

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

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 24677 of 2012

Pradip Kumar Ganguly

-Vs.-

Reserve Bank of India & Ors.

For the petitioner : Mr. Sanajit Kumar Ghosh, Adv.

**For the respondent (s) : Mr. Alok Kumar Banerjee, Adv.
Mr. Arunabha Sarkar, Adv.**

Heard on : 30.03.2023

Judgment on : 10.07.2023

Raja Basu Chowdhury, J.:-

1. The present writ application has been filed, *inter alia*, challenging the charge-sheet dated 31st May, 2011/1st June of 2011, the Enquiry Officer's report dated 20th March, 2012, the final order of the Disciplinary Authority dated 3rd August, 2012 and the order passed by the Appellate Authority dated 18th September, 2012.
2. The petitioner had been employed as Special Assistant, Issue Department (Cash), Reserve Bank of India, Kolkata vide employment no. 01536, and had taken a loan of Rs.1,30,000/- from the Bally Co-operative Bank Ltd., out of which a sum of Rs.80,000/- had been repaid. On 25th June, 2004, the petitioner claims to have requested the Manager of the Bally Co-operative

Bank to provide him with the statement of accounts, in respect of the Loan Account, unfortunately such statement was not supplied to the petitioner.

3. While in service on 9th October, 2007, a charge-sheet was issued on the petitioner which is at page 48 of the writ application, *inter alia*, on the ground of the petitioner having committed breach of Regulation 47(1) of the Reserve Bank of India (Staff) Regulations, 1948 (hereinafter referred to as the “said Regulations”), by forging documents, purportedly issued by the Bank as morefully stated in paragraph 2 of the said charge-sheet. In the domestic enquiry that followed, by a final order dated 16th May, 2008, he was inflicted a punishment and was ordered that his substantive pay be reduced by four stages, for four years with effect from the communication of the said order with the further direction that the same shall have the effect of postponing the date of future increment and withholding his increments in the intervening period.
4. Challenging the aforesaid final order, the petitioner had preferred an appeal whereupon the Appellate Authority upon taking into consideration the case as made out by the petitioner, modified the final order dated 16th May, 2008 thereby directing reduction of substantive pay by three (3) stages, for a period of three (3) years from the date of final order, with a further direction that the reduction shall have the effect of withholding his increments, in the intervening period and shall have the effect of postponing his future increments. It is, however, the contention of the petitioner that

since, all transactions in the Bally Co-operative Bank had been frozen pursuant to direction issued by the Reserve Bank of India, the petitioner could not service the aforesaid loan account and repay the outstanding.

5. Subsequently, on 17th August, 2009, a further charge-sheet was issued on the petitioner which is at page 59 of the writ application wherefrom it would transpire that the petitioner was charged of having committed breach of Regulation 32 of the said Regulations by failing to comply with Bank's directions as detailed in paragraph 2 of the said charge-sheet. The said charge-sheet ultimately culminated in a final order dated 18th December, 2009, whereby the Disciplinary Authority awarded a punishment as provided in Regulation 47(1)(a) of the said Regulations by reprimanding him.
6. Since then, another charge-sheet dated 31st May, 2011, followed (hereinafter referred to as the "third charge-sheet") which is at page 63 of the writ application. By the aforesaid charge-sheet the petitioner was charged of having committed acts of gross misconduct and indiscipline, by acting in a manner detrimental to the interest of the Bank, in terms of Regulation 45 of the said Regulations, by failing to liquidate his outside debts within a reasonable period and by failing to submit half yearly statement of liability within time and also by not declaring certain part of debt in the half yearly statement of liability submitted by him.
7. The petitioner had responded to the said charge-sheet by communication in writing dated 15th June, 2011 and, *inter alia*,

claimed that on April 24, 2002, he had taken a loan of Rs.1,30,000/- from Bally Co-operative Bank which was repayable in 48 installments. Although the petitioner had paid Rs.80,000/- to the Bally Co-operative Bank against receipts yet he could not pay the remaining outstanding sum on account of acute financial crisis despite having all good intentions to pay.

