

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

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 24355 of 2015

**Nachiketa Sengupta
-Vs.-**

Bangiya GraminVikash Bank & Ors.

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

For the Respondents : *Md. Mokaram Hossain*

Heard on : 28.08.2023

Judgment on : 20.11.2023

ParthaSarathi Chatterjee, J:-

1. By this writ petition, the legality and propriety of the charge-sheet *vide*.dated 7th June,2013 issued in contemplation of a disciplinary proceeding against the petitioner, the findings of the enquiry officer, the order of punishment dated 23rd June, 2014 and the order of the Appellate

Authority dated 3rd December, 2014 have been called in question by the petitioner.

2. Shorn of unnecessary details, the facts as projected in the writ petition are that the petitioner joined as Scale-I officer in Mallabhum Gramin Bank in 1984 and in 2005, he was promoted to the post of Scale-II officer. In 2007, Mallabhum Gramin Bank was amalgamated with the Bangiya Gramin Vikash Bank (hereinafter referred to as the bank). The BangiyaGraminVikash Bank (Officers and Employees) Service Regulations, 2010 (in short, the Service Regulations, 2010), which came to effect on 15.11.2010, was promulgated to govern the service conditions of the officers and employees of the bank. The Service Regulations, 2010 was amended by Bangiya Gramin Vikash Bank Service (Amendment) Regulations, 2013 which came into effect 12.08.2013.
3. In 2008, the petitioner was transferred to the Mathpukur Branch of the bank as Branch Manager (Scale-II Officer) and in 2012, he was transferred to Uttar Dinajpur Regional Office as Manager. By an order dated 15.12.2012, the Competent Authority & Chairman of the bank placed the petitioner under suspension pending disposal of the department enquiry and its final decision.
4. A charge-sheet dated 7.6.2013 was issued by the General Manager claiming himself to be the Disciplinary Authority of the petitioner bringing almost 7(seven) nos. of charges against the petitioner namely, *i) committing acts detrimental to the interest of the bank, ii) sanctioning and disbursing loans violating the norms/lending policy of the bank, iii)*

exposing the bank to huge financial loss, iv) discharging official duties in negligent and casual manner, v) committing acts of suppression of facts, vi) committing breach of trust & vii) committing breach of discipline. In the charge-sheet, it was alleged that the petitioner acted in contravening of the Regulations 18 and 20 the Service Regulations, 2010.

5. The petitioner submitted his reply to the charge-sheet on 11.7.2013 which was found unsatisfactory and hence, in exercise of the powers conferred upon him under Regulation no. 41 of the Service Regulations, 2010, the Disciplinary Authority & the General Manager *vide* his letter dated 25.07.2013, appointed the Presenting Officer(in short, PO) and the Enquiry Officer(in short, EO). The enquiry proceeding was continued on different dates. The PO and the petitioner as Charge-sheeted Officer (in short, CSO) exchanged their respective briefs and/or summary arguments.
6. The findings returned by the EO was provided to the petitioner by the Disciplinary Authority under his covering letter 28.04.2014. The petitioner submitted his response to such findings on 15.5.2014. The Chief Manager of the bank under his covering letter dated 23.06.2014 forwarded the order of punishment of dismissal from service dated 23.06.2014 passed by the Disciplinary Authority, to the petitioner. The petitioner preferred the statutory appeal against the order of punishment. The Chairman of the bank acted as the Appellate Authority and by an order dated 03.12.2014, the appeal was dismissed and the order of punishment was affirmed. Hence, assailing the charge-sheet, the enquiry

report, the order of punishment and the order of the Appellate Authority, this writ petitioner has been instituted. The parties have exchanged their affidavits, as directed.

7. Mr. Mitra, learned advocate argues the matter on behalf of the petitioner.

The arguments advanced by Mr. Mitra, as crystallized, are that the Service Regulations, 2010 by which the service conditions of the officer and employees of the bank are governed came into effect from 15.11.2000. Drawing my attention to the Regulation no. 2(g) of the Service Regulations, 2010, he submits that as per this Regulation, the 'Competent Authority' means the Chairman, in respect of officer and the General Manager, in respect of employee.

8. He further submits that the Service Regulations, 2010 was amended by the BGVB Service (Amendment) Regulations, 2013 which came into effect from 12.08.2013 and the Regulations, 2013 substituted the definition of 'Competent Authority' by saying that the 'Competent Authority' means –i) the Chairman in respect of Officers Scale-III, IV and V, and ii) the General Manager in respect of Officer Scale-I and II, and iii) an officer not below the rank of Scale-IV in respect of employees relating to Group 'B' Office Assistant(Multipurpose) and Group'C' Office Attendant(Multipurpose) as decided by the Board.

