

Form No.J(2)

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

Present:

**The Hon'ble Justice Raja Basu Chowdhury**

**WPA 25292 of 2008  
with  
CAN 1 of 2021**

**Manash Sen Chowdhury  
Vs.  
Bank of India & Ors.**

For the petitioner : Mr. Bikash Ranjan Neogi  
Ms. Ananya neogi  
Mr. Guddu Singh

For the respondents : Mr. R.N. Majumder  
Mr. S.M. Obaidulla

Heard on : 14.03.2024 & 19.03.2024.

**Judgment on : 10<sup>th</sup> June, 2024.**

**Raja Basu Chowdhury, J:**

1. The present writ petition has been filed challenging the charge-sheet dated 9<sup>th</sup> July, 2007, the enquiry proceeding, *inter alia*, including the order of compulsory retirement dated 12<sup>th</sup>/19<sup>th</sup> February, 2008.
2. The petitioner was posted as Staff Accounts Clerk in the Bank of India (hereinafter referred to as the said Bank) at South Suburbs Branch, Kolkata. In course of his employment, he was served with

an order of suspension dated 22<sup>nd</sup> December, 2006. The same was followed by a memorandum-cum-show-cause notice dated 19<sup>th</sup> January, 2007. The petitioner had responded to the said memorandum by his communication dated 5<sup>th</sup> April, 2007 denying all material allegations therein. Subsequently, by an office order dated 9<sup>th</sup> July, 2007, the respondent No. 4 as the disciplinary authority of the petitioner ordered a departmental enquiry against the petitioner for his gross misconduct and simultaneously forwarded the petitioner with the charge-sheet dated 9<sup>th</sup> July, 2007, list of documents, along with copy of documents and list of witnesses. Subsequently an enquiry officer was appointed to enquire into the charges leveled against the petitioner. After the enquiry was concluded, the petitioner was issued a show-cause notice dated 22<sup>nd</sup> January, 2008, wherefrom it transpires that the disciplinary authority while differing with the findings of the enquiry officer in so far as the same related to proof of charge No. 1 had held that the said charge stood conclusively proved and had accordingly proposed to impose a punishment of compulsory retirement in terms of Clause 6(c) of the bipartite settlement dated 10<sup>th</sup> April, 2002 subject to the petitioner furnishing representation, if any with regard to the findings of the enquiry officer. The petitioner had duly responded to the said show-cause by a representation wherein it was categorically noted that no opportunity was given to the petitioner to make representation on

the revised findings of the disciplinary authority. Records reveal that by an order dated 12/19<sup>th</sup> February, 2008, the respondent No. 4 had inflicted a punishment of compulsory retirement of the petitioner. Although, the petitioner had preferred a statutory appeal such appeal was dismissed by an order dated 29<sup>th</sup> August, 2008. Challenging the charge-sheet as also the show-cause notice issued by the disciplinary authority, the final order of punishment and the order passed by the appellate authority, the present writ petition has been filed.

3. Mr. Neogi, learned advocate representing the petitioner by drawing the attention of this Court to the show-cause notice dated 22<sup>nd</sup> January, 2008 submits that the disciplinary authority while differing with the findings of the enquiry officer so far as the charge No. 1 is concerned, instead of returning a tentative finding and calling upon the petitioner to respond to the same had conclusively held the said charge to be proved and while proposing to impose penalty on the petitioner, had called upon the petitioner to show-cause. This, according to Mr. Neogi constitutes violation of principles of natural justice. The disciplinary authority being the respondent No. 4 without affording the petitioner adequate opportunity to defend had passed the final order and had imposed a penalty of compulsory retirement of the petitioner. Although, the petitioner preferred an appeal, the appellate authority had glossed over the aforesaid issue and had dismissed the same. In support of

his aforesaid contention, he has placed reliance on the judgment delivered by the Hon'ble Supreme Court in the case of **SBI and others v. Arvind K. Shukla**, reported in **AIR 2001 SC 2398** and the judgment delivered in the case of **Lav Nigam v. Chairman and MD, ITC Ltd. and another**, reported in **(2006) 9 SCC page 440**.

On the same point he has also relied another judgment delivered by the Hon'ble Supreme Court in the case of **Himachal Pradesh State Electricity Board Limited v. Mahesh Dahiya**, reported in **(2017) 1 SCC 768**. In the facts as noted hereinabove it is submitted that not only the disciplinary proceeding but the final order including the order of punishment inflicted on the petitioner stands vitiated and the same should be set aside. Since, the appellate authority also did not consider the aforesaid issue, the order passed by the appellate authority should also be set aside and the petitioner be made available all consequential benefits.

