

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA No. 20282 of 2012

With

CAN 1 of 2019

(Old No. CAN 11484 of 2019)

CAN 2 of 2024

Sri Chandranath Banerjee

Vs

Bangiya Gramin Vikash Bank and Ors.

For the Petitioner

: Mr. Prasad Bagchi,
Ms. Nivedita Mukherjee.

For the Respondent Bank

: Mr. Baidurya Ghosal,
Mr. Saikat Mukherjee,
Ms. Anupama Biswas.

Hearing concluded on

: 24.09.2024

Judgment on

: 04.10.2024

Shampa Dutt (Paul), J.:

1. The Petitioner has prayed for direction upon the respondent not to act on the basis of the charge sheet dated 29.03.2011, the purported enquiry report dated 13.02.2012, the purported order of punishment of the Disciplinary Authority dated 30.04.2012 as well as the order passed by the Appellate Authority dated 22.06.2012 in any manner whatsoever prejudicial to the rights and interests of the petitioner and other related reliefs.

2. The petitioner's case is as follows :-

i) The petitioner was appointed as an officer on or about 12.04.1985 in the Gaur Gramin Bank at Malda. Five Gramin Banks including Gaur Gramin Bank amalgamated in terms of the Government of India Notification and thereby Bangiya Gramin Vikash Bank (hereinafter referred to as the said bank) was formed in the year 2007. The petitioner worked as Branch Manager. Raghunathpur Branch, District Dakshin Dinajpur since 2005 to 2011.

ii) In the year 2002 the petitioner was promoted to the rank of a Scale-II officer after consideration of his meritorious service career. While working as a Manager of the said Bank at Raghunathpur Branch, Dakshin Dinajpur during 06.09.2005 to 14.05.2011 certain allegations were purportedly made against the petitioner, on November, 2011 without disclosing the source

of the allegation which ultimately resulted in the reversion from the rank of officer scale II to officer scale-I in the last stage of time scale of pay of the petitioner in terms of the decision of the Disciplinary Authority and the Appellate Authority dated 30.04.2012 and 22.06.2012 respectively.

iii) *It was inter alia alleged that the petitioner had allegedly exercised his power in violation of the bank norms prescribed in the guidelines of the said bank. The petitioner denied the allegations and contended that during his tenure at the said branch the operating profit was more than Rs. 2 crores as on date. With regard to 51 accounts stated in the said explanation, many accounts have been closed and most of the accounts which are term loan in nature are also running regularly. In that view there is no such irregularities with regard to the allegations meted out against the petitioner.*

iv) *The petitioner was then served with a charge sheet bearing Ref. No. BGVB/HO/VIG/270/11 on 29.03.2011 issued by the Disciplinary Authority and Chairman of the said bank without disclosing the list of witnesses. By the said purported charge sheet it was inter alia alleged that the petitioner had allegedly committed an act which was detrimental to the interest of the bank, exposed the bank to the threats of financial loss in abusing his official position, sanction, disbursement and*

recommendation of loans violating rules/norms of the bank, done acts in negligent and suppressive manner. The said allegations forming the basis of the said purported charge sheet dated 29.03.2011 were prejudged and with closed mind and without any basis / documents.

- v)** *In the said purported charge sheet it was inter alia alleged that the petitioner sanctioned 40 numbers of loans under different heads of accounts by exercising his discretionary powers. It has been further alleged that the petitioner sanctioned multiple loan facilities to a particular person beyond discretionary powers by violating the group exposure norms as laid down in the bank's lending policy. It was alleged further in the said purported charge sheet that proposal of fresh lending or enhancement of existing credit limit with a specific recommendation thereof was made by the petitioner to get sanction of the same from the Regional Office/Head Office.*
- vi)** *That whatever action was taken by the petitioner for approving the loan was after scrutiny by the other officers of the bank including the loan officer whose recommendation is required for passing the loan. That the said branch was the highest profit earning branch during the tenure of service of the petitioner and NABARD conducted an enquiry in respect of performance of the branch and according to the report of the said enquiry the*