9. The petitioner was placed under suspension by the Chairman under an order dated 15.12.2012 and the General Manager concerned claiming himself to the Disciplinary Authority of the petitioner, who happened to be Scale-II Officer, issued charge-sheet on 07.06.2013. Hence, on the date

of issuance of the charge-sheet the General Manager concerned had no authority to act as Disciplinary Authority of the petitioner and hence, the charge-sheet cannot be sustained and all the proceedings and/or actions initiated and/or taken on the basis of such charge-sheet stand vitiated. He argues that a statutory authority cannot act beyond statute.

10. He further argues that the Disciplinary Authority claimed that petitioner's reply to the charge-sheet was held to be unsatisfactory but no reason was assigned and he contends that no list of documents and list of witnesses were provided along with the charge-sheet and from the minutes of enquiry proceeding, it would be evident that documents relied upon by the management were handed over to the petitioner only during the enquiry proceeding. He vociferously contends that the findings of the enquiry officer was perverse and the disciplinary authority mechanically accepted the findings of the enquiry officer. He argues that the entire disciplinary proceeding has been continued and concluded in derogation of the Service Regulations, 2010 and in violation of principle of natural justice. According to Mr. Mitra, the disciplinary proceeding cannot be sustained and the order of punishment and the order of the Appellate Authority are liable to be quashed. In support of his such contentions, he places reliance upon the judgments delivered in cases of *Joint Action Committee of AIR Line Pilots' Association of India –vs- Director General of Civil Aviation and Ors.*, reported in (2011) 5 SCC 435, *A.K. Roy &Anr. – vs- State of Punjab &Ors.*, reported in (1986) 4 SCC 326, *Union of India – vs- B.V. Gopinath*, reported in (2014)1 SCC 351, *Chairman Cum*

Managing Director, Coal India Limited and Ors. –vs- Ananta Saha & Ors., reported in (2011) 5 SCC 142 and on unreported judgment passed by a Hon'ble Division Bench of this Court in F.M.A 2937 of 2015 (*Biplab Das –vs- Bangiya Gramin Vikash Bank & Ors.*)

11. *Per Contra*, Mr. Hossain, learned advocate advances his arguments on behalf of the bank. Drawing my attention to a Circulatory Board Note dated 10.1.2013, he contends that the suggestion for amendments of the provisions of Disciplinary and/or Competent Authority was approved by the Board on 10.1.2013 and although the Service (Amendments) Regulations, 2013 was published in the Gazette on 7.6.2013 but on the basis of such approval of the Board, the bank started taking steps as per the Circulatory Board Note dated 10.1.2013 and as an officer of the bank, the petitioner was well aware of such fact. He submits that suspension order was issued by the Chairman on 15.12.2012 as per the Service Regulations, 2010 whereas the charge-sheet was issued by the General Manager on 7.6.2013 as per Circulatory Board Note dated 10.1.2013. He submits that in such event, it is to be considered whether the delinquent has lost the fora to prefer statutory appeal or not. He contends that the petitioner did not lose such fora and he has not been prejudiced.

12. Mr. Hossain submits that the petitioner during his stint as Branch Manager of Mathpukar Branch sanctioned and disbursed loan of more than 9(nine) Crores in violation of the lending policy and/or extant norms. He contends that most of the loan accounts have slipped to Non-Performing Assets(in short, NPA). Drawing my attention to page 113 of

the reply to the Charge-sheet and page numbers 133, 139 and 154 of the summary argument of the delinquent, he strenuously contends that the delinquent had admitted his guilt. He further contends that the order of punishment was passed on 23.6.2014 and appellate authority disposed of the appeal on 13.12.2014 and thereafter, the petitioner has accepted all the dues and then, this writ petition has been preferred in September, 2015 and hence, this writ petition, according to him, is not maintainable. He asserts that it is not mandatory that the disciplinary proceeding has to be initiated by appointing authority only. He submits that petitioner did not raise such issue at any point of time. He contends that there is not irregularity and/or illegality in the decision making process and the petitioner has not been prejudiced in any way. He further submits that the petitioner officiated the post of Manager of a bank and hence, it was expected that the Manager of a bank will act with absolute integrity and honesty in handling the funds of the customers/borrowers and any misconduct of such official will entail severe punishment. To bolster his submission, he places reliance upon the judgments delivered in cases of *P.V. Srinivasa Sastry & Ors. –vs- Comptroller and Auditor General and Ors.*, reported in *AIR 1993 SC 1321*, *Pankajesh –vs- Tulsi Gramin Bank & Anr.*, reported in *AIR 1997 SC 2654* & another judgment passed by the Hon'ble Supreme Court of India in Case no. *Appeal (Civil) 4243-4244 of 2004 (State Bank of India & Ors. –vs- S.N. Gayal)*.