4. Mr. Majumder, learned advocate representing the respondent bank submits that the petitioner is a workman and if instead of filing the writ petition, an industrial dispute is raised, the petitioner shall get all opportunity to defend himself including the right to lead additional evidence. He, however, candidly submits that the disciplinary authority had in fact differed with the findings of the enquiry officer. According to Mr. Majumder, there is no irregularity on the part of the disciplinary authority in differing with the findings of the enquiry officer. It is within the competence,

authority and jurisdiction of the disciplinary authority to differ with the findings of the enquiry officer, the same cannot be questioned by the petitioner before this Court. It is still further submitted that there are other charges, being charge Nos. 2 and 3 which have been conclusively proved and as such there is no irregularity on the part of the disciplinary authority in issuing the second show-cause notice. In this case due procedure was followed and the petitioner was duly served with the second show-cause notice prior to imposition of penalty. In fact, in the second show-cause notice punishment that was proposed to be inflicted had been disclosed for the petitioner to respond to the same.

5. Affidavit-in-opposition and the affidavit-in-reply filed in Court today be retained with the record
6. Heard the learned advocates appearing for the respective parties and considered the materials on record. In this case it may be noted that disciplinary proceeding had been initiated against the petitioner on the basis of a charge sheet dated 9<sup>th</sup> July 2007. The petitioner had duly participated in the enquiry and ultimately, the enquiry officer had returned the finding. From the second show-cause notice dated 22<sup>nd</sup> January, 2008 issued by the respondent No. 4, the following would transpire:

*“2. Regular Departmental enquiry was ordered by appointing Enquiry Officer and Presenting Officer vide Orders dated 09.07.2007. The Enquiry officer conducted*

*the preliminary hearing on 31.07. 2007 and regular hearing was started from 08.08.2007 which was concluded on 19.10.2007. The Enquiry Officer, on receipt of written representation of both the Presenting Officer and Defence submitted his findings dated 29.11.2007, a copy of which is enclosed for your record. The Enquiry Officer, while concluding Charge-II and Charge – III as conclusively proved, as regards Charge-I he has stated as under.*

*“The receipt of the amount of Rs.18,000/- by the CSE on 29.06.2006 is proved while the refund of amount of Rs.18,000/- by Mrs. Chitra Sen Chowdhury on 11.07.2006 is not proved:”*

*3. The Enquiry Officer has relied on the deposition of MW-II and MW-IV. The undersigned being the appropriate Disciplinary Authority in respect of you has carefully perused the day-to-day proceedings of the enquiry, the documents produced during the course of the enquiry, the findings arrived by the Enquiry Officer and observed that all reasonable opportunities were given to you during the course of the enquiry. The findings arrived at by the Enquiry Officer are based on records and do not suffer from any perversity except in respect of Charge no.I where the Enquiry officer has concluded that it could not be established in the Enquiry that Mrs. Chitra Sen Chowdhury has returned Rs.18,000/- on 11.07.2006. In view of the following:*

- i) It is established during the course of the enquiry that one Shri Kamal Jhavar, proprietor, M/s. Bajrang Sewing Thread, maintaining a C/D A/c. No.301 deposited Rs.18,000/- on 29.06.2006*

*across the counter no.2 which was manned by you;*

- ii) It is also established that the said amount of Rs.18,000/- deposited in respect of C/D Account no.301 has not been accounted for in the books of the Bank;*
- iii) MW-I, during the course of his deposition on 06.09.2007, 07.09.2007, 11.09.2007, 12.09.2007 and 13.09.2007 stated that Rs.18,000/- was handed over by Mrs. Chitra Sen Chowdhury, your wife, in presence of the Staff Cashier Shri Jyoti Kundu;*
- iv) It is established in the enquiry that Rs.18,000/- was deposited in the C/D A/c. No.301 on 12.07.2006;*
- v) MW-III also confirmed during the course of her deposition that she had seen Mrs. Chitra Sen Chowdhury at the Branch;*
- vi) You failed to produce Mrs. Chitra Sen Chowdhury who happens to be your wife, to confirm that she had not come to the Branch on 11.07.2006. The certificate dated 28.07.2006 produced by you in respect of your claim that Mrs. Chitra Sen Chowdhury was present to perform her duty at the Postal Department from 9.00 a.m. to 5.00 p.m. on 11.07.2006 and 12.07.2006 was also not introduced in the enquiry although the enquiry resumed w.e.f. 31.07.2007.*

*In view of the above and on the basis of preponderance of probability, it is established in the enquiry that Mrs. Chitra Sen Chowdhury handed over Rs.18,000/- on 11.07.2006 to the Senior Branch Manager,*

*Ultadanga Branch and hence the undersigned differs with the findings of the Enquiry Officer to that extent and accordingly hold that Charge-I is conclusively proved against you.”*

7. Following the aforesaid, the disciplinary authority appears to have informed the petitioner that it proposes to impose a penalty of compulsory retirement in terms of Clause 6(c) of the Bipartite Settlement dated 10<sup>th</sup> April, 2002 subject to the petitioner furnishing representation to the finding of the enquiry officer and the substituted finding stated therein. In this context it may be relevant to note that it is well settled that the findings on the charges should be made available to the delinquent before the disciplinary authority proceeds to accept such findings.
8. The Hon'ble Supreme Court in the case of ***Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors.***, reported in **(1993) 4 SCC 727** has been, *inter alia*, pleased to observe as follows :