8. He claims to have repeatedly asked the Bally Co-operative Bank to furnish account statements as regards his outstanding loan taken by him on 24th April, 2002. On his request, the said Bally Co-operative Bank had served the petitioner with the account statements only on 28th May, 2009, and that he had received no other statement. It is for such reason the petitioner was unable to identify the actual amount of outstanding balance in respect of the said loan account and that there could have been mismatch in his half yearly liability statement. By such letter, he categorically informed that no copy of the report as referred to in the said show cause was made over to him and in absence of such document, he was unable to deal with the charge-sheet.

9. By ignoring his reply, an enquiry was not only conducted and concluded without supplying the petitioner with relevant documents. Since, the enquiry was conducted without supplying the petitioner with the relevant documents at the instance of the petitioner, the Competent Authority by order dated 3rd January, 2012 had directed the enquiry to be reopened from the stage of evidence. Pursuant to the aforesaid direction the re-enquiry was

held in one sitting without any adjournment on 17th February, 2012. During such re-enquiry, no witness was present. However, the Presenting Officer had produced 15 documents which was marked exhibits. After the enquiry the report of the Enquiry Officer dated 20th March, 2012 was served on the petitioner on 12th June, 2012.

10. The petitioner had responded to the said enquiry report and had highlighted that the documents in serial nos. 6, 9, 11 and 13 at page 3 of the re-enquiry report was never supplied to the petitioner. He also highlighted the fact that in course of enquiry he was not given the opportunity to cross-examine the managements' representative and that he was tried for the self-same offence for which he had already been enquired and punished.

11. The Disciplinary Authority after taking into consideration the report filed by the Enquiry Officer, the reply given by the petitioner, by his final order dated 3rd August, 2012 and by recording in paragraph 2 thereof that he has been persuaded to take a lenient view of the matter imposed, penalty of reduction of five stages on the petitioner in terms of Regulation 47(1)(c) of the said Regulations from the date of passing of the final order. Although the petitioner had preferred an appeal before the Appellate Authority, the Appellate Authority by an order dated 18th September, 2012 proceeded to conclude that the appellant had not amended himself inspite of penalty imposed on him in the past, and as such, the Appellate Authority did not find any valid or convincing ground on

which he should take a lenient view of the matter and therefore, rejected the appeal.

12. Mr. Ghosh, learned Advocate representing the petitioner, submits that the petitioner was not supplied with the relevant documents. No opportunity was given to the petitioner to cross-examine. The enquiry proceedings stand vitiated on the ground of violation of principles of natural justice and that the petitioner has been charged with the same offence, twice over. Mr. Ghosh, by taking this Court through the records of the proceedings strenuously argued that the third charge-sheet issued on the petitioner was, in fact, a trial of the petitioner for the same offence for which he had earlier been tried. According to Mr. Ghosh, the aforesaid enquiry is *non est* and should not have been proceeded with in the given facts. He further submits that the order passed by the Disciplinary Authority is shocking and would shock the conscience of any ordinary person and a man of ordinary prudence would in the given facts would not have passed such an order.

13. Mr. Ghosh, learned Advocate representing the petitioner, in support of the above contention draws this Court's attention by referring to a judgment delivered by the Hon'ble Apex Court in the case of ***State of Rajasthan v. Hat Singh & Ors.***, reported in **2003 (1) CLJ 136**. He has further placed reliance on the judgment delivered by the Hon'ble Supreme Court in the case of ***Lucknow Kshetriya Gramin Bank & Anr. v. Rajendra Singh***, reported in **(2013) 12 SCC 372**.

14. *Per contra*, Mr. Banerjee, learned Advocate representing the respondents, by drawing attention to Regulation 2 of the said Regulations submits that the said Regulations applies to whole time employee of the Bank and the petitioner being the whole time employee is bound by the terms and conditions as set forth therein. He, thereafter, invites the attention of this Court to the charge-sheet dated 9th October, 2007, and submits that the said charge-sheet is in relation to the petitioner committing breach of Regulation 47(1) of the said Regulations, the same concerns forging documents purportedly issued by the Bank including forging the seal of the Bank. Such a charge-sheet has nothing to do with either the second charge-sheet issued on 17th August, 2009 or the third charge-sheet dated 31st May, 2011.
15. By referring to the second charge-sheet dated 17th August, 2009, it is submitted that the petitioner despite the advice issued by the respondents, chose not to repay the loan amount and as such acted in breach of Regulation 32 of the said Regulations.
16. By referring to the charge-sheet dated 31st May, 2011, it is submitted that the same had been issued for the petitioner having committed gross acts of misconduct and indiscipline, for acting in a manner detrimental to the interest of the Bank, in terms of Regulation 45 of the said Regulations by failing to liquidate his outside debts within a reasonable period as also by failing to submit half yearly statement, and by not declaring certain part of debt in the half yearly statements submitted by him. The said