13. In reply, Mr. Mitra submits that internal communication cannot override the Service Regulations and he further contends that issue of jurisdictional error can be raised at any stage.
14. Indisputably, the disciplinary proceeding consists of various stages, namely, the initiation of the proceeding, the inquiry in respect of the charges levelled against the delinquent and the passing of final order by the disciplinary authority. Article 311(1) of the Constitution of India mandates that no person who is a member of a civil service of the Union or an all- India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. So, Article 311 of the Constitution does not speak as to who shall initiate the disciplinary proceedings. However, the employer may frame a rule prescribing the authority who can initiate a proceeding. In the case of P.V. Srinivasa Sastry & Ors. (*supra*), it was ruled that in absence of such rule, any superior authority who can be held to be the controlling authority, can initiate such proceeding.
15. In terms of the Regulation 2(g) of the Service Regulations, 2010, the expression, 'Competent Authority' means the Chairman, in respect of officer and the General Manager, in respect of the employee and proviso of Regulation 2(g) speaks that if there is no General Manager, the Chairman Shall be the Competent Authority in respect of the employee. At the time of initiation of the disciplinary proceeding against the petitioner, petitioner was officiating the post of Scale-II officer. The

Chairman had issued the show cause notice but the General Manager issued the Charge-sheet against the petitioner on 7.6.2013 and by the Service (Amendment) Regulations, 2013, subsequently, the General Manager became the 'Competent Authority' in respect of Scale-II officer but since the Regulations, 2013 came into effect on and from 12.8.2013, it was urged that the charge-sheet cannot be sustained.

16.2nd Proviso of Rule 39 of the Service Regulations, 2010 says that no order in imposing of the major penalties shall be made except by an order in writing signed by the Competent Authority. Regulation 41 of the Service Regulations, 2010 empowers that Competent Authority to delegate the power to conduct enquiry to an officer who is in a higher scale to the officer against whom the proceeding is instituted, in the case of officer. Regulation 40 thereof has empowered the Competent Authority to waive the procedure prescribed in Regulation 39 in certain contingencies referred therein.

17.Hence, from the aforesaid Regulations it is explicit that legislature has mandated that only the Competent Authority can impose major penalties. As per the Regulations, an enquiry can be conducted by any order who is in higher scale to the officer against whom the proceeding is initiated. Needless to state that the General Manager was in higher scale to the petitioner on the date of issuance of the charge-sheet and subsequently, he became the Competent Authority and the order of punishment has been passed by the Competent Authority and the petitioner has not lost the forum to prefer appeal against the order of punishment.

18. It is well settled mere plea of procedural irregularity or violation of natural justice etc. will not suffice, the delinquent is to make out a case that due to such irregularity and/or violation he has been prejudiced or miscarriage of justice prejudicial to him has occasioned. It is well settled proposition of law 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.
19. The petitioner while giving reply to the charge-sheet has not raised such issue and even the petitioner could not make out any case that due to such irregularity, there had been a substantial miscarriage of justice prejudicial to the petitioner. In case of Pankajesh (*supra*), the Hon'ble Apex Court, in the facts and circumstance of that case, was pleased to hold that by mere delegating the enquiry whether the enquiry officer is of the same cadre or of higher grade than that of the petitioner, it did not cause any material irregularity nor resulted in any injustice to the petitioner. Hence, I do not find any justification to quash the charge-sheet and disciplinary proceeding issued and/or initiated against the petitioner only for this reason.
20. It is well-known proposition of law that 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 require the decision maker to take a fresh decision.

21. The Chare-sheet contained the list of documents and witnesses and the petitioner was given opportunity to submit reply to the charge-sheet. Copies of the documents relied upon by the Management were handed over to the petitioner and two witnesses were produced by the Management and opportunity to cross-examine them was afforded to the petitioner but the petitioner did not avail of such opportunity. In reply to the report of the enquiry officer, petitioner took the plea that there was no examinations-in-chief of the Management witnesses and hence, he could not cross-examine them. Such plea cannot be accepted. The petitioner was given opportunity to submit his written argument and the petitioner submitted such argument.

22. On studied scrutiny of the record, it reveals that the findings returned by the Enquiry Officer are well-reasoned and all the allegations were dealt with and Disciplinary Authority as well as the Appellate Authority passed reasoned orders. From the reply to the Charge-sheet and summary argument of the petitioner, it is explicit that the petitioner admitted that he could not complete some of the *'housekeeping works which might cause deviation of some Banking practices'* and he apologized for the same and he took the plea that while going to comply with verbal orders of his superior he granted loans in derogation of the lending principles of the bank and owing to unavailability of two officers of the bank, he granted loans without getting the equitable mortgages executed. Hence, it is quite clear that the petitioner had admitted his guilt.

23.It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. There is no scintilla of doubt regarding binding effect of the propositions laid down in the judgments relied upon by and/or on behalf of the petitioner but those are distinguishable on facts.

24.In view of aforesaid analysis, I do not find any justification to interfere with the charge-sheet, the enquiry proceeding, the findings returned by the Enquiry officer and the order of punishment and the order of the appellate authority. Consequently, the writ petition being **WPA 24355 of 2015** is thus **dismissed**, however, without any order as to the costs.

25.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.

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

(ParthaSarathi Chatterjee, J.)