**IN THE HIGH COURT AT CALCUTTA**

**(Civil Appellate Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Subrata Talukdar**

**And**

**The Hon'ble Justice Supratim Bhattacharya**

**FMA 373 of 2022**

**With**

**CAN 2 of 2021**

**Murari Sarkar**

**Vs.**

**Union of India and Ors.**

For the Appellant : Mr. Durgadas Purkayastha
Mr. J. H. Mallick
Mr. Sagar Chowdhury

For the Respondents : Mr. Soumya Mazumdar
Mr. Santosh Kr. Roy
Ms. Sannoyee Chakraborty

Heard On : 28.11.2022

Judgement Delivered On : 05.04.2023

**THE COURT:-** The instant appeal has been preferred against the Judgment and Order passed by the Hon'ble Single Bench on 16.04.2021 in the writ petition being no. WPA 21237 of 2010.

By the impugned Judgment and Order the Hon'ble Single Bench was pleased to dismiss the said writ petition praying for reinstating the appellant/ writ petitioner in service with back wages and with all consequential benefits by cancelling the Order of dismissal of the writ petitioner from service.

The fact of the present case is that the writ petitioner was initially appointed as a Clerk in the Bank of Baroda in the year 1980 and thereafter was promoted to the post of Junior Manager (Grade-I Officer) in the year 2006. On 05.05.2008 a show-cause notice was served upon the writ petitioner by the Dy. General Manager in-charge of the Zone of the said Bank alleging misappropriation of fund. The writ petitioner replied to the show-cause notice on 07.07.2008 denying all the allegations. Thereafter, the Disciplinary Authority issued Memo. of charge-sheet on 25.08.2008 and the writ petitioner thereafter submitted a written statement against the charge-sheet denying all the allegations. After receipt of the written statement, the enquiry authority directed the writ petitioner to appear before it. On 31.03.2009 the Disciplinary Authority issued order of major penalty by way of dismissing the petitioner from his service with effect from the date of receipt of the said order. Being aggrieved the writ petitioner filed an appeal before the Appellate Authority which was ultimately dismissed. As such, the instant writ petition has been filed.

The Learned Counsel appearing on behalf of the appellant/ writ petitioner has submitted that the enquiry proceedings do not show that the

Bank of Baroda sustained any monetary loss. He has further submitted that there is no iota of evidence to the effect that the appellant/writ petitioner has misappropriated fund or deceived anybody. He further submitted that at the highest the actions of the appellant/writ petitioner might be of irregularities in CBS transactions. He has further submitted that the charges levelled against the appellant/ writ petitioner is devoid of particulars and has been issued by incompetent authorities. As such, the punishment inflicted upon the appellant/writ petitioner is not at all sustainable.

The Learned Counsel has further submitted that the charge-sheet dated 25.08.2008 was not approved by the competent authority at any stage. He has further submitted that Regulation 5(1) of the Bank of Baroda Officer Employees' (Discipline and Appeal) Regulations 1976 lays down that the Managing Director or any other authority empowered by him by general or special order may institute or direct the Disciplinary Authority to institute disciplinary proceedings against an officer/employee of the Bank, which has not taken place in the instant case. He has further submitted that as per service jurisprudence, departmental proceeding cannot be initiated in absence of a complaint or allegation and in the instant case there was no complaint or allegation against the appellant/ writ petitioner. It has also been contended that the disciplinary proceeding was not conducted in accordance with law. It has further been submitted that the allegations in respect of the irregularities in the CBS transactions mentioned in the Memorandum of Charge issued by the General Manager of the Bank are the same as those mentioned in the show cause notice issued by the Dy. General Manager of the Bank and both the aforesaid Memorandum of Charge and the Show Cause cannot be proceeded with simultaneously. It has also been submitted that the major penalty which has been inflicted upon the appellant/ writ petitioner ought not to have been imposed without holding a proper and complete enquiry. Banking upon the aforementioned submissions, Learned Counsel has prayed for allowing the instant appeal.

