

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**W.P.A. 7994 of 2021
Abhishek Nag
Vs.
Punjab National Bank & Ors.**

For the Petitioner : Mr. Soumya Majumdar
Ms. Sanjukta Duttaadvocates

For the Respondents : Mr. Abhishek Banerjee
/ Bank Ms. Parna Roy Choudhury
Mr. Avishek Choudhury
Ms. Payel Ghosh ... advocates

Reserved on : 21.03.2023

Judgment on : 22.08.2023

Hiranmay Bhattacharyya, J.:-

1. The order of penalty dated August 3, 2018, the appellate order dated January 4, 2019 and the order dated 18.09.2019 of the reviewing authority are under challenge in this writ petition.
2. Petitioner was transferred from Jangipur Branch of Oriental Bank of Commerce which subsequently stood merged with Punjab National Bank (hereinafter referred to as "the Bank") to Dhamra Post branch as Branch Incumbent on 24.10.2017. Petitioner was relieved from the Jangipur branch on 01.11.2017. A Memorandum dated 11.01.2018 was issued proposing to hold an inquiry against the petitioner alleging that he was absent unauthorisedly from his duty since November 2, 2017 and left the station without obtaining prior permission of the competent authority. The aforesaid acts, according to the articles of charge amounts to violation of Regulation 13(1) and (2) of Oriental

Bank of Commerce Officer Employees (Conduct) Regulations, 1982 (hereinafter referred to as the “said Regulations”) read with Regulation 24.

3. The Inquiry authority (for short “IA”) submitted his report dated June 4, 2018 holding that the charge against the petitioner has been proved.
4. The Disciplinary Authority (for short “DA”) imposed the penalty of removal from service which shall not be a disqualification for future employment by an order dated August 3, 2018. Petitioner preferred an appeal on 19.09.2018 against the penalty order dated 03.08.2018 and the Appellate Authority (for short “AA”), by an order dated January 4, 2019, rejected the appeal and upheld the penalty imposed by DA. Thereafter, the petitioner filed a review petition against the order of the AA and the Reviewing Authority (for short “RA”) rejected the review petition and confirmed the penalty imposed by an order dated September 18, 2019.
5. Mr. Majumdar, learned advocate appearing in support of the writ petition, in course of his argument, referred to several documents in support of his contention that the petitioner could not join since 01.11.2017 due to his serious physical ailment for which the doctor advised him to take complete bed rest. He further contended that the petitioner submitted applications for sanction of sick leave but the authorities of the Bank did not reply to such prayers. He contended that the departmental proceeding is liable to be quashed as the same was conducted in gross violation of the principles of natural justice. Mr. Majumdar submitted that the IA conducted the inquiry in a hot haste without affording opportunity to the petitioner to cross examine the Management Witnesses and to present his defense. He contended that the absence of the petitioner from his duty was not a willful and deliberate act as the same was for medical ground. Mr. Majumdar concluded by submitting that the punishment imposed is disproportionate to the charges alleged to have been proved and, therefore, the same should be quashed by this Court in exercise of power of Judicial Review.
6. Mr. Majumdar placed reliance upon the decision of the Hon’ble Supreme Court in the case of ***Hind Construction & Engineering Co. Ltd. Vs. Their workmen*** reported at ***AIR 1965 (SC) 917*** in support of his contention the punishment of dismissal from service for such a

short period of absence is shockingly disproportionate. He also referred to the decisions of the Hon'ble Supreme Court in the case of **Collector Singh vs. L.M.L. Limited Kanpur LML** reported at **(2015) 2 SCC 410** and **Union of India vs. R.K.Sharma** in **Civil Appeal No. 4059 of 2015** in support of his contention that this Court can interfere in case the punishment is disproportionate to the proved guilt. Mr. Majumdar referred to a decision of the Hon'ble Supreme Court in the case of **Sur Enamel and Stamping Works Ltd. vs. Workmen** reported at **AIR 1963 (SC) 1914** to support his submission that not affording an opportunity to cross examine the management witnesses amounts to violation of principles of natural justice. He also placed reliance upon a decision in the case of **Sailendra Lal Sengupta Alias Santi Sen vs. Administrator Corporation of Calcutta** reported at **87 CWN 617** to support his contention that it was the duty of the authorities of the Bank to reply to the leave application.

