

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 17801 OF 2019

Ananda Biswas

Vs.

State of West Bengal & Ors.

For the Petitioner : Mr. Aninda Lahiri,
Mr. Mainak Boseadvocates

For the State : Mr. Raja Saha,
Mr. Amit Kr. Ghoshadvocate

Heard on : 21.11.2022

Judgment on : 17.02.2023

Hiranmay Bhattacharyya, J.:-

1.This writ petition is at the instance of a dismissed employee of Dakshin Dinajpur District Co-operative Agriculture and Rural Development Bank Ltd. praying for setting aside the penalty order dated 14.08.2018 passed by the Chief Executive Officer (for short "CEO") and for payment of subsistence allowance for the period from 05.04.2017 till 14.08.2018.

2.The Petitioner was served with a memo no. 92 dated 20.07.2012 containing the statement of Articles of charge while he was performing the duties as a Development Officer

of Dakshin Dinajpur District Co-operative Agriculture and Rural Development Bank Ltd. (for short “the Bank”). Two charges were leveled against the petitioner. The first charge against the petitioner was that he has misappropriated the subsidy amount (government money) as well as the loan amount which amounts to misconduct under Clause 14(a)(III) of Appendix to Chapter V under Rule 106 of the West Bengal Co-operative Society Rules 2011 (for short “the 2011 Rules”). The second charge was that he insulted an employee of the Bank who, after his retirement was engaged on contractual basis using rude language for entering into the office and also challenged the authority by raising question of such engagement in presence of other employees of the Bank which amounts to misconduct under clause 14(a)(V) and 14(a)(IX) of Appendix to Chapter V under Rule 106 of the 2011 Rules. Petitioner duly replied to the charge sheet denying the allegations leveled against him. An enquiry officer was appointed who submitted a report containing the findings on the articles of charge to the Bank. CEO passed an order on 14.05.2013 thereby dismissing the petitioner from the service of the Bank with effect from 14.03.2013. Petitioner moved a writ petition being WP No. 30853 (W) of 2014 which was disposed of by a co-ordinate bench by an order dated 05.04.2017 thereby setting aside the enquiry and the order of dismissal from service with liberty to the Bank to start an enquiry de novo. Thereafter, enquiry officers were appointed

to conduct enquiry. The enquiry officers after conducting an enquiry submitted their report on 20.07.2017. Petitioner submitted a representation against the findings recorded in the enquiry report and the disciplinary authority issued a second show cause notice against the petitioner proposing the maximum punishment of dismissal from service. Petitioner duly replied to the second show cause notice and the CEO passed the penalty order dated 14.08.2018. Petitioner challenged the said penalty order in this writ petition.

3. Mr. Lahiri learned advocate appearing in support of the writ petition contended that there has been a gross violation of the principles of natural justice by the enquiry officers while conducting the enquiry proceedings. He further contended that the enquiry was done with undue haste and petitioner was not afforded adequate opportunity to adduce evidence. He further contended that copy of the documents relied upon by employer in course of enquiry were provided to the petitioner only along with the enquiry officers' report. He also contended that the disciplinary authority while passing the penalty order did not deal with the contentions raised by the petitioner in his reply to the second show cause notice. Mr. Lahiri relied upon the decisions of the Hon'ble Supreme Court of India in the case of *Neeta Kaplish vs. Presiding Officer, Labour Court and Anr.* reported at (1999)1 SCC 517 in support of his contention that the materials which were relied upon at the

time of the first enquiry cannot be relied upon in the second enquiry as the first enquiry has been set aside by this Hon'ble Court on an earlier occasion. He further relied upon a decision of the Hon'ble Supreme Court in the case of *Roop Singh Negi vs. Punjab National Bank and ors.* reported at (2009)2 SCC 570 in support of his contention that the documents have to be proved by the witnesses.

