioner to be unsatisfactory, had decided to dismiss the petitioner from service with effect from the date of issuance of such letter.

12. Being aggrieved, the petitioner had preferred an appeal before the Appellate Authority in terms of Clause 15(2) of the Appendix to Chapter VI of the West Bengal Cooperative Societies Rules 1987. Despite preferring the appeal, since, the same was kept pending, the petitioner was compelled to invoke the extra-ordinary writ jurisdiction of this Court. By an order dated 4th of March, 2011 passed in connection with WP 401(W) of 2011, a Coordinate Bench of this Hon'ble Court was, *inter alia*, pleased to direct the respondents to dispose of the petitioner's appeal in the next Annual General Meeting of the respondent bank.

13. Following the aforesaid, by a communication in writing dated 1st of November, 2011 issued by J. K. Pradhan, the Chairman of the respondent bank, the petitioner was communicated the decision of the General Body as regards dismissal of the said appeal.

14. Being aggrieved, the present writ application has been filed.

15. Mr. Majumder, learned advocate ably assisted by Ms. Ghosh, learned advocate appearing in support of the aforesaid application submits that the enquiry conducted against the petitioner was conducted in hot haste on two several dates i.e. on 8th February, 2006 and on 14th February, 2006. None appeared on behalf of the respondent bank to prove the documents. No witness was examined by the bank. The Enquiry Officer acted as the Presenting Officer himself. The Enquiry Officer had put questions to the petitioner for the petitioner to respond to the same. The petitioner did not get the opportunity to test out the documents. The entire proceedings were concluded without compliance of the principles of natural justice, equity and fair play. It is still further submitted that unless a document, especially, when the same relates to financial transaction, is proved through witness, the same cannot be taken on record.

16. In support of his contention he places reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***Rup Singh Negi v. Punjab National Bank & Ors.,*** reported in

(2009) 2 SCC 570. On the issue of denial of natural justice vitiating the enquiry, he has placed reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh & Ors. v. Saroj Kumar Sinha***, reported in **(2010) 2 SCC 772**.

17. It is still further submitted that ordinarily when charges are required to be proved, evidence must be led in presence of the charged official. Admittedly, in this case no witness action was conducted in presence of the petitioner. This is sufficient to vitiate the enquiry. In support of his aforesaid contention he has placed reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***Central Bank of India Ltd., v. Prakash Chand Jain***, reported in **AIR 1969 SC 983**.

18. Admittedly, in this case, the Enquiry Officer and the Disciplinary Authority were different. As such, it was for the Disciplinary Authority to satisfy itself as regards the report of the Enquiry Officer and to give reasons for the same. By drawing attention of this Court to the notice dated 25th of May, 2010, it is submitted that there is no finding as regards the Disciplinary Authority concurring with the findings of the enquiry report. The proceedings were decided mechanically. Even the decision in the appeal was taken by a person who himself was the presenting officer.

19. Having regard to the aforesaid, he submits that the enquiry proceedings, the order of dismissal and the order of the Appellate Authority cannot be sustained and the same should be set aside.

20. *Per contra*, Mr. Bhattacharyya, learned advocate representing the respondent bank submits that admittedly, the petitioner had indulged in illegalities. The petitioner had accepted the factum of payments. There was no denial by the petitioner as regards the transactions. The only defence of the petitioner was that Suraj Mia, her superior officer had directed her to make payment. According to Mr. Bhattacharyya, the petitioner was given reasonable opportunity to defend. Although, initially, the enquiry report was not supplied to the petitioner, however, subsequently, pursuant to the direction passed by this Court, the enquiry report was made available to the petitioner, for her to respond to the same. Only upon receiving the response from the petitioner that the Disciplinary Authority by a communication in writing dated 25th of May, 2010 had called upon the petitioner to show-cause as to why she shall not be dismissed from service. Upon receipt of such reply of the petitioner that the final decision had been taken. In response to the query from the Court he submits on instruction that the person who was appointed as the Presenting Officer was, in fact, in the Board of Directors of the bank which dismissed the petitioner from service. The same

gentlemen also formed part of the Board of Directors of the bank when the petitioner's appeal was dismissed.

21. Heard learned advocates appearing for the respective parties and considered the materials on record. I find that in the instant case, the petitioner had been charge-sheeted. Even before such charge sheet was issued, an Enquiry Officer was appointed to conduct an enquiry against the petitioner. The enquiry was conducted against the petitioner on two dates i.e. on 8th of February, 2006 and 14th of February, 2006. Apart from the Presenting Officer and the Enquiry Officer, no other persons were present on behalf of the respondent bank. Admittedly, the matter involved financial transactions. The respondent bank did not produce any witness to substantiate the charges. None had come forward on behalf of the respondent bank to prove the documents. From the records of the proceedings it would appear that the Enquiry Officer had put certain questions to the petitioner and the reply of the petitioner was recorded in answer to such questions. There appears to be no opportunity afforded to the petitioner to make any general statement or the petitioner to present any witness on her behalf. After conclusion of the enquiry, the respondents even without making available the enquiry report to the petitioner had purported to dismiss the petitioner from service.