performance of the said branch was highly appreciated. That in a bank, at the time of processing loan proposal credit officers/loan officers along with Branch Manager worked hand in hand together at the time of passing a loan proposal or forwarding the same to the Head Office for approval or enhancement of the same. That in the circular being No. CREDIT/238/2007 dated 22.09.2009 issued by Head Office, Bangiya Gramin Vikash Bank responsibilities of the Credit Officers/Loan Officers are specifically stated therein at the time of processing loan. In Raghunathpur Branch, BGV Bank also Credit Officers/Loan Officers did their respective duties at the time of processing a loan or forwarding the same to Regional Officer or Head Officer BGV Bank for approval or enhancement of the same. The Branch Manager, CSO always worked on the basis of particulars/information supplied/noted by the Credit Officers/Loan Officers of Raghunathpur Branch, BGV Bank. But the Branch Manager, Raghunathur Branch, BGV Bank is only person against whom charge sheet was issued and even though prayer was made at the time of hearing by the CSO to call for the Credit Officers/Loan Officers of Raghunathpur Branch, BGV Bank as witnesses, his prayer was refused by the respondent no.3. Enquiry Officer i.e Sri Sunil Kumar Ghosh, S.M. (A/c) by

violating all norms and principles to be followed in a disciplinary proceeding.

vii) *A departmental enquiry was initiated by one Sri Sunil Kumar Ghosh, Enquiry Officer appointed by the concerned disciplinary authority.*

viii) *That the petitioner forwarded recommendation and observation of enhancement of the existing credit limit to the Regional Office/Head Office for ultimate sanction. The said recommendation was made by the petitioner on the basis of the note put up by the other concerned Credit Officers/Loan Officers of the said branch. In view of the above the petitioner had no occasion to disbelieve the note put up by the said Credit Officers because it was the day to day affair of the Bank. As such there was no negligence in forwarding the recommendations in respect of the same on the part of the petitioner.*

ix) *That out of 51 loan accounts as stated in Annexure -1 of the Charge Sheet, 20 accounts were closed, 23 accounts were running in a regular way and only 8 nos. loan accounts were turned NPA.*

x) *That subsequent to submission of the findings of the Enquiry Officer, the Disciplinary Authority and Chairman passed Final Punishment Order on 30.04.2012 against the petitioner inter alia holding that Charge No. i) to iv) Vide Charge Sheet No.*

BGVB/HO/VIG/270/11 dated 29.03.2011 as levelled against Sri Chandranath Banerjee, Ex-Branch Manager, BGVB Raghunathpur Branch have been proved beyond any reasonable doubt and purportedly took a decision against the Petitioner inter alia deciding that the petitioner should be reverted from Officer Scale-II to Officer Scale –I in the last stage of time scale of pay.

xi) *Challenging the said purported decision of the Disciplinary Authority dated 30.04.2012 the petitioner preferred an appeal before the Appellate Authority on 29.05.2012 in terms of Rule 49 and 51 of the said Service Regulations of 2010.*

xii) *The Appellate Authority* *i.e. the Board of Directors including the Chairman and the Disciplinary Authority after considering the Appeal was pleased to uphold the order passed by the Disciplinary Authority by an order dated 22.06.2012 and the same was communicated to the petitioner by a covering letter of the General Manager of the said bank on 23.06.2012 Appellate Authority was pleased to pass the said order without considering the proper perspective of the appeal and **also without considering that the petitioner was denied a fair opportunity to defend himself.***

3. The purported acts or actions are per se arbitrary and unreasonable.

4. That arbitrariness, mala fide and/or consideration of collateral and/or extraneous factors and non-consideration of relevant and vital materials formed the basis of the purported acts or actions on the part of the respondent authorities in conducting the enquiry proceedings and passing the purported order of reversion of rank of the petitioner from officer Scale –II to officer Scale-I in the last stage of time scale of pay without giving the petitioner an opportunity to defend himself at the hearing by refusing to produce the relevant documents for inspection as well as the witnesses for examination in wanton breach and violation of the extant provisions of law and the principles of natural justice.

5. **The following charges were levelled against the petitioner :-**

- i) Committing act **detrimental** to the interest of the Bank.
- ii) Exposing the Bank to the threats of **financial loss** in abusing the official position.
- iii) Sanction, disbursement and recommendation of loans **violating rules**/norms of the Bank.
- iv) Doing acts in **negligent & suppressive** manner.