4. Mr. Saha learned counsel representing the Bank submitted that the writ petition is not maintainable as there is an alternative efficacious remedy provided under the statute. He further contended that the scope of interference in a disciplinary proceeding by a writ court is very limited. He submitted that the writ court cannot act as an appellate court and reappreciate the evidence led in the domestic enquiry. He further submitted that the loss of confidence in the employee of a bank is an important and relevant factor and in case the disciplinary authority arrives at a finding that the employer has lost confidence in the employee concerned the order of dismissal cannot be interfered with. In support of such contention the learned counsel appearing from the Bank relied upon the decision of the Hon'ble Supreme Court in the case of *State Bank of India Bikaner and Jaipur vs. Nemi Chand Nalwaya* reported at (2011) 4 SCC 584 and *Burdwan Central Cooperative Bank Limited and Another vs. Asim Chatterjee and Ors.* reported at (2012) 2 SCC 641. He further submitted that

a bank officer holds the position of trust and in the banking business absolute devotion diligence integrity and honesty needs to be preserved by every bank employee and if a bank officer/employee commits misconduct against the interest of the bank and the depositors he does not deserve to be dealt with leniently. In support of such contention he relied upon the decision of the Hon'ble Supreme Court in the case of *State Bank of India & Ors. vs. Ramesh Dinkar Punde* reported at (2006) 7 SCC 212. He further submitted that the previous misdemeanor of an employee can also be taken into consideration in order to consider as to whether the employee can be punished.

5. Heard the learned advocates for the parties and perused the materials placed.
6. The learned advocate appearing for the respondent raised the point of maintainability of the writ petition in view of existence of an alternative efficacious appellate remedy under the West Bengal Co-operative Societies Act, 2006 read with the 2011 Rules.
7. Since the point of maintainability of this writ petition has been raised, such issue is to be decided first. It is evident from the articles of charge that the petitioner was charged for misconduct under the provisions of Clauses 14(a)(III), 14(a)(V) and 14(a)(IX) of Appendix to chapter V under Rule 106 of the

2011 Rules. The petitioner alleged that there has been a gross violation of the principles of natural justice by the disciplinary authorities. The report of the erstwhile enquiry officer who submitted a report on the self same charges was set aside by a co-ordinate bench in a writ petition with a direction to conduct a de novo enquiry within a stipulated time. In the present writ petition the report of the enquiry officers who conducted the enquiry pursuant to the direction passed by the co-ordinate bench on 05.04.2017 in WP No. 30853 (W) of 2014 and the order of the disciplinary authority is the subject matter of challenge in this writ petition. Since charges were framed as per Appendix to of Chapter V of Rule 106 of the 2011 Rules and there is also an allegation of the violation of principles of natural justice, this court is of the considered view that the existence of an alternative efficacious remedy cannot be a bar in entertaining this writ petition. After deciding the maintainability issue, this Court shall now proceed to decide the other issues raised by the parties.

8. The Hon'ble Supreme Court in the case of *State Bank of India Bikaner and Jaipur* (supra) reiterated the well settled proposition of law that the High Courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. It was further observed that if the enquiry has been fairly and properly held and the

findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. The courts will not interfere with findings of fact recorded in departmental enquiries except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a Tribunal acting reasonably could have arrived at such conclusion or finding on the material on record. The courts will however interfere with the findings in disciplinary matters if the principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, *mala fide* or based on extraneous considerations.

9. Record reveals that the Inquiry Officers after conducting an enquiry into the charges leveled against the petitioner submitted a report dated 20.07.2017. Upon going through the said report this Court finds that the Enquiry Officers, after considering the materials before them, observed that the writ petitioner was well aware of the PMEGP guideline and he had handled several PMEGP cases in his capacity of the accountant-in-charge. It was further observed that the delinquent was aware that the first installment of the loan had not been utilised when the second installment and the subsidy were released. It was further observed that being the accountant of the bank the delinquent was supposed to check

and verify that the required formalities had been duly complied with before releasing the loan subsidy and it was his bounden duty to bring it to the notice of the CEO that such subsidy cannot be credited to the savings account of the beneficiary before 28.03.2012 as per the norm of PMEGP Scheme. The Inquiry Officers further found that the beneficiary of the loan amount did not deposit the required security deposit worth Rs. 70,000 as recommended by the Field Level Officer. The Enquiry Officers further noted that the beneficiary withdrew the first installment amount only on March 30, 2010 though the same was credited to his Savings Account on 28.03.2009.

