

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

Before:

**The Hon'ble The Chief Justice T. S. Sivagnanam
and**

The Hon'ble Justice Hiranmay Bhattacharyya

APOT/80/2019

IA NO. GA/2/2021

PUBJAB NATIONAL BANK AND ORS.

VS.

RAGHUNATH KARFA AND ORS.

For the Appellant : Ms.Parna Roychowdhury,
Ms. Payel Ghoshadvocates

For Respondent : Mr. Mainak Gangulyadvocate

Reserved on : 28.03.2023

Judgment on : 12.07.2023

Hiranmay Bhattacharyya, J.:-

1. This appeal is at the instance of the Punjab National Bank (for short "the Bank") and its General Manager challenging a judgment and order dated 17.05.2019 passed by a learned Single Judge in WP 891 of 2016.
2. By the judgment and order impugned, all proceedings and orders connected to the disciplinary proceeding was set aside with a direction to reinstate the writ petitioner in service with all past and present benefits.
3. The writ petitioner/respondent no. 1 herein while working as a Senior Manager, Khagra (Berhampore) Branch of the Bank was served with a show cause notice dated 08.04.2015

alleging dereliction of duties while he was posted as a Senior Manager at Dankuni Branch of the said Bank. The respondent no. 1 was served with a show cause notice dated 08.04.2015 alleging that the said respondent while recommending, sanctioning and disbursing transport loans from the Dankuni branch during the period of 01.12.2011 to 31.07.2013 exposed the bank to financial loss. After a lapse of yearly six months chargesheet was issued containing the same charges as that in the show cause notice and also that all the loans have turned NPA and the lapses on the part of the respondent no. 1 have exposed the Bank to the financial loss of Rs. 1062.24 lacs plus applicable interest thereon.

4. The respondent no. 1 who is the Chargesheeted Officer (for short "CSO") replied to the show cause notice on 15.05.2015. In the reply to the chargesheet the CSO reiterated his reply to the show cause notice.
5. The Enquiry Officer after holding enquiry submitted his report on 12.04.2016 holding that charge nos. A-1 and A-3 as partially proved and charge nos. A-2, B-1, B-2 and B-3 as fully proved. The Enquiry Officer further held that loss to bank also stands proved.
6. The disciplinary authority imposed the punishment of compulsory retirement which was affirmed by the appellate authority.
7. The CSO challenged the order of compulsory retirement passed in the disciplinary proceeding by filing the writ petition which was ultimately allowed by the impugned judgment and order.
8. Being aggrieved by the order setting aside all proceedings and order connected to the disciplinary proceeding and the

direction to reinstate the respondent no. 1 in service, the Bank and its General Manager have approached this Court by filing this intra court appeal.

9. Ms. Roy Chowdhury the learned advocate appearing in support of appeal sought to justify the delay in issuance of the show cause notice by contending that the same was issued after the loan accounts have been classified as a non-performing asset (for short “NPA”) and after it was found that the credit facilities have been sanctioned by the respondent no. 1 by transgressing his limits. She further submitted that the respondent no. 1 cannot have any reasons to feel aggrieved by the single day enquiry as he was given full opportunity to defend his case. She further contended that since the reply to the show cause notice was found to be not satisfactory, same allegations have been leveled against the respondent no. 1 in the chargesheet. Ms. Roy Chowdhury attacked the finding of the learned Single Judge on the issue as to loss of forum by contending that the right to pray for review is not absolute but depends upon fulfillment of the conditions laid down in Regulation 18 of the United Bank of India Officer Employees’ (Discipline and Appeal) Regulations 1976 (for short “the Appeal Regulations”). She further alleged that the respondent no. 1 cannot allege loss of forum as it is not the case of the respondent no. 1 that he is in possession of new material or evidence which could not be produced or was not available at the time of passing order under review. She further submitted that it has been proved in the enquiry that the respondent no. 1 is guilty of misconduct under Regulation 24 of the United Bank of India Officer Employees’ (Conduct Regulations 1976 (for short “the Conduct Regulations”) as the respondent no. 1 had violated Regulation 3(1) and 3(3) of the said Regulations. In support of her submissions she referred to the following decisions –