The Learned Counsel appearing on behalf of the Bank of Baroda during his elaborate submissions has stated that the charge sheet was issued by the General Manager of the Bank and the said disciplinary proceeding could not have been initiated without the order or direction of the Managing Director of the said Bank. He has further submitted that Regulation 5(2) of the Regulations 1976 empowers the Disciplinary Authority to institute the disciplinary proceedings and there is no hard and fast rule that only the Managing Director should pass an order or direction to initiate disciplinary proceeding. The Learned Counsel has further submitted that the appellant/writ petitioner was given reasonable opportunity to represent his case before the Enquiry Officer. It has further been submitted that the incumbent had admitted the allegations against himself. It has further been submitted that the Appellate Authority independently scrutinized the materials on record and thereafter passed the order of punishment. Stressing upon the aforementioned facts, the Learned Counsel appearing on behalf of the respondents prays for rejection of the instant appeal.

From the contentions of the parties it reveals that the appellant has come with the plea that the procedure which was followed by the Bank of Baroda as regards the disciplinary proceeding and which ultimately resulted in his dismissal from service of the Bank was not in accordance with law and natural justice.

From the facts and circumstances of the case it reveals that the Bank of Baroda served the suspension order on the 27th day of March, 2008 and thereafter, on the 5th day of May, 2008 the Dy. General Manager in-charge of the Zone in respect of the Bank of Baroda issued a show cause letter containing four allegations, in respect to which the appellant/writ petitioner denied all the four allegations. Being not satisfied with the aforementioned reply, the Disciplinary Authority initiated disciplinary proceedings against the appellant/ writ petitioner by issuing Memorandum-cum-Articles-of Charge on the 25th day of August, 2008 containing five charges accompanied by a statement of allegations. The appellant/writ petitioner had replied to the same on the 17th of September, 2008.

Thereafter, the said Bank appointed an inquiry officer to hold a preliminary inquiry and during the preliminary inquiry the appellant denied all the allegations brought against him as a result of which a full-fledged departmental inquiry was initiated.

The said Bank appointed a Presenting Officer on their behalf, while the appellant/writ petitioner appointed one Tridibesh Prasad Nanda, a Manager of the said Bank to represent him in the departmental proceeding as a Defence Representative.

It also reveals that several witnesses, who were/are employees of the Bank, were examined on behalf of the Bank and they have been cross-examined by the said defence representative. The appellant/writ petitioner was also examined.

The Enquiry Officer submitted his Report on the 29th day of January, 2009 and had come to the conclusion that four charges have been proved.

Ultimately, on the 31st day of March, 2009 the Disciplinary Authority issued the order of dismissal of the appellant/writ petitioner from service by passing the following order:

> *"Mr. Murari Sarkar is hereby dismissed from service of the Bank, which shall ordinarily be a disqualification for future employment with effect from the date of receipt of this order. ….."*

Thereafter, the appellant/writ petitioner applied before the Appellate Authority and the Appellate Authority on the 27th day of June, 2009 affirmed the order of dismissal of the appellant/writ petitioner from service but modified the order of the Disciplinary Authority to the extent of "removal from Bank's service which shall not ordinarily be disqualification for future employment".

Now judicially reviewing the impugned Judgement and Order passed by the Hon'ble Single Bench, this Court finds that relying on several judgements of the Hon'ble Apex Court the Hon'ble Single Bench has come to the conclusion that "*judicial review is not an appeal from a decision but review of the manner in which the decision has been made. The Court in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent finding on the evidence. Court may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion of finding reached by the disciplinary authority is based on no evidence.*"

The impugned Judgement and Order has dealt with the suspension order dated the 27th day of March, 2008 issued by the General Manager of the said Bank. Regulation 5(1) of the Bank of Baroda Officer Employees' (Discipline and Appeal) Regulations, 1976 states that "*the Managing Director or any other authority empowered by him by general or special order may institute or direct the disciplinary authority to institute the disciplinary proceeding against an officer employee of the Bank*". Therefore, in this instant case the General Manager was the competent authority to issue the suspension order.