charge-sheet has nothing to do with any other charge-sheet. In fact, according to Mr. Banerjee, all the three charge-sheets are based on separate cause of action and do not in any way interfere with one another.

17. He further submits that the petitioner was given ample opportunity to participate in the enquiry proceedings. The allegations made by the petitioner as regards non-supply of the documents cannot be sustained, inasmuch as the petitioner was supplied with all documents, and in course of the enquiry proceedings, the petitioner has not only admitted having received all documents but has also admitted the charge leveled against him. Such fact would corroborate from page 70 of the writ application. He then, by placing reliance on the statements made in page no. 10 of the affidavit in opposition filed by the respondents, submits that by cover of letter dated 5th December, 2011, the documents as sought for by the petitioner were made over to him. There are no contemporaneous documents denying the aforesaid letter. The petitioner chose not to use any affidavit in reply to the affidavit in opposition submitted by the respondents and as such the doctrine of non-traverse would come in play, the contents of the aforesaid letter are deemed to have been admitted by the petitioner.

18. It is still further submitted that since the petitioner admitted his guilt, there is no requirement for the respondent to further enquire in the matter. In support of his aforesaid contention, he has placed reliance on the following judgments of the Hon'ble

Supreme Court. ***Dharmarathmakara Raibahadur Arcot Ramaswamy Mudaliar Educational Institution v. Educational Appellate Tribunal***, reported in (1999) 7 SCC 332, ***Union of India and Others v. B. K. Srivastava***, reported in (1988) 6 SCC 340 and ***Himachal Pradesh Road Transport Corporation & Anr. v. Hukam Chand.***, reported in (2009) 11 SCC 222. He submits that the Hon'ble Court in exercise of its power of judicial review is also not called upon to interfere with the quantum of punishment inflicted by the respondents, as according to Mr. Banerjee, the Disciplinary Authority is the best judge to decide the quantum of punishment.

19. Heard the learned advocate appearing for the respective parties and considered the materials on record.
20. Although the parties have made elaborate arguments on diverse aspects the moot issue revolves on the question as to whether the petitioner had been tried for the same offence twice and whether there had been violation of principles of natural justice. To consider both the aforesaid aspects it would be necessary to note the following undisputed facts.
21. The petitioner had taken a loan of Rs.1,30,000/- from Bally Co-operative Bank Ltd. Although the petitioner had repaid a sum of Rs.80,000/- out of the loan amount, the balance outstanding was not repaid. The petitioner claims to have requested the Manager, Bally Co-operative Bank to provide him a statement of accounts, which the petitioner was not favoured with in time.

22. In the first charge-sheet dated 9th October, 2007, Reserve Bank of India had identified that the petitioner had availed the personal loan of Rs.1,30,000/- on 24th April, 2002, from Bally Co-operative Bank Limited which had not been repaid by him. It was alleged in the said charge-sheet that before availing the loan he had submitted a “letter of authority/undertaking” addressed to one Sri Balai Das, Manager, Establishment Section, Reserve Bank of India, who subsequently issued a “Letter of Confirmation from the Employer to remit the amount of monthly installment” on behalf of the bank, in favour of the petitioner, however, on verification it was found that no such officer had been working in the bank during the time of the petitioner availing the loan. The signature and the name along with seal of the bank appeared to be forged, thus, the petitioner was charged with acts of gross misconduct, detrimental to the interest of the Bank under Regulation 47(1) of the said Regulations. In the domestic enquiry that followed by a final order dated 16th May, 2008, the petitioner was awarded a punishment and was ordered that his substantive pay be reduced for four stages by four years, with effect from communication of the said order, with a further direction that the same shall have the effect of postponing the date of future increments and withholding his increments in the intervening period. On an appeal being preferred by the petitioner, the Appellate Authority by an order dated 5th August, 2008 was, *inter alia*, pleased to modify the final order dated 16th May, 2008, by directing reduction of substantive pay of the

petitioner, by three stages for a period of three years from the date of final order, with a further direction that the reduction shall have the effect of withholding his increments in the intervening period and shall have effect of postponing his future increments. It is noted that according to the petitioner, the petitioner could not further service his loan account initially owing to financial inability and later since, all transactions in the Bally Co-operative Bank had been frozen, pursuant to direction issued by Reserve Bank of India.