6. **The petitioner in his explanation dated 04.12.2010 has stated as follows :-**

“.....Sir, I had no ulterior motive or evil intention in doing act which have been alleged as irregularity rather I do believe what I did that was completely for the interest of the bank and to keep up prestigious stand of my branch. I was confident all the acts committed on my part would be helpful to ensure earning profit by this rural welfare

concern. And the same have been proved. It is perhaps true a little of my activities was not in conformity to banking lending policy but that is not for deliberate attitude rather it was my short coming and having no fair knowledge about group financing.

Under this situation I do hope the above explanation will satisfy you of your queries and I will be escaped from disciplinary action.

Assuring you of regularizing all the irregularities and with best regards.....”

7. The petitioner in his explanation dated 17/18.05.2011 has stated:-

“.....Sir while concluding I beg to submit neither I have committed any act detrimental to the interest of the bank nor put the bank in to the face of any kind of financial threat. Due to ignorance some procedural lapses may have been committed by me but I have never suppressed anything to the authority concerned to hoodwink the bank or to satiate my personal interest.

I have always tried to good for the bank like expansion of the branch through potential advances I discharged my utmost endeavour for non fund businesses too. This year the branch will earn more than 22 Lakhs towards non fund business. The DCB position of the branch is more than 80 percent. I joined the branch when it has a business 9 Crore. I reached the business of the branch to around 49 Crore. I honestly tried my best to do well for the bank and left no stone unturned to place my bank to a prestigious position within this area. I arranged Business relation meet with District authorities where our Chairman and all and all the Government officers of the District were present. A meet at the chamber of commerce with the business houses of this area was also organized by me at the call of our Chairman just to highlight my bank as well as Raghunathpur branch. It is regretted I have been Charge Sheeted due to a little procedural lapses. Sir, I am not a dishonest employee. Not single actions for which I have been charge sheeted have been committed for my own interest. What I did so far are all in the interest of the bank. My past records and performance will speak on it.....”

8. Enquiry report dated 13.02.2012 is a detailed report with clear reasoning and findings based on oral and documentary evidence.

9. The petitioner was given the following punishment on being found guilty :-

“Reversion from Officer, Scale-II to Officer, Scale-I in the last stage of time scale of pay which shall not be a disqualification for future stagnation increment.”

10. The appellate authority disposed the appeal by the petitioner against the punishment imposed, by **upholding/affirming** the order and punishment imposed by the Enquiry/disciplinary authority.

11. By way of the supplementary affidavit the petitioner reiterated his case of being innocent and that all irregularities done by him were either due to ignorance or only for the benefit of the Bank. The petitioner in compliance of this court’s order dated 14.08.24 has filed documents to support his actions by way of exercise of discretionary powers.

12. The petitioner in his written Argument has relied upon the following judgments :-

- i)** *Mahabir Prasad Santosh Kumar – Vs- State of West U.P., A.I.R. 1970 SC 1302 (Paragraph 6, 7, 8).*
- ii)** *Anil Kumar –Vs- Presiding Officer & Ors., A.I.R. 1985 SC 1121 (Paragraph – 5).*
- iii)** *Bhagabati Prasad Dubey –Vs- Food Corporation of India, A.I.R. 1988 SC 434 (Paragraph – 7).*
- iv)** *S.N. Mukherjee – Vs- Union of India, A.I.R. 1990 SC 1984.*

13. Written notes filed by the Respondent Bank relies upon the judgment in:-

I) *The State of Karnataka & Anr. vs Umesh, in Civil Appeal Nos. 1763-1764 of 2022, decided on 22.03.2022,* the Supreme Court held:-

*“13. The principles which govern a disciplinary enquiry are distinct from those which apply to a criminal trial. In a prosecution for an offence punishable under the criminal law, the burden lies on the prosecution to establish the ingredients of the offence beyond reasonable doubt. The accused is entitled to a presumption of innocence. **The purpose of a disciplinary proceeding by an employer is to enquire into an allegation of misconduct by an employee which results in a violation of the service rules governing the relationship of employment. Unlike a criminal prosecution where the charge has to be established beyond reasonable doubt, in a disciplinary proceeding, a charge of misconduct has to be established on a preponderance of probabilities.** The rules of evidence which apply to a criminal trial are distinct from those which govern a disciplinary enquiry. The acquittal of the accused in a criminal case does not debar the employer from proceeding in the exercise of disciplinary jurisdiction.*