It also reveals that on the 5th day of May, 2008 the Dy. General Manager in-charge of the Zone, being the authorized officer, issued a show-cause notice to the petitioner clearly indicating the facts leading to the charges. As per Regulation 5(1) of the said Regulations the Dy. General Manager was the competent authority to issue the show-cause notice being the authorized officer. The said show-cause notice was served upon the appellant/writ petitioner and the said appellant/writ petitioner replied to the said show-cause notice on the 7th day of July, 2008. Through the said reply no objection was raised by the writ petitioner to its validity. In view thereof, contention of the writ petitioner raised subsequently cannot be considered.

Issuance of Articles of Charges and the statement of allegations by the General Manager as the Disciplinary Authority is in accordance with the regulations of the said Bank.

The appellant/writ petitioner received the Memorandum dated the 25th day of August, 2008 with its annexure being the Articles of charges and statement of allegations and thereafter, the appellant/writ petitioner replied to the same on the 17th of September, 2008, which shows that the appellant/writ petitioner understood the charges. The point of vagueness of charges which has been raised now by the appellant/writ petitioner cannot be accepted being an afterthought.

As regards to non-mentioning of the petitioner's reply in the said Memo., at the highest the same can be an irregularity and not an illegality which does not vitiate the disciplinary proceeding and such has also been dealt with by the impugned judgement.

The appointment of an Enquiry Officer and a Presenting Officer was also in terms of the said Regulations.

Preliminary hearing of the case on the 27th day of September, 2008 was duly communicated to the appellant/ writ petitioner by the Enquiry Officer and was attended by the appellant/writ petitioner.

Thereafter, on the 30th day of September, 2008, the appellant/writ petitioner appointed his defence representative to defend his case and the defence representative had cross-examined all the witnesses who were examined.

On the 16th day of December, 2008 the statement of the presenting officer was made over to the petitioner and in respect of which the appellant/ writ petitioner had filed his written argument through the defence representative and after considering such written submissions the Enquiry Officer prepared and submitted his Report before the Disciplinary Authority on the 29th day of January, 2009. The said inquiry report was made over to the appellant/ writ petitioner for his response thereto. The inquiry report did not provide any specific punishment, so it cannot be said that the inquiry officer exceeded his jurisdiction.

On the 12th day of February, 2009 the appellant/ writ petitioner had submitted a letter requesting the Disciplinary Authority to treat him sympathetically. Therefore, even the appellant / writ petitioner had virtually admitted the allegations levelled against him and had expressed his repentance which does not go in favour of the challenge which has been raised at a subsequent stage by the appellant/writ petitioner. Thereafter, the Disciplinary

Authority came to the conclusion that the charges being serious in nature and the actions of the writ petitioner being derogatory, prejudicial and detrimental to the interests of the said Bank, has imposed major penalty as per Regulation 5(3) read with Regulation 4 and 7 of the said Regulations.

Against the aforementioned penalty imposed by the Disciplinary Authority the appellant/ writ petitioner preferred an appeal on the 6th day of May, 2009. Thereafter, the Appellate Authority modified the order of the Disciplinary Authority after considering the charges and findings of the Disciplinary Authority and also the Grounds of Appeal.

Through the impugned judgement it has been stated that the Disciplinary Authority has concurred with the findings of the Enquiry Authority and the Appellate Authority after scrutinizing the materials and taking into consideration the order of the Disciplinary Authority has passed its order independently. Relying on the concurrent findings by the Disciplinary Authority and also the Appellate Authority in respect to the charges brought against the writ petitioner being proved, the Hon'ble Single Bench has found no scope for interference in exercise of its powers under Article 226 of the Constitution of India.

In addition to the above, it is to be categorically mentioned that the charges leveled against the incumbent, i.e., the appellant/writ petitioner have not been challenged either during the stages of the disciplinary proceeding or during the conduct of proceedings by the Bank authority. On the contrary through the replies dated 29-03.2008 and 17-09-2008, the appellant/writ petitioner has admitted the charges brought against him and has time and again requested for sympathetic treatment.