23. The said disciplinary proceeding was followed by a further charge-sheet dated 17th August, 2009. The said charge-sheet also noted the factum of personal loan taken by the petitioner and the direction issued by the bank management on the petitioner to repay the loan together with interest, and the petitioner having failed to adhere to such instructions, the aforesaid charge-sheet was issued. The said charge-sheet ultimately culminated in a Final Order dated 18th December, 2009, issued by the Disciplinary Authority whereby in terms of Regulation 47(1)(a) of the said Regulations, a penalty of reprimand was inflicted on the petitioner. The respondents did not stop there. A third charge-sheet dated 31st May, 2011 appears to have been issued. Such charge-sheet is also based on the factum of loan taken by the petitioner from Bally Co-operative Bank. It was alleged that the petitioner had not repaid the loan till 21st January, 2011. The amount of outstanding balance mentioned in the petitioner's half-yearly liability statement, as on 31st December, 2011, did not match with the amount reported by Bally Co-

operative Bank Limited. Since, the aforesaid constituted a misconduct within the meaning of Regulation 47 of the said Regulations, a disciplinary action was initiated for holding domestic enquiry.

24. It is the petitioner's contention that by his letter dated 15th June, 2011 and 9th July, 2012, while explaining his position, had categorically made it clear that Bally Co-operative Bank did not furnish him with statement of accounts, as regard his outstanding loan amount which had resulted in the mismatch in the liability statement. By such letter it was further pointed out the report as relied on by the management in the charge-sheet was not forwarded to the petitioner. Notwithstanding the aforesaid and by ignoring the petitioner's reply an enquiry was conducted and concluded in hot haste.

25. It is the petitioner's contention that the petitioner was not favoured with relevant documents, *inter alia*, including the documents relied on in the charge-sheet for holding the petitioner guilty in respect of the charges levelled against the petitioner. No opportunity was given to the petitioner to cross-examine the management witnesses.

26. Records reveal that pursuant to directions issued by the Competent Authority, the proceedings of the enquiry were reopened and re-enquiry was held from the stage of evidence. In course of such re-enquiry, which was conducted on 17th February 2012, the management witnesses produced the following documents:

1. *Copy of the show-cause notice No. DAPM. Kol Disc. 13360/03.05.001/2010-11 dated May 13, 2011*
 2. *Reply to the show-cause notice dated May 25, 2011*
 3. *Copy of the Charge Sheet No. DAPM. Kol Disc. 13907/03.05.001/2010-11 dated June 1, 2011*
 4. *Request for extension of 7 days time to reply the Charge Sheet*
 5. *Reply to Charge Sheet dated June 15, 2011*
 6. *Letter No. BCB/RBI/415/2010-11 dated January 21, 2011 received from Bally Co-operative Bank Ltd., Howrah (addressed to DGM, UBD)*
 7. *Office note prepared by UBD, Kolkata*
 8. *Office notes prepared by Discipline Section of DAPM.*
 9. *Copy of letter Bally/PSL/574/230/2005-06 dated September 9, 2005 from Bally Co-operative Bank.*
 10. *Copy of application dated February 6, 2002 filled in and submitted for personal loan along with forged verification of employment.*
 11. *Copy of letter Bally/PSL/574/503/3/2005-06 dated March 8, 2006 from Bally Co-operative Bank.*
 12. *Copy of the half-yearly liability statements as on 18.9.2003, 31.12.2004, 6.10.2005, 13.6.2006 and 31.12.2010.*
 13. *Copy of the Bank's letter DAPM Kol. Disc. 12684/03.50.01/2009-10 dated May 4, 2010.*
 14. *Copy of Appellate Authority's Final Order dated August 5, 2008 along with Office Order No. 54/2008-09 dated August 6, 2008.*
 15. *Copy of Competent Authority's Final Order dated December 18, 2009.*
27. The enquiry having been concluded on that self-same date, by cover of letter dated 12th June, 2012, the Enquiry Officer forwarded

the petitioner with the details of the enquiry report. The same was followed up by a tentative proposal dated 4th July, 2012 to impose penalty on the petitioner.