***14.** In a judgment of a three judge Bench of this Court in **State of Haryana v. Rattan Singh, (1977) 2 SCC 491,** Justice V R Krishna Iyer set out the principles which govern a disciplinary proceedings as follows:*

*“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. **All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility.** It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this*

*proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below misdirected themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American Jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. **The simple point is, was there some evidence or was there no evidence** — not in the sense of the technical rules governing regular court proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the Flying Squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground."*

(emphasis supplied)

*These principles have been reiterated in subsequent decisions of this Court including **State of Rajasthan v. B K Meena**, (1966) 6 SCC 417; **Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh**, (2004) 8 SCC 200; **Ajit Kumar Nag v. Indian Oil Corporation Ltd.**, (2005) 7 SCC 764; and **CISF v Abrar Ali**, (2017) 4 SCC 507.*

16. In Karnataka Power Transmission Corporation Ltd. v. C. Nagaraju, this Court has held:

"9. Acquittal by a criminal court would not debar an employer from exercising the power to conduct departmental proceedings in accordance with the rules and regulations. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. In the disciplinary proceedings, the question is whether the Respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings, the question is whether the offences registered against him under the PC Act are established, and if established, what sentence should be imposed upon him. The standard of proof, the mode of inquiry and the rules governing inquiry and trial in both the cases are significantly distinct and different."

The Court also held that:

"Having considered the submissions made on behalf of the Appellant and the Respondent No.1, we are of the view that interference with the order of dismissal by the High Court was unwarranted. It is settled law that the acquittal by a Criminal Court does not preclude a Departmental Inquiry against the delinquent officer. The disciplinary authority is not bound by the judgment of the Criminal Court if the evidence that is produced in the Departmental Inquiry is different from that produced during the criminal trial. The object of a Departmental Inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a Departmental Inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the Inquiry Officer in the disciplinary proceedings, which is different from the evidence available to the Criminal Court, is justified and needed no interference by the High Court."

17. *In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not re-appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether: (i) the rules of natural justice have been complied with; (ii) the finding of misconduct is*

based on some evidence; (iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and (iv) whether the findings of the disciplinary authority suffer from perversity; and (vi) the penalty is disproportionate to the proven misconduct. However, none of the above tests for attracting the interference of the High Court were attracted in the present case. The Karnataka Administrative Tribunal having exercised the power of judicial review found no reason to interfere with the award of punishment of compulsory retirement. The Division Bench of the High Court exceeded its jurisdiction under Article 226 and trenched upon a domain which falls within the disciplinary jurisdiction of the employer. The enquiry was conducted in accordance with the principles of natural justice. The findings of the inquiry officer and the disciplinary authority are sustainable with reference to the evidence which was adduced during the enquiry. The acquittal of the respondent in the course of the criminal trial did not impinge upon the authority of the disciplinary authority or the finding of misconduct in the disciplinary proceeding.”

II) *State Bank of India and Anr. vs Bela Bagchi and Ors., 2005(6) Supreme 87.*

III) *Sri Uttam Kumar Das vs Bangiya Gramin Vikash Bank & Ors., in WPA 5066 of 2020 dated September 12, 2023, Calcutta High Court.*

14. In the present case, this court finds that the enquiry officer/disciplinary authority and the Appellant authority have all:-

- i)** duly followed the rules of natural justice.
- ii)** the findings misconduct in based on oral and documentary evidence.
- iii)** Statutory rules governing conduct of disciplinary enquiry have been observed and

- iv) The findings of the disciplinary/Appellate authority do not suffer from perversity and
- v) finally, the penalty imposed is not disproportionate to the proven misconduct. ***(Para 17, The State of Karnataka & Anr. vs Umesh, (Supra))***

15. Accordingly, the said findings under appeal do not warrant interference by this Court.

16. WPA 20282 of 2012 stands dismissed.

17. All connected applications, if any, stand disposed of.

18. Interim order, if any, stands vacated.

19. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)