7. Ms. Roychowdhury, learned advocate representing the Bank seriously disputed the submission of Mr. Majumdar. It was contended that the petitioner had been on leave since 02.11.2017 without any approval from the Bank. It was further contended that the emails alleged to have been sent by the petitioner was forward to an E-mail ID which was not the E-mail ID of the Bank. It was submitted that the petitioner left the station/headquarter without obtaining prior permission from the competent authority. It was contended that the IA gave adequate opportunity to the petitioner to participate in the inquiry and the principles of natural justice was duly followed in the inquiry. The learned advocate for the Bank relied upon the decisions of the Hon'ble Supreme Court in **Civil Appeal No. 5848 of 2021** in the case of **Union of India & ors. vs. Dalbir Singh** and **Union of India and others vs. P. Gunasekaran** reported at **(2015) 2 SCC 610** on the scope of interference by a High Court under Article 226 against the orders passed in disciplinary proceedings. The decision of the Hon'ble Karnataka High Court in the case of **State Bank of India and ors. vs. D.K.Seetharam** reported at **2003(96) FLR 614** was relied upon in support of the contention that the act of employee remaining absent and not joining duty even after opportunity was given to join, the Court should be slow to interfere with the orders passed by the disciplinary authorities.

8. Heard the learned advocates for the parties and perused the materials placed.
9. Record of the proceedings before IA reveals that the first hearing was fixed on 19.02.2018 but the petitioner remained absent on that date. The hearing was adjourned to 28.02.2018 to enable the petitioner/Charged Officer (for short "CO") to submit his defense. Even on that date the CO did not attend. The IA adjourned the hearing to 09.03.2018 and the CO did not attend the hearing on that date also. The hearing was adjourned to 19.03.2018 and on that date the CO appeared and prayed for 15 days time. Acceding to such request, the hearing was adjourned to 02.04.2018. The CO, however, did not appear on that date and the IA adjourned the hearing to 10.04.2018. The CO appeared on 10.04.2018 and prayed for time. The next hearing was fixed on 20.04.2018 but the CO was also not present on that date.
10. The DA, after noting the aforesaid factual position observed that the CO was given full opportunity to present his case. In view thereof, this Court is not inclined to accept the submission of Mr. Majumdar that the IA did not afford adequate opportunity to CO to present his case.
11. It is evident from the minutes of the proceeding before the IA that the IA gave opportunity to the CO to cross examine the management witness but he refused to cross examine. Therefore, the contention of Mr. Majumdar regarding violation of the principles of natural justice on this ground also is not acceptable.
12. In ***Sur Enamel*** (supra) the persons who made the reports which were relied upon by the Enquiry Officer did not attend the enquiry and also that such reports were not made available to the employee at any time before the enquiry was held. On such facts the Hon'ble Supreme Court held that the enquiry cannot be said to have been properly held. The said decision being distinguishable on facts do not have any manner of application to the case hand.
13. The allegation of the writ petitioner that he was not given any opportunity to submit his written brief before the IA is also a baseless one as it is evident from the records that the petitioner chose to submit his written defence by a letter dated 17.05.2015 which was also taken into consideration by the IA.
14. The DA observed that the CO was relieved from the Jangipur branch on 01.11.2017. After considering the exhibit M. Ex- 14, which is the leave record, it was noted by the DA that CO has not applied for any leave before leaving the Jangipur branch nor did he apply for station

leave. DA also took into consideration the Medical Certificate dated 02.11.2017 wherein the doctor advised CO to take rest for 30 days and observed that even after completion of 30 days rest as per medical advice, he had not joined the duties on 01.12.2017. In reply to the letter of the competent authority being M.Ex-8 advising CO to submit the documents as indicated in the said letter, CO did not submit any medical report apart from the old prescription along with the report dated 02.11.2017. CO was called upon to submit his comments vide letter being M.Ex-9 for not joining his duties even after expiry of advised rest of 30 days and was also advised to report to duty at Dhamra branch by 04.01.2018. However, the CO did not join the branch till 05.01.2018. In the backdrop of such factual findings, the DA observed that CO has not informed the competent authority regarding his health condition. It was further observed by such authority that CO did not join the duties even after he was given full opportunity to do so. DA concurred with the findings of IA and held that the charge against CO has been proved. DA accordingly imposed the punishment.