- i) (2022) 7 SCC 475 Union of India & Ors. vs. M. Duraisamy
 - ii) (2022) 4 SCC 358 United Bank of India vs. Bachan Prasad Lall
 - iii) (2022) 6 SCC 563 State of Karnataka and Another vs. Umesh
 - iv) Civil Appeal No. 3490 of 2022
10. Per contra Mr. Ganguly the learned advocate representing the respondent no. 1 seriously disputed the submissions made by Ms. Roy Chowdhury. Mr. Ganguly submitted that the enquiry proceeding was conducted in a single day and in a hot haste and therefore the entire proceeding was vitiated. He further contended that there were procedural infractions and the rules while conducting the enquiry proceedings. According to him the evidence returned by the Enquiry Officer are contrary to the evidence produced in the enquiry. He further supported the judgment and order passed by the learned Single Judge. Mr. Ganguly placed reliance upon the following decisions in support of his contentions.
- (i) (2011) 6 SCC 376 (Commissioner of Police, Delhi and ors. vs. Jai Bhagwan)
 - (ii) (2009) 2 SCC 570 (Roop Singh Negi vs. Punjab National Bank and ors.)
 - (iii) (1979) 2 SCC 286 (Union of India and ors. vs. J. Ahmed)
 - (iv) (2006) 4 SCC 713 (Narinder Mohan Arya vs. United India Insurance Co. Ltd. and ors.)
 - (v) AIR 1966 SC 1081 (The State of Punjab and Anr. vs. Hari Kishan Sharma)

(vi) (2007) 4 SCC 566 (Inspector Prem Chand vs. Govt. of NCT of Delhi and ors.)

11. Heard the learned advocates for the parties and perused the materials placed.
12. Record reveals that the General Manager (HRM) being the appellant no. 2 therein issued the show cause notice dated 08.04.2015. On the prayer of the respondent no. 1 the time to submit the reply was extended and the respondent no. 1 submitted his reply within the extended time. The specific defense of the respondent no. 1 to the show cause notice was that the entire work relating to 19 transport loans were done by the Hooghly Regional Office only. He clarified the words “entire work” to signify sourcing of borrowers interviewing, market survey and other diligence investigations, processing initiating the proposals in conformity with the existing norms of Bank’s Lending Policy etc., procurement of Net Worth certificate, assessment of loans calculation of TNW, obtaining income tax return etc. It was further stated in the said reply that the respondent no. 1 at the Dankuni Branch had nothing to do with except some minor work like residence verification etc. It was also contended therein that the recommendation from the branch was obtained after completion of all work and as a matter of routine formality only. With regard to slipping of the accounts to NPA, it was specifically stated in the said reply that not a single of the aforesaid loan accounts were turned into NPA during his tenure and even after expiry of nearly two years repayment was paid as would be evident from the account statements.
13. However, the chargesheet dated 19.11.2015 was issued by the Assistant General Manager (D&IR) as the disciplinary authority. From the first schedule to the appeal regulations in the matter of disciplinary proceedings against officers it is

evident that the Assistant General Manager-in-Charge of Personnel/ HR department and in his absence the Assistant General Manager of any other department at the head office may be nominated as disciplinary authority in respect of all officers up to scale III in branch/ office of the bank. The respondent no. 1 being an officer belonging to the said category, the Assistant General Manager is the disciplinary authority and the Deputy General Manager is the appellate authority as per the first schedule. It further appears from the first schedule that the General Manager in-Charge of Personnel/ the HR Department at the head office shall be the review authority.

14. From the show cause notice dated the 08.04.2015 it is evident that the same was issued by the reviewing authority i.e., an authority higher than that of the disciplinary authority. Upon perusal of the show cause notice dated 08.04.2015 and chargesheet dated 19.11.2015 it is evident that the chargesheet is a mere reproduction of the show cause notice. Since the show cause notice was issued by the authority who, in terms of the Appeal Regulations is a reviewing authority this court is of the considered view that the allegation of the CSO that it was the reviewing authority who had dictated the chargesheet resulting in the disciplinary proceeding cannot be said to be without any basis. Regulation 18 of the Appeal Regulation provides that the reviewing authority may either on his/her own motion or otherwise reviewing the said order. Since the show cause notice was issued by the review authority in the case on hand, the door of the review as per Regulation 18 after the appellate stage stood closed. The learned Single Judge took note of the decision of the Hon'ble Supreme Court in the case of ***State of Punjab vs. Hari Kisan*** reported at ***AIR 1966 (SC) 1081*** on issue as to whether the CSO had suffered a loss of forum for issuance of the show

cause notice by the reviewing authority. The Hon'ble Supreme Court held thus-

“12. The question which we have to decide in the present appeal lies within a very narrow compass. What appellant No. 1 has done is to require the licensing authority to forward to it all applications received for grant of licences, and it has assumed power and authority to deal with the said applications on the merits for itself in the, first instance. Is appellant No. 1 justified in assuming jurisdiction which has been conferred on the licensing authority by S. 5(1) and (2) of the Act ? It is plain that S. 5(1) and (2) have conferred jurisdiction on the licensing authority to deal with applications for licences and either grant them or reject them. In other words, the scheme of the statute is that when an application for licence is made, it has to be considered by the licensing authority and dealt with under S. 5(1) and (2) of the Act. Section 5(3) provides for an appeal to appellant No. 1 where the licensing authority has refused to grant a licence; and this provision clearly shows that appellant No. 1 is constituted into an appellate authority in cases where an application for licence is rejected by the licensing authority. The course adopted by appellant No. 1 in requiring all applications for licences to be forwarded to it for disposal, has really converted the appellate authority into the original authority itself, because S. 5(3) clearly allows an appeal to be preferred by a person who is aggrieved by the rejection of his application for a licence by the licensing authority.

13. It is, however, urged by Mr. Bishen Narain for the appellants that S. 5(2) confers very wide powers of control on appellant No. 1 and this power can take within its sweep the direction issued by appellant No. 1 that all applications for licences should be forwarded to it for disposal. It is true that S. 5(2) provides that the licensing authority of S.5(1) and subject to the control of the Government, and it may be conceded that the control of the Government subject to

which the licensing authority has to function while exercising its power under S. 5(1) and (2), is very wide; but however wide this control may be, it cannot justify appellant No. 1 to completely oust the licensing authority and itself usurp his functions. The Legislature contemplates a licensing authority as distinct from the Government. It no doubt recognises that the licensing authority has to act under the control of the Government itself. The result of the instructions issued by appellant No. 1 is to change the statutory provision of S. 5(2) and obliterate the licensing authority from the Statute-book altogether. That, in our opinion, is not justified by the provision as to the control of Government prescribed by S. 5(2)."

15. In **Harikisan** (supra) the Hon'ble Supreme Court observed that the appellate authority cannot oust the licensing authority and itself usurp its functions. In the case on hand the review authority by issuing the show cause notice usurped the functions of the disciplinary authority thereby rendering the loss of the review forum which the respondent no. 1 was entitled to invoke in terms of regulation 18 of the appeal regulations.
16. In view of the observations made hereinbefore, this Court is of the considered view that the learned Single Judge was right in holding that CSO suffered a loss of forum.
17. Now this Court is to consider whether the charges leveled against the CSO has been proved in the disciplinary proceedings.
18. Before proceeding further, it would be beneficial to take note of the principles laid down by the Hon'ble Supreme Court as to the scope of interference by the writ court in a domestic enquiry.

19. The Hon'ble Supreme Court in **Narinder Mohan Arya** (supra) observed that in the event the findings arrived at in the disciplinary proceedings are questioned before the writ court, the court shall keep in mind that in a domestic enquiry fairness in the procedure is a part of the principles of natural justice. It is also not possible to lay down any rigid rules of the principles of natural justice which depend on the facts and circumstances of each case but the concept of fairplay in action is the basis. The Enquiry Officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charges is wholly illegal.
20. The Hon'ble Supreme Court in **Roop Singh Negi** (supra) observed that although the charges in a disciplinary proceeding are not required to be proved like a criminal trial that is beyond all reasonable doubt. The Enquiry Officer performs a quasi judicial function who upon analyzing documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. However, while doing so he cannot take into consideration any irrelevant fact and cannot also refuse to consider the relevant facts. The Enquiry Officer also cannot enquire into the allegations with which the delinquent officer had not been charged with.
21. The specific defense of the CSO as would be evident from the written brief of defense submitted by the CSO to the Enquiry Officer is as follows-

"The fact that the 19 Transport Loan accounts were processed at the Hooghly RO could be ascertained from DE-22 as confirmed by MW in reply to my question no.23. This document clearly reveals that the entire set of documents were sent to us for post-facto recommendation

as a formality only. In truth, Sir, we had not at all recommended the proposals. By citing three signatures on a forwarding letter, the burden of entire due diligence cannot be shifted to us. Besides, as your kind self may see, in respect of all proposals, the date of forwarding letter of the branch and the date of process note are the same date (ref:ME-23/2 and ME-23/5). This clearly and conclusively proves that the entire work was done much prior to the branch forwarding and hence, I can, in no way be held responsible for inherent shortcomings, if any, of the process notes. This aspect was also confirmed by the MW in reply to my question no 24, while adducing ME-19, page 7. DE-23 adduced by MW vide DR's question no 25 also proves the overwhelming pressure of the RO over the disbursements of the subject loans. However, we had done whatever possible in the matter of monitoring of the account as evinced by MW in reply to DR's question no 30, page 24 of the Proceedings.

Conclusion: In view of my above submission it is crystal clear that all the charges brought against me for the loans sanctioned by the Dankuni Housing Complex branch are disproved in entirety and the charges in respect of the 19 loan accounts sanctioned by the Regional Office are misdirected and not at all applicable against me. Accordingly, you are requested to examine my arguments in the light of the proceedings and the truth that emerged and submit your findings to the Disciplinary Authority accordingly."

22. The conclusion of the Presenting Officer in his written brief submitted to the Enquiry Officer is extracted below as the same would be of same relevance.

"(K) It would be further profitable at this juncture to note the conclusion of the PO in his Written Brief submitted to the EO, which is reproduced below:-

"There is no dispute as regards Management exhibits or witness. It has been vividly argued in the brief here in

above ingredient wise, supported by documentary evidences produced and proved through witness. All the ingredients, on which the charges are based, have been proved under section "5" of this brief.

While summing up the written brief it deserves mention that CSO was negligent in applying due diligence and utmost care in the affairs of the sanctioning and recommending the Transport Loans. CSO has exceeded his Discretionary Power limit while sanctioning the second loan to M/s Saha Transport Agency. In his reply dated 15.05.2015 (ME-26(2)) he has admitted the guilt that he has exceeded his DP limit. But most surprisingly, in his reply dated 03.12.2015 (ME-26(1)) it was mentioned by him that he has nothing further to add, save & except what he has replied earlier (ME-26(2)) and therefore he has enclosed the copy of his earlier letter. But he has intentionally deleted the 1st paragraph of the letter dated 15.05.2015 regarding crossing of DP limit. It is a fact that the nineteen (19) numbers of proposals were recommended by CSO to Hooghly RO for sanction. So, before according recommendation, the Branch ought to have checked the proposals for any inherent defects, shortcomings etc. further, CSO vide his letter dated 15.05.2015 (ME-26) has mentioned that recommendation of the loan proposals were a matter of routine formality only, as all work was completed earlier by RO, which is not at all acceptable from a senior official of the Bank. Thus the onus is on CSO and which cannot be shifted to others. The CSO cannot avoid his contributory liability in the entire episode. The CSO is thus found not working with utmost integrity, devotion and diligence and thereby acted in contravention of Regulations 3(1) and 3(3) of United Bank of India Officer Employees' (Conduct Regulations), 1976 amounting to misconduct in terms of Regulation 24 of the said Regulations.

All the ingredients of the charges thus stands proved beyond any iota of doubt."

23. The Presenting Officer was, however, of the opinion that the CSO cannot avoid his contributory liability in the entire episode. The ultimate conclusion of the Presenting Officer is that the CSO failed to discharge his work with utmost integrity devotion and diligence thereby acted in contraventions of regulations 3(1) and 3(3) of the conduct regulations amounting to misconduct in terms of regulation 24 of the said regulations.
24. The use of the expression “contributory liability” by the Presenting Officer in his written brief submitted to the Enquiry Officer necessarily employees that in addition to the CSO other officers of the bank had also contributed to lack of due diligence. 25. The learned Single Judge in our considered view was right in holding that the alleged act of the CSO can be said to be that of negligence but does not amount to misconduct. The Hon’ble Supreme Court in ***Inspector Prem Chand*** (supra) after taking note of the definition of “misconduct” as defined in Black’s Law Dictionary, B. Ramanatha Law Lexicon held that a negligence simplicitor would not be a misconduct. It was further held therein that an error of judgment, per se is not a misconduct. In view thereof this Court is of the considered view that the alleged act cannot be said to be failure of utmost integrity devotion and diligence by the respondent no. 1. The Enquiry Officer in a report dated 12.04.2016 observed as follows-

"The CSO was negligent by way violating Bank's extant guidelines. He should have been more careful while discharging his duties to protect the interest of the Bank. It is fact that RO had sanctioned the 19 proposals despite a number of irregularities and in some cases the sanction was accorded on the same date of recommendation. There might be pressure from the higher authority but recommending without proper analysis and appraisal is

an act of negligence. Apart from the 19 proposals sanctioned by RO, the CSO was in discharging his duties as pointed out in charge A-1 to A-3 which was sanctioned by him. Bank has suffered loss for such act on his part."

25. From conclusions of the Enquiry Officer it would be relevant to point out that the Enquiry Officer accepted that the transport loans would have been sanctioned due to the pressure from the pressure exerted by the higher authorities. The Enquiry Officer further observed that the CSO should have been more careful while discharging his duties and making recommendation for loan which is an act of negligence.
26. In ***Jai Bhagwan*** (supra) the Hon'ble Supreme Court held that if no direct and reliable evidence is produced nor clearly prove an establish guilt, it is a case of no evidence. In ***J. Ahmed*** (supra) the Hon'ble Supreme Court after noticing the definition of misconduct in judicial dictionary as well as any other decisions held that there should have been clear case of misconduct namely such acts and omissions which would render the delinquent liable for punishment before imposing punishment upon the delinquent under the relevant rules and regulation.
27. The learned Single Judge after noticing the proposition of law laid down in ***J. Ahmed*** (supra) and upon considering the conclusion of the Presenting Officer in his written brief wherein the CSO has been held guilty of contributory law and consequently conclusion drawn thereon is that the CSO failed to work with utmost integrity, devotion and diligence, rightly observed that the instant case at the highest can be that of negligence and not mala fide and therefore, no misconduct can be inferred therefrom.
28. Since it is well settled that negligence does not amount to misconduct and also that the recommendation of the loans

could have been due to pressure from the higher authorities, this Court is of the considered view that the charge of the misconduct leveled against the CSO could not have been said to be proved in the disciplinary proceedings.

29. The disciplinary authority did not take into consideration the aforesaid aspects while concurring with the findings against the Enquiry Officer. The disciplinary authority while imposing the punishment of compulsory retirement to the CSO failed to take note of the admitted position that in addition to the respondent no. 1, the other officers were subjected to disciplinary proceedings but only the petitioner was given a major punishment in the nature of compulsory retirement. Therefore, the punishment of compulsory retirement in the case on hand is also shockingly disproportionate and discriminatory and on such grounds also the punishment awarded to the respondent no. 1 calls for interference.
30. Now this Court has to deal with the decisions relied upon by the learned advocate for the appellant. In **Umesh** (supra) the Hon'ble Supreme Court reiterated the well settled proposition of law that the High Court in its exercise of judicial review cannot act as an appellate forum over the findings of the disciplinary authority. The court does not reappreciate the evidence on the basis of which the findings of misconduct has been arrived at in course of a disciplinary enquiry. The court in its exercise of judicial review must restrict its review to determine whether the rules of natural justice has been complied with or the finding of misconduct is based on same evidence or that the statutory rules governing the conduct of the disciplinary enquiry have been observed and whether the findings of the disciplinary authority suffer from perversity and the penalty is disproportionate to the proven misconduct. There is, however, no quarrel to the aforesaid proposition of

law laid down in **Umesh** (supra). However, as would be evident from the observations made hereinbefore that the case on hand falls within the exceptions carved out by the Hon'ble Supreme Court for exercising the powers of judicial review.

31. The decision of the Hon'ble Supreme Court in the case of **M. Duraswami** (supra) has no manner of application to the facts of the case as it was a case of substitution of the order of punishment from removal with that of compulsory retirement by the learned tribunal.
32. In **Bachan Prosad Lal** (supra) the Hon'ble Supreme Court after looking into the seriousness of the nature of allegations leveled against the respondent employee and also that the finding of guilt recorded by the Enquiry Officer in his report was confirmed at all later stages by the disciplinary/ appellate authority and even after judicial scrutiny by the Division Bench observed that the punishment of dismissal inflicted upon the person concerned cannot be said to be shockingly disproportionate which would have required the tribunal to interfere with merely on the ground that the employee stood superannuated in the meanwhile. The decision being distinguishable on facts do not have any manner of application to the case on hand.
33. There is, however, no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in **K.S. Viswanath** (supra) as to the scope of judicial review. However, it would be relevant to point out here that the case on hand falls within the exceptions carved out by the Hon'ble Supreme Court in the case of **Union of India vs. P. Gunasekaran** reported at **(2005) 2 SCC 610** which was relied upon by the Hon'ble Supreme Court in **K.S. Viswanath** (supra).

34. For the reasons as aforesaid, this court is of the considered view that the disciplinary proceedings cannot be sustained in the eye of law. The learned Single Judge was perfectly justified in setting aside all the proceedings and orders connected to the disciplinary proceedings. The instant appeal therefore stands dismissed thereby affirming judgment and order dated 17.05.2019 passed by the learned Single Judge. Accordingly GA 2 stands disposed of. There shall be, however, no order as to costs.
35. Urgent Photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, CJ.)

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita)