

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

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 12531 of 2016

Sukanta Ganguly

-Vs.-

Bangiya Gramin Vikash Bank

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

For the Respondent : *Md. Mokaram Hossain*
Mr. Kamakshya Prasad Mukhopadhyay
Mr. Sandipan Maity

Heard on : *27.07.2023*

Judgment on : *28.08.2023*

Partha Sarathi Chatterjee, J.:-

1. By this writ petition, the petitioner questions the defensibility of the charge-sheet *vide*.dated 19.6.2014 issued against him in contemplation of a disciplinary proceeding, the findings returned by the Enquiry Officer dated 28.1.2014, the order of punishment *vide*.no. 42 of 2014 dated 6.12.2014 and also the order dated 19.3.2015 passed by the Appellant Authority.
2. The capsulated form of the facts projected in the writ petition are that the five rural banks namely, Sagar Gramin Bank, Nadia Gramin Bank, Mallabhum Gramin Bank, Gour Gramin Bank and Murshidabad Gramin Bank were constituted under Regional Rural Bank Act, 1976. By virtue of a notification dated 21.02.2007 issued by the Department of Economic Affairs (Banking Division), Government of India, Ministry of Finance, Government of India those five banks were amalgamated to a single bank namely, Bangiya Gramin Vikash Bank (in short, BGVB) which started its journey from its head office located BMC House, NH-34, Chuanpur, P.O.- Chaltia, Berhampore, District- Murshidabad.
3. To regulate the service conditions of the officers and employees of BGVB, Bangiya Gramin Vikash Bank (Officers and Employees) Service Regulations, 2010 (in short, the Service Regulations) was promulgated and the same was given effect to on and from 15.11.2010 being the date of its publication in the Gazette of India. Subsequently, the Service Regulations was amended in 2013.

4. The petitioner was appointed as Scale- III officer in BGVB on 05.07.2012 and on 09.04 2023, he joined as Branch Manager of Kandi Zemo Bazar Branch (Scale –III officer).
5. The Competent Authority & Chairman, BGVB by an order vide. dated 15.02.2014 placed the petitioner under suspension with immediate effect pending departmental enquiry and its final decision. By a letter dated 04.06.2014, the General Manager, BGVB sought for explanation from the petitioner as regards the allegations referred therein. On 10.06.2014, the petitioner submitted his detailed reply thereto.
6. A preliminary inquiry was held but no report of preliminary enquiry was supplied to the petitioner. A charge-sheet *vide*.dated 19.06.2014 was issued against the petitioner in which as many as six allegations were levelled against him. In the charge-sheet, it was alleged that during his stint as Branch Manager, Kandi Zemo Bazar Branch, he sanctioned and disbursed loans to the tune of Rs. 49.09 lacks to 12 borrowers without following the rules, norms and lending policy of the bank and those 12 loan accounts had slipped into Non Performing Asset (in short, NPA) as on 31.05.2014.
7. On 24.06.2014 by giving a letter, the petitioner had requested to provide some documents so that he could have submitted a befitting reply to the charge-sheet but surprisingly, the aforesaid letter dated 24.06.2014 was treated as his reply and the same was held to have been unsatisfactory. However, by a letter dated 08.07.2014, the Enquiry Officer and the Presenting Officer were appointed.

8. By a letter dated 28.07.2014, the petitioner sought for permission to engage one Bidhan Chandra Chakraborty as his defence representative and the petitioner made another request to shift the venue of enquiry proceeding from Kandi Zemo Bazar Branch to any other branch. Permission to engage Mr. Chakraborty as his defence representative was accorded but the petitioner's prayer for shifting the venue of enquiry proceeding was turned down.
9. On 12.08.2014, the domestic enquiry commenced and continued on diverse dates. The Management adduced oral testimonies of two witnesses who were examined MW-1 and MW-2 and almost 11 documents were admitted in evidence without any authentication. The petitioner sought for CCTV footage, primary investigation report, rejected loan proposal of one M.S. Dutta etc. but no documents have been supplied to the petitioner which would be explicit from the evidence of Management Witness- 1 (in short, MW-1).
10. The written argument submitted by the Presenting Officer was made available to the petitioner and in response, the petitioner also submitted his written argument. In his written argument, the petitioner categorically mentioned that during his tenure as Branch Manager, he disbursed 164 numbers of loans but out of 164 loans, only 15 loans formed the subject matter of domestic inquiry and out of 15 loans, 3 loans were regular. However, the findings recorded by the Enquiry Officer dated 28.10.2014 was supplied to the petitioner by the Disciplinary Authority & Chairman, BGVB under a covering letter dated 30.10.2014.