*“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.”*

9. The proceeding under challenge has yet another difficulty. In this case the disciplinary authority had proceeded to differ with the findings of the enquiry officer and instead of expressing its tentative findings had arrived at a conclusion as regards the charge No. 1 and had held that same had been conclusively proved. Although, an opportunity was afforded to the petitioner to respond but such opportunity was to the proposed punishment. Despite by the self-same show-cause, the petitioner had been called upon to respond to the enquiry officer's report and the revised findings returned by the disciplinary authority, in my view, such opportunity cannot be construed as a reasonable opportunity for the petitioner to defend since, by such time the disciplinary authority had already made up its mind to hold the petitioner guilty.
10. The failure on the part of the disciplinary authority firstly, to afford the petitioner with an opportunity to respond to the findings of the enquiry report to the extent the same was acceptable by the disciplinary authority and secondly, to the differing opinion of the disciplinary authority, is fatal and the same vitiates the proceeding at least from that stage. I have, however, been informed by the parties that the petitioner has reached the age of superannuation. Ordinarily, when the enquiry proceeding stands vitiated on account of procedural irregularities, necessary liberty ought to be afforded to

the respondents to conclude the proceeding from the stage, the enquiry proceeding stands vitiated. In the present case, however, it is noticed that the petitioner has reached the age of superannuation. The Memorandum of settlement dated 10<sup>th</sup> April, 2002/27<sup>th</sup> May, 2002 which provides for disciplinary action and procedure, does not make any provision for continuance of departmental proceeding beyond the date of superannuation.

11. There is, however, another aspect of the matter Mr. Majumder, learned advocate representing the respondents, has submitted that the petitioner is a workman and ordinarily ought to have proceeded with the Tribunal for adjudication of his right. It is, however, noticed that the writ petitioner was entertained by an order dated 12<sup>th</sup> January, 2009 by keeping the point of maintainability raised by the respondents open. In the affidavit-in-opposition the respondents apart from claiming the petitioner to be an award staff and to be a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 has disclosed no other particulars.
12. Admittedly, the writ petition concerns violation of principles of natural justice as also procedural irregularity which has the effect of vitiating the enquiry proceeding. Such is the defect that the same could not have been rectified even by the Tribunal. Although, before the tribunal, the respondent bank could have got an opportunity to establish the charge afresh, however, by reasons of the petitioner having already reached the age of superannuation, I do not find any

reason to relegate the parties to tribunal at this stage. For the same and identical reason, the option of remanding the matter to the respondent bank for them to conclude the same from the stage when the same was vitiated is also not possible. For reasons morefully indicated hereinabove, the objection raised by the respondents fail.

13. The only other point raised by Mr. Majumdar is that the disciplinary authority had only differed with the findings of the enquiry officer in so far as charge no.1 is concerned. Since, the findings on the other charges was accepted by the disciplinary authority, the final order, including the order inflicting punishment cannot fail by reasons of the disciplinary authority, not making available his tentative findings, in so far as charge no.1 is concerned. In this context, it may be relevant to note that the final order of punishment dated 12<sup>th</sup>/19<sup>th</sup> February 2008 is a composite order and does not provide for separate punishments for separate charges. As such, it is not possible to sustain the said order on the ground that the disciplinary authority had concurred with the findings of the enquiry officer, excepting charge no.1. Since, the order is a composite order, the entire order stands vitiated on account of procedural irregularity as noted above. Thus, the above objection also fails.

14. For reasons morefully discussed hereinabove, the enquiry proceeding which stands vitiated from the stage of issuance of the second show-cause notice by the disciplinary authority to the extent it disagreed with the findings of the enquiry officer and since, by reasons of cessation of employee-employer relationship and the Memorandum of settlement dated 10<sup>th</sup> April, 2002/27<sup>th</sup> May, 2002 not providing for continuance of the disciplinary proceedings beyond the date of superannuation, no further liberty can be afforded to the respondents to continue the disciplinary proceeding any further, the disciplinary proceeding which otherwise stands vitiated, and can no longer be concluded, stands set aside along with the final order of punishment dated 12<sup>th</sup>/19<sup>th</sup> February, 2008. As a sequel thereto, the order passed by the appellate authority also stands set aside.

15. At the same time, taking into consideration the fact that the petitioner had not discharged any functions with the respondent bank subsequent to passing of the final order dated 12<sup>th</sup> February, 2008, the petitioner shall not be entitled to any actual benefits but shall only be entitled to notional benefits and other consequential reliefs.

16. With the above directions and observations, the writ petition stands disposed of.

17. There shall be no order as to costs.

18. In view of disposal of the writ petition the connected application being CAN 1 of 2021, praying for early hearing of the writ petition, having become infructuous also stands disposed of.
19. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

**(Raja Basu Chowdhury, J.)**