

Form No.J(2)

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

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 23510 of 2017

Dukhu Das
Versus
Central Bank of India & Ors.

For the petitioner : Mr. Dilip Kumar Samanta
Mr. B. Samanta

For the Respondent Bank : Mr. Biswambhar Jha
Mr. H.K.Jha
Ms. Munmun Mishra

Heard on : 27.02.2024

Judgment on : 27.02.2024

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, challenging the disciplinary proceeding as also the order of dismissal passed by the respondent no. 6.
2. It is the petitioner's case that the petitioner had participated in the selection process initiated by the respondent no. 2 for recruitment of Safai Karmachari cum Sub-Staff and/or Sub-Staff in the Central Bank of India. Upon being successful, the petitioner had been appointed in the sub cadre on probation with effect from 8th

February, 2013, and subsequently confirmed on permanent roll in the post of Sub-Staff. In course of his employment, the petitioner was served with a memorandum dated 28th March, 2016 alleging that the school leaving certificate (Transfer certificate) dated 2nd May 2007 issued by the Katamari High School which was submitted by the petitioner at the time of his appointment in the bank appears to be not genuine. Accordingly, the petitioner was directed to submit a written explanation within 7 days from the date of receipt of the said memorandum as to why disciplinary action should not be initiated against the petitioner.

3. Consequent upon receipt of the aforesaid memorandum, the petitioner had submitted his reply, *inter alia*, claiming that he was a bonafide student of Katamari High School, Post office – Elajanerkuthi, District – Cooch Behar and that he had obtained the said transfer certificate at the time of leaving the school. Records reveal that the petitioner was subsequently served with a charge sheet dated 26th September, 2016. The petitioner duly participated in the said enquiry. Ultimately, after conclusion of the enquiry, the findings of the enquiry were forwarded to the petitioner under cover of letter dated 17th July, 2017 by the disciplinary authority, for the petitioner to respond to the same.
4. The petitioner had duly made a representation to the enquiry officer's report and ultimately, by a communication in writing dated

10th August, 2017, the disciplinary authority of the petitioner had issued a show cause notice informing the petitioner that he agrees with the findings of the enquiry officer and that the charges leveled against the petitioner stood proved and also proposed to punish the petitioner in terms of Clause 6(a) of the Memorandum of Settlement dated 10th April, 2002.

5. Ultimately, by a communication dated 25th August, 2017, the petitioner was communicated with the decision of the disciplinary authority, dismissing the petitioner from service without notice under Regulation 6(a) of the Memorandum of Settlement on Disciplinary Action Procedure for Award Staff dated 10th April, 2002.
6. Challenging the aforesaid, the present writ petition has been filed.
7. Mr. Samanta, learned advocate appearing for the petitioner, by drawing attention of this Court to the communication dated 17th July, 2017, submits that when the disciplinary authority had forwarded the findings of the enquiry officer to the petitioner, he had already made up his mind as regards the guilt of the petitioner and had thereby, agreed with the findings of the enquiry officer's report. The agreement of the disciplinary authority with the findings of the enquiry officer would corroborate from the communication dated 17th July, 2017. This, according to the petitioner, has infringed upon the petitioner's right to defend himself against the

charges leveled against him and constitutes denial of reasonable opportunity to prove his innocence.

8. In support of the aforesaid contention, Mr. Samanta places reliance on a judgment of the Hon'ble Supreme Court delivered in the case of ***Managing Director, ECIL, Hyderabad and others v. B. Karunakar and Others***, reported in **(1993) 4 SCC 727**.
9. It is submitted that in a similar case, a Co-ordinate Bench of this Court by its judgment and order dated 16th February, 2018 passed in WP no. 23509 (W) of 2017 was, *inter alia*, pleased to interfere with the final order of the disciplinary authority and had set aside the same with liberty to proceed afresh from the stage from which the delinquent had been denied his opportunity to defend. He submits that in the given facts the petitioner should be afforded with similar relief.
10. Mr. Jha, learned advocate appearing for the respondent Bank, submits that this is not a case of denial of the principles of natural justice. It is submitted that not only the petitioner was served with the charge sheet but was afforded with a reasonable opportunity of hearing. After the enquiry was concluded, the petitioner was served with the findings of the enquiry officer. The petitioner had responded to the findings of the enquiry officer and such fact would corroborate from the communication dated 10th August, 2017

wherefrom it would appear that the disciplinary authority had taken note of the representations made by the petitioner.