28. The petitioner had duly responded to the enquiry report by a communication dated 9th July, 2012. He had clarified in such reply, the reasons for the mismatch in his liability statement. It was further, *inter alia*, pointed out that on the basis of the documents disclosed in the re-enquiry, the charges levelled against the petitioner were proved, notwithstanding the petitioner not being supplied with 4 (four) of such documents being serial numbers 6, 9, 11 and 13. This according to the petitioner had the effect of vitiating the entire enquiry. Out of the 15 (fifteen) documents, particularly the document of serial numbers 6, 9, 11 and 13 were not supplied to the petitioner. Despite request, the enquiry officer did not afford the petitioner with any opportunity to produce any document by adjourning the enquiry even for a single day. No opportunity was given to cross-examine. The figure mentioned by the enquiry officer in his report, as regards the total outstanding did not match with the statement of the account received from Bally Co-operative Bank as on 9th February, 2012. The petitioner was being subjected to double jeopardy as the petitioner was being tried for the self-same offence for which he had already been punished.

29. The Competent Authority had, however, passed a Final Order and imposed a major penalty as noted above. The Appellate Authority also did not accede to his prayer on the ground that he

had not amended himself. Although, it has been strenuously argued by the learned advocate representing the respondents that the 3 (three) separate charge-sheets, were based on separate cause of action and to contend that all the 3 (three) charge-sheets were issued for infractions of different regulations, a perusal of the 3 (three) charge-sheets would demonstrate that all the charge-sheets are based on an identity of cause of action.

30. While it is seen that in the first charge-sheet the petitioner was charged of obtaining loan by committing forgery, the respondents were also aware at that stage the loan had not been repaid till then. The second charge-sheet is based on the failure on the part of the petitioner to repay the loan amount. As such, he was charged of having committed breach of Regulation 32 of the said Regulations. A detailed enquiry followed, and a punishment was also awarded to the petitioner in respect of the enquiry based on the second charge-sheet as well. The third charge-sheet dated 31st May, 2011, is also based on the said loan. On this occasion, he was charged for failing to submit half-yearly statement by not declaring certain parts of his debts qua his loan account. This, in my view, could not form the basis for any independent charge especially when the factum of non-payment of loan by the petitioner was within the knowledge of the respondents. In any event, the punishment inflicted on the petitioner in respect of the third charge-sheet, appears to be disproportionate especially when the respondents had inflicted a

punishment on the petitioner by reprimanding him for not repaying the loan in connection with the second charge-sheet.

31. There appears to be valid reasons, which may have prevented the petitioner from disclosing or for the petitioner failing to submit prescribed liability statement with accuracy, especially when there appears to be a direct mismatch in the conclusion arrived at by the enquiring authority in respect of the petitioner's liability concerning Bally Co-operative Bank qua his loan account and the disclosure made on the basis of Secretary of the Bally Co-operative Bank vide communication dated 9th February, 2012. The said document was also not considered. It appears that the enquiry was conducted in hot haste and the petitioner was not permitted to rely on the aforesaid documents. The representation dated 9th July, 2012 made by the petitioner not only referred to the aforesaid document but a copy of this document also appears to have been enclosed to such representation. The same was not taken into account by the Disciplinary Authority, while passing the Final Order. In fact, the Final Order was passed by ignoring the same. No reasons are available in the order passed by the Competent Authority on 3rd August, 2012 for ignoring the aforesaid documents and for placing reliance on the findings of the enquiry report dated 20th March, 2012, wherein the enquiry officer had identified the outstanding liability of the petitioner towards Co-operative Bank to be Rs.3,45,159/- as on 21st January, 2011, which was much higher than the particulars as aforesaid disclosed by the Secretary of the

selfsame Co-operative Bank. In my view, no financial liability could have been thrust on the petitioner without permitting the petitioner to appropriately explain the same and without permitting the petitioner to respond to a direct charge. The charge-sheet did not identify a financial liability as against the aforesaid loan account to be Rs.3,54,159/- as on 21st January, 2011. The same tantamounts to violation of natural justice. The aforesaid is sufficient to vitiate the entire enquiry.

