

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)**

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 10127 of 2019

Rabi Lochan Ghosh

-Vs.-

Paschim Banga Gramin Bank & Ors.

For the Petitioner : Mr. Debabrata Saha Roy
Mr. Indranath Mitra
Mr. Subhankar Das
Mr. Neil Basu

For the Respondent No.1 : Mr. Baidurya Ghoshal

Heard on : 05.07.2023

Judgment on : 20.07.2023

Partha Sarathi Chatterjee, J:- In invocation of the extraordinary jurisdiction of this court under Article 226 of the Constitution of India, the writ petitioner has called in question the sustainability of the charge-sheet *vide.* no. PGDB/HO/CM/95/12-13 dated 04.10.2012 and order of punishment dated 19.03.2014, both passed by the Chairman & Competent Authority, Paschim Banga Gramin Bank (in short, PBGB).

Facts as unfurled in the writ petition are that the petitioner joined as Field Supervisor in Howrah Gramin Bank on 15.1.1985 and on 1.12.1990, he was promoted to the post of Scale-I Officer and subsequently, he was further promoted to Scale-II Officer.

Howrah Gramin Bank, Burdwan Gramin Bank and Mayurakshi Gramin Bank were constituted under the Regional Rural Bank Act, 1976 and by virtue of a notification *vide.* dated 26.2.2007, issued by the Ministry of Finance, Department of Economic Affairs (Banking Divn.), aforesaid three banks were amalgamated to a single bank, namely, PBGB and the service conditions of the Officers and employees of the PBGB were

governed by the Paschim Banga Gramin Bank (Officers and Employees) Service Regulations, 2010.

While the writ petitioner was rendering his service as Scale-II officer at Moloypur Branch, on 22.8.12 at night, one incident of theft/burglary took place in that branch and on receipt of such information, he rushed to the branch and upon instruction of his superior officers, he lodged an F.I.R. which gave rise to Arambagh P.S. Case no. 595/12 dated 23.8.2012 under Sections 457/380 IPC.

On 25.8.2012, the Chairman concerned by issuing one show cause notice sought for explanation for retention of excess cash in Moloypur Branch and the writ petitioner submitted his explanation on 10.09.2012 but by passing an order dated 01.01.2012, the petitioner was placed under suspension.

Under a memo. *vide.* no. 04.10.2012, a charge-sheet containing statement of allegations and articles of charges was issued holding that the explanation and/or reply dated 10.9.2012 was not found satisfactory. The petitioner submitted reply to the charge-sheet on 11.10.2012.

On 7.12.2012, 11(eleven) numbers of document were admitted in evidence as Management Exhibits (in short, ME). Although, the Presenting Officer did not produce document no. 11, yet the document no. 11 had been marked as ME-11 and on perusal of the recording of proceedings, the petitioner came to learn that those documents had not been authenticated and/or verified by the respective authors of the documents and on 10.1.2013, the Presenting Officer concerned tendered 13 numbers of documents and in the same manner, those 13 numbers of documents were accepted as evidence and marked as ME 12 to ME 25 and after examination of Management witness (MW-1) was over , he was recalled and re-examined without leave of the Enquiry Officer.

However, the Enquiry Officer submitted his report on 9.2.2013 and on receipt of such report, the petitioner submitted his representation on 27.2.2013 but under a covering letter dated 19.3.2013, an order of punishment dated 19.3.2013 passed by the Chairman & Competent Authority, PBGB was served upon the petitioner. By the order of punishment, the basic pay of the petitioner was reduced by three stages in the time scale of pay of Rs. 31,500/- to Rs. 28,900/- till retirement with further direction

that he will not earn any increment of pay during such period of reduction. The petitioner preferred statutory appeal against the order of punishment but the same was dismissed and the order of punishment was upheld. On 28.11.2014, the writ petitioner demitted his office on attaining the age of superannuation.

Record reveals that answering respondents filed exception to the writ petition but the writ petitioner did not file any response to that exception.

Questioning the defensibility of the charge-sheet and the order of punishment, Mr. Mitra being led by Mr. Saha Roy, learned advocate representing the writ petitioner argues that no list of documents and no list of witnesses have been disclosed in the charge-sheet. During domestic enquiry, documents have been admitted as evidence without authentication and/or verification made by the authors of the document and even without ascertaining the relevancy and admissibility of those documents. According to Mr. Mitra, to recall and re-examine any witness after his examination is over, permission of the Enquiry Officer is required to be taken but in the case at hand, no such permission has been sought for. He argues that the Enquiry Officer is quasi-

judicial authority and he is to return his findings based on evidence and his report and/or findings must be informed with reason since reason is heart-throb of any findings. He asserts that the Enquiry Officer has not returned any reasoned findings. He asserts that the PBGB, for having insurance policy to indemnify the loss suffered by the bank due to the like incidents of theft, burglary etc., has not suffered any pecuniary loss. He submits that the charge-sheet and the order of punishment cannot be sustained. To invigorate his submission, he placed reliance upon the judgments delivered in cases of *Rup Singh Negi -vs- Punjab National Bank* reported in (2009)2 SCC 570 , *Union of India & Ors. -vs- Prakash Kumar Tandon* reported in (2009) 2 SCC 541 and *Eastern Coal Fields Ltd. -vs- Noren Kora* reported in (2008) 2 WBLR (Cal) 373(DB).