In this regard the Judgement passed by the Hon'ble Apex Court reported in *(1996) 4 SCC 708* is being relied upon wherein it is stated as follows:

> *"we find that the legal position is well settled that it is not necessary that the authority competent to impose the penalty must initiate the disciplinary proceedings and that the proceedings can be initiated by any superior authority who can be held to be the controlling authority who may be an officer subordinate to the appointing authority. …."*

From the above discussion it is clear that the proceedings adopted by the Bank of Baroda were in accordance with its service regulations. Furthermore, the participation of the writ petitioner at all stages of the proceeding upto the stage of the Appellate Authority prove compliance with the principles of natural justice.

It is also trite in law that when the disciplinary proceeding suffers from no procedural infirmity, the Court under Article 226 of the Constitution of India will be slow in exercising jurisdiction. This principle is reported in *(1984) 1 SCC 43* of which Paragraphs 34 and 36 read as follows:

> *"34. …. As we have set out hereinbefore, indeed he had accepted the factual basis of the allegations. We have set out hereinbefore in extenso the portions where he had actually admitted the factual basis of these allegations against him, where he has not questioned the veracity of the witness of the facts or credibility of the witnesses or credibility of the entries on records. Indeed he has given explanation namely, he was over-worked, he had consulted his superiors and sought their guidance, his conduct has not actually, according to him*

*caused any financial risk or damage to the Bank concerned. Therefore, in our opinion, in the manner in which the investigation was carried out as a result of which action has been taken against him cannot be condemned as bad being in violation of the principles of natural justice. Had he, however, denied any of the facts or had questioned the credibility of the persons who had given information against him, then different considerations would have applied and in those circumstances, refusal to give an opportunity to cross-examine the persons giving information against him or to lead evidence on his own part to rebut the facts would have been necessary and denial of such opportunity would have been fatal. But such is not the case here as we have mentioned hereinbefore.*

*36. We may also mention that the appellant has contended that there is no evidence that the appellant has actually defrauded the Bank or actual loss or damage has been caused to the Bank or actual risk has been incurred by the Bank. That is true. But the charge against the appellant was that he had so conducted himself which exposed the Bank to grave risk and for which his explanation was not accepted, after considering his explanation and after personal hearing reasonably an opinion may be formed that his conduct was such that defrauding of the Bank might have been caused. These were the charges against him and these are the charges upon which he was accused. Therefore, whether actual loss or damage had been caused or not, is, in our opinion, immaterial. In that view of the matter, we are of the opinion that the arguments on this aspect of the matter on behalf of the appellant cannot be accepted. In that view of the matter, it is not necessary to express any opinion on the question whether these rules under which the enquiry was conducted were statutory rules or not and as such whether the appellant has any statutory remedy against the orders impugned.*

*45. … The facts of the instant case are, however, different. It has to be emphasised that the appellant was not charged for defrauding the Bank. He was charged mainly for the conduct which suggested that he acted improperly and in violation of the principles on which sound banking business should be conducted. The charge against the appellant was that he had acted in violation of procedure of the Bank, he had disregarded all safeguards in sanctioning the overdrafts, encashing bills and his conduct had exposed the bank to grave risks and that he had flagrantly violated the bank rules and instructions with a view to cover up attempts to misappropriate bank's money after defrauding the bank. Whether actual misappropriation had been*

> *caused or bank defrauded or not were not relevant in respect of the charges against him."*

From the aforesaid discussion, this Court finds no infirmity in the Judgement and Order of the Hon'ble Single Bench. Hence the Order impugned dated the 16th of April 2021 deserves no interference.

**FMA 373 of 2022** with **CAN 2 of 2021** stands accordingly **dismissed.**

Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**(Supratim Bhattacharya, J.)** **(Subrata Talukdar, J.)**