11. The petitioner submitted his response to the findings of the Enquiry Officer on 11.11.2014, *inter alia*, contending therein that reasonable opportunity had not been afforded to him to defend himself by not supplying the preliminary inquiry report, CCTV footage, loan proposal of one M.S. Dutta etc. and the findings of the Enquiry Officer had been retuned without scanning the evidence and new facts and/or irregularities had been introduced in the findings.
12. On 6.12.2014, the Disciplinary Authority awarded a punishment of *“Reduction of rank from Scale –III Officer to Scale- II Officer with basic pay of Rs. 24,900/-, below the initial scale of pay of Scale –III Officer, and shall not be disqualified for future increment”* to the petitioner. By another letter dated 06.12.2014, the order of suspension was revoked with immediate effect.
13. The petitioner joined as Scale-II Officer without prejudice to his rights and contentions. He carried the order of punishment in appeal before the Appellate Authority & Board of Directors. The appeal failed and the order of punishment was confirmed by an order *vide*.no. 15 dated 19.3.2015. In such chronological events, the petitioner has preferred the writ petition seeking annulment of charge-sheet, the enquiry report, the order of punishment and the order of appellant authority.
14. The respondents filed exception to the writ petition and the petitioner has also filed his response to that exception, as directed.
15. Mr. Saha Roy, learned advocate while representing the petitioner argues that the report of the preliminary inquiry, CCTV footage and loan proposal

of one M.S. Dutta etc. were not provided to the petitioner. He submits that in the show cause notice it was alleged that in violation of norms and lending policy of the bank, the petitioner sanctioned loans to 15 borrowers which turned to NPA but in the charge-sheet, it was claimed that 12 loans slipped to NPA. He contends that out of 12 loans, 6 loans have become operative. He stated that only to wreak vengeance, disciplinary proceeding were initiated and concluded against the petitioner and hence, the charge-sheet, the order of punishment and the order of the Appellant Authority cannot be sustained.

16. He contends that the petitioner was appointed as Scale-III officer through a direct recruitment and hence, the punishment of reduction of rank from Scale-III officer to Scale-II officer could not be awarded to the petitioner and the petitioner could not be placed in the post that he never held. He asserts that the order of punishment cannot be sustained. In support of such contention, Mr. Saha Roy placed his reliance upon a judgment delivered in case of *Nyadar Singh –vs- Union of India &Ors. And M.J. Ninama –vs- Post Master General, Gujarat ,Ahmadabad*, reported in (1988)4 SCC 170.
17. He submits that the disciplinary proceeding was contemplated and concluded in 2014 i.e. almost 9(nine) years back and hence, at such distance time, it would not be iniquitous to direct the authority concerned to pass an order of punishment afresh.
18. In response, Mr. Hossain submits that following the rules and regulations, the disciplinary proceeding was conducted and concluded. Drawing my attention to the reply of the petitioner dated 10.06.2014 and also to the

petitioner's response to the report of the Enquiry Officer dated 11.11.2014 he contends that the petitioner had virtually admitted his guilt. He claims that the principle of natural justice has not been violated by the respondents while conducting domestic enquiry.

- 19.** He further contends that a bank survives on the trust of its clientele and the employees of the bank in particular, the Manager are expected to act absolute integrity and honesty while handling the funds of the customers of the bank. He contends that the illegality committed by a bank manager should not be viewed lightly and in support of his such contention, he placed reliance upon a judgment delivered by the Hon'ble Supreme Court of India in Civil Appeal nos. 4243-4244 of 2004 (State Bank of India &Ors. – vs- S. N. Gayal) on 02.05.2008. He contends that the respondents have taken lenient view and inflicted a minor penalty.
- 20.** Heard the learned advocates appearing for the parties at length and perused the materials on record.
- 21.** There is catena of judgments on the proposition that the preliminary enquiry is held by the employer to satisfy itself whether or not a disciplinary enquiry should be initiated against the delinquent and after full-fledged enquiry has been held, the preliminary enquiry losses its significance. If the preliminary enquiry report does not form part of the evidence before the enquiry officer and if the same is not relied upon for arriving at the findings, it is not obligatory on the employer to supply such report and in such circumstances, non-supply of such report cannot be treated as non-observation of the Rules of natural justice.