32. It is true that the petitioner was required to comply with the regulations, and it is also equally true that the petitioner ought to have cleared his debts. However, before fastening a liability on the petitioner for Rs.3,54,159/-, the petitioner ought to have been given appropriate opportunity to explain. From the undisputed records of proceeding of the enquiry, it does not appear that any responsible officer of the Bally Co-operative Bank had come forward to prove the statement of accounts. No opportunity was also given to the petitioner to controvert the same by relying on any document since, the enquiry was closed on the very selfsame date. On such grounds, the enquiry in the guise of non-disclosure of liability, could not have been converted to fastening of a particular liability on the petitioner. The same cannot be sustained.

33. Insofar as the charge of failing to liquidate debts within a reasonable period is concerned, I am of the view that the foundation for such charge was available in the charge-sheet dated 17th August, 2009. The petitioner had already been held guilty,

once on such a score. If the respondents at that stage did not include the aforesaid charge in the said charge-sheet, in my view, the respondents could not have again incorporated the aforesaid charge, a foundation for which was already available on 17th August, 2009. It is well settled that no person shall be prosecuted or punished for the selfsame offence, for more than once. I find that that the Hon'ble Supreme Court in the case of ***State of Rajasthan v. Hat Singh and Ors.*** (supra) has discussed the said proposition. Admittedly, in this case, the foundation for charging the petitioner for not making repayment within the reasonable time was available on 17th August, 2009, when the second charge-sheet was issued. If the respondents have chosen not to enquire against the petitioner when the second charge-sheet was issued, the respondents, in my view, have lost their right to enquire further.

34. I, however, find that it is also relevant to mention that the learned advocate representing the respondents had claimed that the petitioner having admitted in course of cross-examination that he was supplied with all documents and the petitioner having not denied the same by replying to the affidavit-in-opposition, by reasons of doctrine of non-traverse the petitioner cannot be permitted to contend otherwise. In support of the aforesaid contention several authorities have been cited. I might reiterate, as noted above, the enquiry was conducted in hot haste. No opportunity was given to the petitioner to cross-examine, although the enquiry officer appears to have cross-examined the charged

officer (the petitioner herein). The findings of the aforesaid proceedings were challenged by the petitioner in his reply to the enquiry report. The final order passed by the Competent Authority did not consider the aforesaid objections at all. In the backdrop as aforesaid, the irregularity committed by the respondents cannot be brushed aside on the basis of a single statement made by the petitioner. It is well settled that a judgment is an authority for what is decided. A slight variation in the facts may lead to an entirely different result. The judgment relied on by the learned advocate representing the respondents do not assist the respondents in any way. I also find that the Appellate Authority was in fact prompted not to interfere in the case, since according to the Appellate Authority, the petitioner did not amend himself. I am of the view that there is no charge based on which such a finding could have been rendered by the Appellate Authority. The aforesaid order passed by the Appellate Authority also does not address the issues raised by the petitioner.

35. In the given facts, for reasons morefully indicated hereinabove, I am of the view that the charge-sheet dated 31st May, 2011 the enquiry report, the findings of the competent authority dated 4th July, 2012, the final order of punishment dated 3rd August, 2012 and the order passed by the Appellate Authority on 18th September, 2012 cannot be sustained and the same are accordingly set aside and quashed.

36. Having regard to the facts of this case, I find that the petitioner has received enough punishment. The petitioner has also reached the age of superannuation, having regard to the same, I am of the view that no fruitful purpose will be served by granting any further opportunity to the respondents to further enquire in the matter by issuing a fresh charge-sheet. Since, the petitioner in the meantime has reached the age of superannuation, the respondents are directed to re-compute the retiral benefits of the petitioner in terms of the judgment delivered by this Hon'ble Court and disburse the same within a period of 8 (eight) weeks from the date of communication of this order.

37. The writ application accordingly stands disposed of.

38. There shall be no order as to costs.

39. Urgent photostat certified copy of this judgment, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(Raja Basu Chowdhury, J.)