22. At the instance of the petitioner, a Coordinate Bench of this Court by an order dated 30th March, 2010, while hearing a challenge to order of dismissal had set aside the order of dismissal and had directed the respondents to conclude the enquiry by favouring the petitioner with the enquiry report. Pursuant to the aforesaid direction, by a cover of letter dated 16th April, 2010, the petitioner was favoured with the enquiry report. From such report, the petitioner for the first time came to learn that the petitioner was held responsible only, in respect of 5 several transactions. Particulars of such transactions are annexed at page 129 to the writ application. The petitioner had responded to the same and had categorically identified in her response that the aforesaid transactions were not cash payments but were cheque transfers and 4 out of 5 transactions were made to the Government officials and only other transaction relating to payment to a private party was on the basis of specific instruction issued by her superior, and that there was sufficient balance in the bank account.

23. Notwithstanding the aforesaid, the Chairman of the respondent bank, who also happened to be the Presenting Officer for the Bank by a communication in writing dated 25th of May, 2010 had found the petitioner responsible for serious irregularities as pointed out in the charge sheet. Such communication, however, does not recorded satisfaction of the Disciplinary Authority or its

concurrence with the enquiry report. Although, the petitioner had issued a response to the said communication and had explained her position, by a communication dated 31st of July, 2010, the petitioner was dismissed from service on the basis of a decision of the Board of Directors of the bank, which included the Chairman who was the Presenting Officer in the case. This fact has been acknowledged by the learned advocate representing the respondents.

24. The aforesaid is enough to vitiate the enquiry proceedings. I must, however, note and as rightly pointed out by Mr. Majumder that the finding of the Enquiry Officer was based on no evidence. The Hon'ble Supreme Court in the case of ***Rup Singh Negi*** **(supra),** in paragraph 23 of the judgment, has, *inter alia*, observed that the decision of the Disciplinary Authority and the Appellate Authority must be on the basis of materials brought on record pointing out the guilt. The materials brought on record pointing out the guilt are required to be proved. The decision must be arrived at on the basis of some evidence which is legally admissible.

25. In this case there appears to be no material on record which was legally admissible to prove the guilt of the petitioner. Admittedly none of the documents were exhibited by providing them in the proceedings or by lending evidence. The branch manager was also not examined. As such, it can be concluded

that the conclusion reached by the Enquiry Officer was based on no evidence. It is also noted that no opportunity was given to the petitioner to make any general statement in her defence. The petitioner was only permitted to answer to the question put forward to her. No opportunity was given to the petitioner of examining any witness or disclosing any document in her defence.

26. In the case of **Saroj Kumar Sinah (supra)** in paragraph 39 of the judgment the Hon'ble Supreme Court was, *inter alia*, pleased to observed as follows:-

> ***"39.*** *The proposition of law that a government employee facing a departmental enquiry is entitled to all the relevant statements, documents and other materials to enable him to have a reasonable opportunity to defend himself in the departmental enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in State of Punjab v. Bhagat Ram [(1975) 1 SCC 155 : 1975 SCC (L&S) 18] : (SCC p. 156, paras 6-8)*
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> *"6. The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.*

> *7. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.*
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> *8. It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken.*"

27. Having regard to the aforesaid, I have no doubt in my mind that the petitioner was denied the basic fundamental principles of natural justice. The decision arrived at by the respondent bank was based on no evidence. In any event, the same was perverse. The Chairman of the respondent bank who himself was the Presenting Officer, formed part of the Board of Directors of the Bank which had decided to dismiss of the petitioner from service

and the appeal. In view thereof, the order of dismissal dated 31st July, 2010 and the order issued by the Appellate Authority dated 1st November, 2011 cannot be sustained and the same are accordingly set aside and quashed.

28. I have been informed by the parties that the petitioner had already crossed the age of superannuation in the year 2020. Taking into consideration the fact that the petitioner was initially suspended and subsequently dismissed from service on the basis of an irregular enquiry conducted against her, I find that the petitioner had, in fact, been denied the employment by the respondent bank. I am of the view that justice would be sub-served, if the petitioner is granted 50 per cent of the back wages from the date of dismissal till she attained the age of superannuation. She shall, however, be paid full back wages for the period for which she was under suspension, excluding the subsistence allowance already paid. The respondents are however directed to re-compute the terminal benefit payable in favour of the petitioner, *inter alia*, including gratuity by treating the petitioner to be in continuous service till her superannuation. The entire terminal benefits must be released in favour of the petitioner within a period of 8 weeks from the date of communication of this order along with interest at the rate of 10 per cent per annum from the date of superannuation, till such time the same is actually disbursed in her favour.

29. With the aforesaid observations/direction the writ application, stands allowed and disposed of.

30. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)

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