- 22.** The petitioner requested the disciplinary authority to provide CCTV footage , loan proposal of M.S. Dutta but the petitioner could not justify the necessity of the those documents to defend the charges and he could not make out any case to show how due to non-supply of those documents, he had been prejudiced. I may profitably refer the judgment delivered in case of *State of U.P. –vs- Sudhir Kumar Singh*, reported in *AIR 2020 SC 5125*, wherein it was ruled that where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction *per se* does not lead to invalidity of the orders passed, prejudice must be caused to the person complaining of the non-observation of principle of natural justice. The delinquent is to make out a case that the documents sought for had bearing on charges levelled against him.
- 23.** Ordinarily, in case of a disciplinary proceeding, the scope of judicial review shall be restricted to decision making process and if the decision-making process is found to be flawed, the court may interfere to correct the error by setting aside such decision and requiring the decision maker to take a fresh decision.
- 24.** It is condign to note that in his summary argument and also in his response to the report of the Enquiry Officer, the petitioner himself made the comment to the effect that ‘*some negligible unintentional lapses are there*’ and ‘*the minor mistakes happened to have committed by me in course of my sincere discharge of service are due to conceptual deficiency and lack of experience and are not at all chargeable offence..*’

- 25.** In such consequence of facts and enunciation of law, I am not inclined to hold that the entire disciplinary process stands vitiated and the charge sheet and enquiry report are liable to be quashed.
- 26.** The expression 'reduction in rank' as used in Article 311(2) of the Constitution of India means reduction from a higher to a lower post. From the Regulation 3 of the Service Regulations it would be explicit that Scale-III officer is a higher rank in comparison to a rank of Scale-II officer and the respondents did not dispute that the petitioner was directly recruited to the post of Scale-III officer and he had never held the post and/or rank of Scale-II officer.
- 27.** It is well-acclaimed proposition of service jurisprudence that reduction in rank by way of punishment cannot be awarded from a higher rank to a rank which an employee never belonged. In other words, an employee cannot be reduced to a rank and/or post which he never held. [See, the case of *P.V. Srinivasa Sastry –vs- Comptroller and Auditor General*, reported in AIR 1993 SC 1321 and judgment of *Nyadar Singh (supra)*].
- 28.** Hence, the punishment of reduction in rank awarded to the petitioner reducing his rank from Scale–III officer to Scale-II officer cannot be sustained and consequently, the order of punishment is set aside. Now, the next question is whether it would be justified to relegate the matter to the disciplinary authority to pass the order of punishment afresh at this distance of time. In the case at hand, the order of punishment was passed in 2014 i.e. almost 9 years back. In case of *Nyadar Singh (supra)*, the order of punishment was passed in 1976 and in case of *M.J. Ninama (supra)*,

modified order of punishment was passed in 1988. The Hon'ble Apex Court held that at such distance time, it would not be proper to direct the disciplinary authority to pass a fresh order of punishment. The petitioners therein were restored to their posts they held before the imposition of penalty.

29. Following the same principle enunciated in case of *Nyadar Singh & M.J. Ninama (supra)*, the order of punishment imposed upon the petitioner is set aside. Needless to observe that since the order of punishment has been quashed, the order of the appellate authority cannot have any leg to stand on.
30. The petitioner is restored to the post which he held prior to the imposition of penalty of reduction in rank i.e. the petitioner is restored to the post of Scale-III Officer but subject to the condition that the petitioner shall not be entitled to the difference of salary. The period of service in the reduced post shall be treated as service in the post held by him prior to imposition of the penalty for all other purposes. To avoid any confusion, if arises, it is clarified that the petitioner shall draw the salary of Scale –III officer from the month of September, 2023.
31. In case of *State Bank of India & Ors. –vs- S.N. Goyal (supra)*, the delinquent misappropriated the fund whereas in the case at hand, the main allegation against the petitioner was that without following rules, norms and lending policy of the bank, the petitioner sanctioned loans and some of those loan accounts have slipped to NPA. Hence, the judgment relied upon by Mr. Hossain is distinguishable on facts.

- 32.** With these observation and order, the writ petition is being **WPA 12531 of 2016** stands thus **disposed of**, however, without any order as to the costs.
- 33.** 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.
- 34.** 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.)