In response, Mr. Ghoshal, learned advocate appearing for the response submits that writ petitioner was in habit of retention of excess cash. He claims that not only on a single occasion on 22.8.2012, but he retained cash beyond permissible limit for the considerable period of time in 2012 and since, he retained excess cash , bank suffered financial loss to the tune of Rs.31,56,640/- on account of theft/burglary occurred on

22.8.2012. He contends that the appellate authority by passing a reasoned order has dealt with all the issues raised by the petitioner. He submits that there is no scope to interfere with the charge-sheet and the order of punishment.

In a domestic enquiry fairness in the procedure is a part of the principles of natural justice. It is apposite to refer the judgment of *Sawai Singh v. State of Rajasthan* reported in (1986) 3 SCC 454 wherein it was observed that it is not possible to lay down any rigid rules of the principles of natural justice which depends on the facts and circumstances of each case but the concept of fair play in action is the basis.

Procedural fairness in a departmental enquiry demands proper disclosure of materials to be used against the delinquent. There are repetitive pronouncements on the proposition that non-disclosure and non-supply of the documents to the delinquent employee would amount to violation of natural justice and if it is found that the documents are voluminous and it is impracticable to supply the copies to the delinquent, the disciplinary authority must afford an opportunity to the charged employee to inspect the documents and the omission to supply the documents or to

afford an opportunity to inspect the document, as the case may be, would vitiate the entire decision making process and/or the disciplinary proceeding.

Indisputably, from the charge-sheet issued against the petitioner it would be explicit that no list of documents and list of witnesses were disclosed. On cursory glance at the record of enquiry of proceedings, it would be discernible that the Presenting Officer adduced oral testimony of only one witness. On the first date of enquiry, before handing over any documents to the charged employee, ten numbers of document were admitted in evidence and marked as ME 1 to ME 10 and then list of those documents was provided to delinquent and the record of proceedings postulates that on the second date of enquiry, charged employee was handed over some documents. On the 3rd day of the enquiry proceeding, further 14 (fourteen) numbers of document were accepted as evidence and exhibited as ME 12 to ME-25. The delinquent employee raised objection against acceptance of those documents as evidence but no whisper has been made regarding such objection rather since the presenting officer had claimed those documents are relevant, the Enquiry Officer has accepted those documents as evidence without

passing any reasoned order justifying the acceptance of those documents as evidence. Documents have been accepted as evidence on mere tendering without making any enquiry as to the relevancy and admissibility of those documents. ME-11 has not been produced claiming that the same was not traceable.

It is axiomatic that an Enquiry Officer is a *quasi judicial* authority and function of an Enquiry Officer is *quasi judicial* in nature and the Enquiry Officer should perform his functions fairly and reasonably. [See, the case of Roop Kumar Negi (supra) and also the case of Prakash Kumar Tandon(supra)]. It is long standing proposition that an enquiry has to be conducted fairly, objectively and not subjectively and a finding of the Enquiry Officer should not perverse or unreasonable, nor should the same be based on conjectures and surmises and the Enquiry Officer must record reasons for arriving at the finding of fact in the context of statute defining the misconduct. Purpose of enquiry is not somehow to establish the charge levelled against the delinquent but to unearth the truth.

It is the trite law that court should not re-appreciate and re-appraise the evidence led before the Enquiry Officer and examine

the findings recorded by the Enquiry Officer as a court of appeal and the scope of judicial review must confine to the decision making process. Now, only to ascertain as to whether enquiry report contains reasons for reaching the conclusion that charges framed against the delinquent stood proved, if report of the Enquiry Officer is looked into, it would be explicit that findings of the Enquiry Officer is not supported with reason and just after narrating the events occurred in the proceeding, he abruptly jumped to the conclusion and evidence had not been appreciated to show how the allegations of misconduct stood proved. On perusal of the Enquiry Report, it can be argued that the tenor of the Enquiry Report demonstrates that Enquiry Officer was predetermined to find the delinquent guilty.

So, in view of the preceding analysis, it is clear as day that there was no proper initiation of the disciplinary proceeding. By issuing show cause notice, the delinquent was asked to show cause as to why disciplinary proceeding would not be initiated against him but before taking decision whether or not the explanation was satisfactory, the charged employee was placed under suspension which speaks about the pre-determined mind of the disciplinary authority. No list of document and list of

witness were disclosed in the charge-sheet and although some documents have been used against the delinquent but those documents have not been supplied to the charged employee beforehand and the findings of the Enquiry Officer is not informed with the reason and evidence has not been appreciated and documents have been accepted as evidence on mere tendering. So, disciplinary proceeding was not conducted fairly and it can be conferred that for these reasons, the delinquent was prejudiced. The foundation the disciplinary proceeding initiated against the delinquent is fragile and hence, edifice cannot stand thereon.

In view of such sequence of fact and enunciation of aforesaid settled principle law, I have no qualm to hold that charge-sheet issued against the delinquent is liable to be quashed and the consequential proceeding stands vitiated and the order of punishment is also liable to be annihilated.

Ex consequenti, the charge-sheet *vide.* dated 04.10.2012 and the order of punishment dated 19.03.2014 are quashed. The respondent no.2 is directed to release the consequential benefits

to the writ petitioner positively within 4(four) weeks from the date of communication of this order.

With the above observations and order, the writ petition is being **WPA 10127 of 2019** stands thus **disposed of**, however, without any order as to the costs.

Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

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

(Partha Sarathi Chatterjee, J.)