11. Mr. Jha, however, submits that simply because the disciplinary authority in his communication dated 17th July, 2017 had recorded his agreement with the findings of the enquiry officer, the same cannot have the effect of vitiating the enquiry proceeding or the final order passed by the disciplinary authority. It is submitted that the disciplinary authority not being a legally trained person had expressed himself in simple words. Recording of his agreement with the findings of the enquiry officer should be ignored, as by the self same communication he had called for representation from the petitioner, which was also duly considered prior to holding the petitioner guilty.
12. He further submits that in the enquiry it was proved that the certificate in question was not genuine and hence, no interference is called for by this Court.
13. Heard the learned advocates appearing for the respective parties and considered the materials on record.
14. Admittedly, in this case I find that the petitioner was charge sheeted. Relevant portion of the charge sheet as regards the allegations leveled against the petitioner is extracted hereinbelow: -

“The School Leaving (Transfer) Certificate no 42 dated 02/05/2007 of Katamari High School PO Elazanerkuthi Dt Coochbehar submitted by Shri Dukhu Das as part of Documents for getting

appointment in Banks service on 08/02/2013 is found not to be genuine during Banks internal Investigation.

*His above act of Knowingly making a False Statement in a Document in connection with his employment in the Bank is treated as **Gross Misconduct** and he is charged under clause 5(m) of Memorandum of Settlement dated 10/04/2002 on Disciplinary Action Procedure for Award Staff.”*

15. Following the aforesaid, an enquiry was conducted. The petitioner had put up a defense and ultimately, the enquiry officer had concluded the enquiry. It is not the case of the parties that the enquiry officer had committed any irregularity in procedure in conducting the enquiry. The petitioner also does not contend that there had been violation of the principles of natural justice before the enquiry officer.
16. I, however, notice that prior to giving an opportunity to the petitioner, for the petitioner to respond to the findings of the enquiry officer, the disciplinary authority had taken a decision as regards the guilt of the petitioner by expressing his agreement with the findings of the enquiry officer. Although, it is true that the disciplinary authority did forward a copy of the enquiry report to the petitioner for the petitioner to respond to the same, in my opinion, such response subsequent to the decision of the disciplinary authority, as is reflected in the communication dated 17th July, 2017 could not have afforded appropriate opportunity to the petitioner to prove his innocence.

17. It is well settled that where an enquiry is conducted by a person other than the disciplinary authority, it is obligatory for the disciplinary authority, prior to accepting the findings rendered by the enquiry officer, to forward the findings thereof to the delinquent employee, for the delinquent employee to respond to the same and it is on the basis of the representation to be made by the delinquent employee that the final decision in that regard can be taken by the disciplinary authority.
18. Denial of such opportunity to the delinquent employee to prove his innocence has been held to be in breach of the principles of natural justice. In this context, I find support from the judgment delivered by the Hon'ble Supreme Court in the case of **Managing Director, ECIL, Hyderabad** (*Supra*). To morefully appreciate the same paragraph 29 of the above the judgment is extracted hereinbelow:

“ 29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.”

19. Having regard to the aforesaid, I am of the view that the subsequent consideration of the petitioner's representation by the disciplinary authority after the disciplinary authority having agreed with the findings of the enquiry officer, cannot be sustained as the disciplinary proceeding stands vitiated from the stage when the disciplinary authority by his communication dated 17th July, 2017 had expressed his agreement with the findings of the enquiry, prior to making the findings of the enquiry officer available to the petitioner for the petitioner to respond to the same.
20. In view thereof, the disciplinary proceeding from the stage of communication of the enquiry report including the final order of dismissal stands set aside.
21. Since, the petitioner has already been made available with a copy of the enquiry report, the petitioner shall be at liberty to file a response to the same. If the petitioner responds to the aforesaid enquiry report within a period of four weeks from date, the disciplinary authority shall take a reasoned decision in the matter in accordance with the rules.
22. The aforesaid judgment and order shall not entitle the petitioner to reinstatement.
23. It is made clear that the respondents shall be at liberty to continue with the disciplinary proceeding from the stage of submissions of the enquiry report, and the final order shall be passed by the disciplinary authority within a period of eight weeks

from the date of communication of this judgment and order. If no response is received from the petitioner within the time specified hereinabove, the disciplinary authority shall decide the matter *ex parte*.

24. With the aforesaid observations and directions, the writ petition being WPA 23510 of 2017 is ***partly allowed***.
25. There shall be no order as to costs.
26. Urgent Photostat certified copy of this order, if applied for, be made available to the parties on priority basis upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)