15. CO, however, made out a new case before the AA. It was stated in the appeal petition that the transfer orders came at a crucial time when his age old father had undergone a major surgery and as a result he suffered nerves breakdown. AA, however, took into consideration the grounds taken in the appeal petition and dealt with such grounds specifically by passing a reasoned order.
16. CO, thereafter, approached the RA by filing a petition dated 11.05.2019. RA observed that no new material/ evidence was brought in the review which was not available at the time of passing of the appellate order which has the effect of changing the nature of the case. RA accordingly dismissed the review petition.
17. In **P. Gunasekaran** (supra), the Hon'ble Supreme Court held that the High Court shall not reappreciate the evidence while exercising the power of judicial review. It was further held that the High Court shall not interfere with the conclusions in the enquiry in case the same has been conducted in accordance with law and go into the proportionately of punishment unless it shocks its conscience. The Hon'ble Supreme Court held thus-

“In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not

venture into re- appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i. the finding of fact is based on no evidence.*

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate the evidence;*
- (ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii). go into the adequacy of the evidence;*
- (iv). go into the reliability of the evidence;*
- (v). interfere, if there be some legal evidence on which findings can be based.*
- (vi). correct the error of fact however grave it may appear to be;*

(vii). go into the proportionality of punishment unless it shocks its conscience.”

18. The aforesaid proposition of law as to the scope of judicial review was reiterated by the Hon'ble Supreme Court in the case of **Dalbir Singh** (supra).
19. Keeping the aforesaid proposition of law in mind, this Court shall consider whether the findings of the disciplinary authority calls for any interference.
20. It is the case of the petitioners that on account of deactivation of his operating ID he could not apply for leave through the normal channel i.e., HRMS. The petitioner further contended that he requested for leave through electronic mails. The disciplinary authorities arrived at a concurrent finding of fact that the HRMS of CO was never deactivated by the bank after his transfer from Jangipur branch. Whether the CO applied for sanction of leave being a disputed question of fact, the decision in the case of **Sailendra Lal Sengupta** (supra) cannot be of any assistance to the petitioner. However, there is nothing on record to show that leave was sanctioned in favour of CO by the Bank.
21. After going through the materials on record including the report of the IA, the orders of the DA, AA and RA, this Court finds that the enquiry was held according to the procedure prescribed. It cannot be said that the findings of fact arrived at are based on no evidence. The proceedings were conducted by the aforesaid authorities by following the principles of natural justice. It is well settled that the High Court in exercise of its powers of judicial review in respect of disciplinary proceedings cannot reappreciate the evidence and substitute its findings with that of the disciplinary authorities. The High Court cannot go into the adequacy or reliability of the evidence.
22. In the case of **State Bank of India** (supra) it was held that if the delinquent did not join even after ample opportunity was given to him and the conduct of the disciplinary proceeding is fair and reasonable, the Court should be slow to interfere with the orders passed by the management.
23. In the case on hand the disciplinary authorities conducted the proceedings in a fair manner. The CO was also given adequate opportunity to join but the CO did not join duties. Therefore, this Court is not inclined to interfere with the concurrent findings of fact

arrived at by the disciplinary authorities holding that the charge against the CO has been proved.

24. Now, the question arises whether this Court should go into the proportionality of punishment imposed upon the CO. Mr. Majumdar would contend that the punishment imposed upon the CO for absence on medical ground is disproportionate to the charges leveled against the CO. The decision in the case of **Hind Construction & Engineering** (supra) was pressed into the service by Mr. Majumdar to buttress his contention that an extreme punishment of dismissal in the instant case calls for interference as the same was out of proportion to the fault and no reasonable employer would have imposed such a punishment. The Hon'ble Supreme Court in the said reports took note of the practice followed by the company of substituting for a holiday falling on a Sunday, the day next following and was pleased to hold that the absence of the 11 workmen on the 2nd January was not something for which no lesser punishment could have been imposed. The said decision being distinguishable on facts can have no manner of application to the case on hand.
25. The decision in the case of **R.K.Sharma** (supra) cannot also come to the aid of the petitioner as the Hon'ble Supreme Court in paragraph 13(vi) made it clear that the said order shall not constitute a precedent as the same has been passed by invoking power under Article 142 of the Constitution.
26. In the case on hand it is evident from the materials on record that the petitioner was given ample opportunity by the authorities of the bank to join the duties but the CO did not avail of such opportunity. The disciplinary authority did not pass an order of dismissal from service. Instead the disciplinary authority imposed the punishment of a lesser degree of removal from service which shall not be a disqualification for future employment. The penalty imposed by the disciplinary authority, in the facts of the case on hand, in the considered view of this Court, cannot be said to be disproportionate to the proved charge. Therefore, the punishment imposed by the DA also do not call for any interference by this Court.
27. In **Collector Singh** (supra) the Hon'ble Supreme Court held that the mere act of throwing of jutes/cotton waste balls weighing 5 to 10 grams may not by itself lead to imposing punishment of dismissal from service. The said decision being distinguishable on facts do not have any manner of application to the case on hand.

28. For all the reasons as aforesaid this Court is not inclined to interfere with the orders passed by the DA, IA and RA. The writ petition accordingly fails and the same stands dismissed without, however, no order as to costs.
29. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)