IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

WPA 19070 of 2018

IN THE MATTER OF

Apurba Kanchan Dev Roy.
Vs.
The State Bank of India & Anr.

For the Petitioners	:	**Mr. Arun Kumar Deb, Adv.,** **Mr. Pinaki Brata Ghosh, Adv.,** **Mr. Parth Pratim De, Adv.,** **Mr. Kousik Karmakar, Adv.** **Mr. Abhinaba Roy Adv.**
For the SBI	:	**Mr. Subrata Kumar Sinha, Adv.,** **Mr. S. Pal Choudhuri, Adv.,** **Ms. Tithi Paul, Adv.,** **Ms. Shilpi Paul Adv.**
Reserved on	:	**22.08.2024**
Judgment on	:	**03.12.2024**

Subhendu Samanta, J.

1. The petitioner was an employee of respondent bank who after 37 years of service has retired from the service on superannuation in the year 2018. The petitioner has challenged an order of disciplinary proceeding initiated by the respondent bank against him. Wherein he was imposed punishment by the order of the disciplinary-cum appointing authority.

2. The grounds for challenging the order of disciplinary authority as well as the appellate authority. In this writ petition is manly two fold--

3. Firstly, the order of disciplinary authority is perfunctory, purposive and in violation of the natural justice.

Secondly, the award of punishment is disproportionate.

4. Learned counsel, appearing on behalf of the petitioner submits that the bank has failed to prove any of the charges, instead the bank has imposed a major punishment. He further argued that the punishment is not proportionate to the alleged charge against the present petitioner. He further argued that the Bank's manual is very clear about the charges and and required punishment. In this case no direct allegation were proved against the present petitioner but only on the basis of complicity the present petitioner was punished.

5. Learned Counsel for the petitioner has elaborately demonstrated each and charges before this court and tried to convince this court that allegation against the present petitioner has not been sufficiently proved. He submits that it has been alleged by the bank authority that the present petitioner had not verified the KYC documents/credentials of the applicant borrowers to ensure their genuineness for availing Produce Marketing Loan before recommending for sanction of 58 PML's. It is the case of the petitioner that petitioner was not entrusted to verify the KYC of PML applicant other officers was assigned for the

purposes. The Bank officials are well aware of the fact, but they have only made the petitioner slape goat. He further argued during witness action, DW1 has specifically stated before the disciplinary authority that Petitioner was not entrusted to verify the KYC documents. In support of his contention Learned Counsel for the petitioner has relied some decisions of Hon'ble Apex Court as follows:

In **United Bank of India Vs. Biswanath Bhattacharjee (2022) 13 SCC 349** the Hon'ble Supreme Court has held that:-

> **The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/ Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.**

In **Ramlal Vs State of Rajasthan And Ors. (2024) 1 SCC 175** the Hon'ble Supreme Court has held that:-

> **It is very clear that relevant and material evidence being, the deposition of PW 5/Raj Singh; the marksheet of 8th class of the appellant (enclosed to the charge-sheet) and the original marksheet independently marked as Ext. D-3 by the defence have been completely left out in the discussion and consideration. Inference has been drawn about the proof of the charges by**

> **ignoring crucial, relevant and material evidence which had come on record. The evidence of PW 5 Raj Singh and the marksheet enclosed in the documents annexed to the charge-sheet and the original marksheet marked as Ext. D-3, were materials having a direct bearing on the charge. The disciplinary authority has merely reiterated the reasoning in the enquiry report. Equally so are the findings of the appellate authority. It is well settled that if the findings of the disciplinary authorities are arrived at after ignoring the relevant material the court in judicial review can interfere. It is only to satisfy ourselves to this extent, that we have scrutinised the material to see as to what was reflected in the record. We are satisfied that the disciplinary proceedings are vitiated and deserve to be quashed.**

In **S.R. Tewari Vs. Union of India and Anr. (2013) 6 SCC 602** the Hon'ble Supreme Court has held that:-

> **The court can exercise the power of judicial review if there is a manifest error in the exercise of power or the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist hand which are patently erroneous. Such exercise of power would stand verified.**
>
> **The question of interference on the quantum of punishment has been considered by this Court in a catena of judgments and it was held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution.**

6. It is the argument of the present petitioner that the Hon'ble Apex Court has specifically held that where findings of disciplinary authority are based on no evidences or based on considerations

ignorant materials are mala fide, perverse or such that they could have been rendered by any reasonable person in given circumstances to be unconceivable at the stage, the interference under Article 226 of Constitution of India would be justified, where some amount of scrutiny would be necessary. He further submits that the High Court has the jurisdiction under Article 226 of the Constitution of India to interfere in a disciplinary proceedings when the punishment is not proportionate. He argued that according to the State Bank's manual, the alleged punishment imposed against the present petitioner is come under the definition of major punishment which cannot be imposed in this case. He prayed quashing of the order passed by the disciplinary authority as well as appellate authority.

7. Learned Counsel appearing on behalf of the respondent bank submitted that present petitioner was posted in the bank in a responsible position as a processing authority. At the time of giving agricultural loans, petitioner was entrusted to verify the identity of the applicants, but the petitioner has not verified the KYC document and thereby allowed diversion of huge money by cash. The disbursement of public money to the third party with the connivance of the coal storage owners thereby the bank has suffered huge loss amounting to more than Rs 4.8 Crore.

8. Learned Counsel for the bank respondent has submitted that 58 numbers of loans amounting to Rs. 10,00,000/- each, was

disbursed to 58 fake persons as the KYC not verified by the present petitioner.

9. He further submits that in this case the preliminary enquiry was conducted articles of charges were served upon the petitioner, he was given proper hearing as well he was allowed to argue and give his evidence; after giving him all opportunity of being heard, the disciplinary authority has found that the charge against him has been proved.

10. He submits that in this case the punishment cannot be said to be disproportionate according to the Bank manual. He again submit that huge amount of public money has been defaulted by the help of the present petitioner. At this juncture, this court cannot look into correction of disciplinary proceedings which was done after giving a proper opportunity of hearing to the petitioner. He further submits that it is not the case of the petitioner that only the petitioner, being the sole bank employee has faced the disciplinary action, but other persons who was employed at that time to disbursement of the loans, including the DW 1, has also faced the same consequences of disciplinary proceedings.

11. The Learned Counsel for the respondent has submitted that the Hon'ble Apex Court has categorically framed a guideline in which cases the High Court can interfere with the finding of facts. He submits that unless the facts is severely perverse or when the opportunity of being heard was not given to the petitioner, or where

principle of natural justice have been violated, in those cases only, the High Court can interfere with a disciplinary proceeding.

12. In support of his contention he has cited several judgments of Hon'ble Supreme Court as follows:-

In **Union of India Vs. P. Gunasekaran AIR 2015 Supreme Court 545** the Hon'ble Supreme Court has held that:-

> **Despite the well-settled position, it du is painfully disturbing to note that the High Court has acted as an appellate authority de in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. 1 de was accepted by the disciplinary authority d and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:**
>
> **a. the enquiry is held by a competent authority;**
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> **b. the enquiry is held according to the procedure prescribed in that behalf;**
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> **c. there is violation of the principles of natural justice in conducting the proceedings;**
>
> **d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;**

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been con- ducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.

In **State Bank of India and Anr Vs. Bela Bagchi and Anr. (2005) 7 SCC 435** the Hon'ble Supreme Court has held that:-

> **A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, it is no defence available to say that there was no loss or profit c which resulted in the case, when the officer/employee acted without authority. The very discipline of an organisation more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is misconduct. The charges against the employee were not casual in nature and were serious. 'That being so, the plea about absence of d loss is also sans substance.**

In **State Bank of India Vs. AGD Reddy** the Hon'ble Supreme Court held that:-

> **Thus, in a proceeding under Article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority and so long as the findings of the disciplinary authority are supported by some evidence the High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence. This position of law has been reiterated in several decisions by this Court which we need not refer to, and yet by the impugned judgment the High Court has re- appreciated the evidence and arrived at the conclusion that the findings recorded by the enquiry officer are not substantiated by any material on record and the allegations leveled against the respondent no.1 do not constitute any misconduct and that the respondent no.1 was not guilty of any misconduct."**

13. Learned counsel for the petitioner in reply has submitted that the fraud was not proved against the present petitioner. The statement of charge has not mentioned the perpetration of fraud by the petitioner, still then the appellate authority/disciplinary authority has awarded major punishment against the petitioner.

14. Heard the Learned Counsels. Perused the impugned order of punishment. It appears that the disciplinary authority has awarded punishment after initiating a disciplinary proceeding; against which the petitioner has approached before the appellate authority and the

reviewing authority respectively, wherein the appellate authority and the reviewing authority has affirmed the order of disciplinary authority.

15. The punishment which was imposed upon the petitioner is as follows:

> *"Reduction to MMGS-II grade from MMGS-III grade in terms of Rule No 67(g) of SBIOSR & "Reduction to the stage of Rs 40,710/- in the time scale of pay for 1 year with further directions that you will not earn Increments to pay during the period of such reduction and on the expiry of such period the reduction will have the effect of postponing the future increments of your pay," in terms of Rule No 67 (f) of SBIOSR.*

16. It appears to me that the Hon'ble Supreme Court has framed specific guideline where a disciplinary proceeding can be come under the judicial review by High Court under the Article 226/227 of Constitution of India. Following the Hon'ble Supreme Court in **P.Gunasekaran (supra)** I am of view that-

The evidence which was laid before the disciplinary authority cannot be re-appreciated by this court on the ground that the evidence could be construed otherwise; furthermore the interference with the conclusion of the enquiry authority if it appears, that was passed after giving reasonable opportunity of being heard to the petitioner the same cannot be declared to be perverse, this court also cannot go into adequacy of evidence or reliability of the evidences. It appears that the enquiry was held by the competent authority according to the procedure prescribed in that behalf; I find there is no violation of principle of natural justice in conducting the procedure. Moreover, the authority concern after hearing the petitioner has come to the conclusion. It further appears to me that the correctness of the order of the authority concerned cannot be looked into by this court as a second appellate authority.

17. In this particular case 58 PML's were allowed to be credited at the account of the borrowers without verifying the KYC documents. Huge amount of public money has flown down while the petitioner being a responsible bank officer failed to provide required vigilance before sanctioning the loans. It is surprising to note that how 58 Nos. of agricultural loans 1,00,000/- each were sanctioned without verifying any KYC documents. Due to non-verification of KYC documents, bank failed to the recovered those moneys which resulted a burden upon the general creditors of bank.

18. Considering the entire circumstances I find the punishment as imposed upon the petitioner is not at all vindictive or unduly harsh. Thus it is not so disproportionate to the offence as to shock the conscience of this court.

19. The argument as advanced by the Learned Counsel for the petitioner regarding non- presence of "perpetration of fraud", whether

proved or not, is not to be looked into in a disciplinary proceedings, rather it may warrant in criminal proceeding.

20. Under the above observation I find no justification to interfere with the order of the disciplinary authority as well as the appellate authority and reviewing authority of the present respondent Bank against the petitioner.

21. Thus, the instant writ petition being meritless, is hereby disposed of.

22. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)