10. The Inquiry Officers further found that the delinquent had been habitual offender in discharging his duties which is not commensurate with his job profile and responsibilities. The Inquiry Officers observed that the manner in which the loan case of Shri Subodh Kumar Mondal i.e., the beneficiary was dealt with by the delinquent is totally arbitrary, *mala fide* and not transparent. On the basis of such observations the Inquiry Officers held that the first charge against the petitioner stands proved. The Inquiry Officers also found that the second charge have merit.
11. It is evident from the materials on record that an opportunity was afforded to the writ petitioner to inspect the documents which the employer sought to rely upon in the enquiry but he

refused to inspect the documents. Upon a question being put to the writ petitioner, in course of his evidence, as to whether he wants to bring any witness to defend himself, he replied in the negative. It further appears from the deposition of the writ petitioner that in course of his evidence he was confronted with the vouchers produced by the employer to substantiate the charges but the petitioner did not challenge the veracity of the said vouchers.

12. Since the writ petitioner was duly confronted with several documents including the vouchers while he was deposing and the veracity of those documents were not challenged by him at that stage, the writ petitioner cannot turn around and contend that the documents relied upon by the employer in the enquiry was not proved.
13. Record further reveals that the petitioner was also allowed to cross examine the witnesses. It is not in dispute that the petitioner was given opportunity to reply to the charges; to file representation against the findings of the Enquiry Officer; to reply to the second show cause notice against the proposed punishment.
14. The enquiry officer after considering the evidences adduced by the respective parties have assigned elaborate reasons in support of the ultimate conclusion. The disciplinary authority also considered the findings returned by the enquiry officers

and the objections raised by the petitioner and after being satisfied that there is sufficient evidence to establish the guilt of the delinquent arrived at a finding that the charges against the petitioner stands proved.

15. The disciplinary authority found that the complicity of the petitioner in the matter has been clearly established. CEO expressed the opinion that the financial impropriety under enquiry involved government subsidy which cannot be disbursed unless the beneficiary fulfilled all the conditions attached to such subsidies and the beneficiary also did not utilise the loan disbursed at all which was well within the knowledge of the writ petitioners as all the related vouchers were prepared by him with the fraudulent intention and for personal gain. The disciplinary authority was of the view that the improper act of the delinquent amounts to serious breach of trust and loss of faith for which the petitioner cannot be trusted anymore. The disciplinary authority further took into consideration the service record of the petitioner wherefrom it revealed that the petitioner on an earlier occasion was inflicted with the punishment by the Bank authority by an order dated 07.09.2000 of withholding one increment in pay for his involvement in the fraudulent activities. After taking into consideration the aforesaid aspects the disciplinary authority issued second show cause notice to the petitioner on the proposed punishment of dismissal from service. The

petitioner was allowed an opportunity to reply to the said show cause notice. The petitioner duly submitted a reply against the second show cause notice. The disciplinary authority after considering the reply of the petitioner to the second show cause notice imposed the punishment of dismissal from service.

16. It is well settled that the strict rules of evidence laid down under the Evidence Act are not applicable in a disciplinary enquiry but such enquiry is to be conducted in accordance with the principles of natural justice. Merely because the evidence of the witnesses were completed within a short span it cannot be presumed that the principles of natural justice has been violated as this Court after considering the materials on record is of the considered view that the writ petitioner could not demonstrate as to how he was prejudiced. This Court accordingly holds that the principles of natural justice was duly followed in the case on hand.
17. The case on hand is not a case of no evidence. The findings of the disciplinary authority are based on evidences adduced by the parties. Documents on which reliance has been placed in the disciplinary enquiry were also proved in course of enquiry as observed hereinbefore. Such findings also do not suffer from perversity. For such reasons, this Court is not inclined to interfere with the findings of the disciplinary authority insofar as it held that the charges have been established.

18. This Court shall now consider whether the punishment can be said to be shockingly disproportionate to the charges proved.
19. In *Asim Chatterjee* (supra) the Hon'ble Supreme Court held that an allegation of financial irregularity would require serious consideration as to whether the services of an employee against whom such allegation have been leveled should be retained since a bank acts in a fiduciary capacity with regard to people's investments and the very legitimacy of the banking system depends on the complete integrity of its employees.
20. The Hon'ble Supreme Court in the case of *Ramesh Dinkar Punde* (supra) held that a bank officer holds a position of trust where honesty and integrity are inbuilt requirements of functioning and it would not be proper to deal with the matter lightly. It was further observed therein that in banking business absolute devotion, diligence, integrity and necessity needs to be preserved by every bank employee and in particular the bank officer so that the confidence of the public/ depositors is not impaired. When a bank officer commits misconduct for his personal gains against the interest of the bank and the depositors such employee/officers must be dealt with iron hands and does not deserve to be dealt with leniently. Loss and confidence is the primary factor and not the amount of money misappropriated in case the employer loses confidence or faith in an employee

and accordingly awards punishment of dismissal. There is also no place for generosity or misplaced sympathy on the part of judicial forums. The aforesaid decisions in case of *Asim Chatterjee* (supra) and *State Bank of India Bikaner and Jaipur* (supra) are squarely applicable to the facts of this case as the allegation against the writ petitioner who at the relevant point of time was a development officer of the Bank was that he has misappropriated the subsidy amount (the government money) as well as the loan amount. The disciplinary authority held that the employer has lost confidence. This court, therefore holds that the punishment inflicted upon the petitioner cannot be said to be shockingly disproportionate to the proved charges.

21. In *Roop Singh Negi* (supra) the only basic evidence whereupon reliance was placed by the enquiry officer was the purported confession made before the police. A factual finding was recorded therein that there was neither any direct evidence nor even indirect evidence. It was also observed that reliance was placed by the enquiry officer on the FIR which could not have been treated as an evidence. On such facts the Hon'ble Supreme Court interfered with the order of the disciplinary authority and the appellate authority after arriving at a finding that the orders passed by such authority are also not supported by any reason.

22. The case on hand is not a case of no evidence or that an inadmissible evidence formed the basis of the Enquiry Report. The enquiry officer relied upon the evidences on record and arrived at a finding that the charges stands established. *Roop Singh Negi* (supra) being distinguishable on facts is not applicable to the facts of the instant case.
23. In *Neeta Kaplish* (supra) the issue before the Hon'ble Supreme Court was whether the labour court or the tribunal can take fresh evidence on merits of the charge if it comes to the conclusion that the domestic enquiry was not properly held and principles of natural justice were violated. Such issue is not germane in this writ petition and therefore the decision in the case of *Neeta Kaplish* (supra) is not applicable to the facts on this hand.
24. Mr. Lahiri would contend that the writ petitioner is entitled to subsistence allowance from the date of the order passed by the co-ordinate bench in the earlier round of litigation as the status of the writ petitioner from the date of the said order till 14.08.2018 would be that of a suspended employee.
25. The co-ordinate bench by the order dated 05.04.2017 directed the enquiry proceedings to be conducted de novo after setting aside the order of dismissal. The effect of such order is that the parties were relegated to the same position that they were holding at the stage of initiation of the enquiry. Therefore, the

status of the writ petitioner after the order of dismissal was set aside would be that of a suspended employee as rightly argued by Mr. Lahiri. To the mind of this Court, the writ petitioner would be entitled to subsistence allowance as a suspended employee for the period from the date of order of the coordinate bench i.e., 05.04.2017 till the order of dismissal dated 14.08.2018, provided the relevant rules and regulations are complied with. This Court is, therefore, of the considered view that liberty is to be granted to the writ petitioner to submit a representation to the authority claiming subsistence allowance and the authority should be directed to consider such prayer as a decision on that issue would involve adjudication on facts as well.

26. For the reasons as aforesaid, the order of dismissal dated 14.08.2018 is not interfered with by this Court. However, liberty is granted to the petitioner to submit a representation for consideration of his claim for subsistence allowance for the period from 05.04.2017 till 14.08.2018 before the competent authority and if such representation is submitted within two weeks from date, the competent authority shall consider such representation and dispose of the same by passing a reasoned order upon giving an opportunity of hearing to the writ petitioner and communicate the reasoned order to the petitioner within a period of four weeks from the date of submission of such representation. The competent

authority will be free to decide the claim of the petitioner on its merit by treating the petitioner to be a suspended employee during such period. With the above observations and directions, the writ petition stands disposed of.

27. There shall be, however, no order as to costs.
28. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita)