

S/L 6
18.07.2024
Court. No. 551
Suwayan

WPA 22880 of 2019

Tapan Kumar Mallick
Vs.
Canara Bank & Ors.

Mr. S. N. Biswas

...for the petitioner.

Mr. Ayan Kumar Boral
Mr. A. Dutt

...for the respondents.

1. In this writ petition the writ petitioner has prayed for quashing and/or setting aside the report of the enquiry officer dated December 30, 2016, order of penalty that is the order of dismissal as imposed upon the writ petitioner by the disciplinary authority on January 17, 2017, appellate authority's order dated October 19, 2017 and the order of the reviewing authority dated December 15, 2018 *vis-à-vis* the order of rejection of the mercy petition filed by the writ petitioner on June 11, 2019.

2. From the materials on record it reveals that the writ petitioner while posted as Manager of Hatibagan Market Branch, Kolkata of the respondent No. 1/Bank was charged with two articles of charges containing detail statements of imputation to articles of charges.

3. Thereafter a preliminary enquiry was held against the delinquent and on the basis of such preliminary enquiry, the respondent No. 1/Bank authority initiated an enquiry proceeding and after conclusion of the enquiry proceeding the enquiry authority found that all the charges except two under the heading of the aforesaid two

articles of charges have been proved. The copy of the finding of the enquiry authority was served upon the writ petitioner. Before the disciplinary authority the entire records of the enquiry proceeding has been placed and the enquiry authority on appreciation of the entire materials as available in the enquiry proceeding found that the charges against the delinquent has been proved and thus passed an order of penalty that is '*dismissal which shall ordinarily be a disqualification for future employment*'.

4. The writ petitioner being the delinquent felt aggrieved and thus preferred an appeal before the appellate authority. The appellate authority also found that the findings of the enquiry authority and the disciplinary authority are correct and, thus the said appellate authority did not intervene either with the finding of the enquiry authority or with regard to the punishment as imposed by the disciplinary authority.

5. The delinquent who is the writ petitioner before this Court, thereafter tried his luck before the reviewing authority where also he could not succeed and ultimately he filed a special appeal alleging imposition of disproportionate punishment upon him which was also not found to be convincing by the appropriate authority and, therefore, the writ petitioner has approached this Court for quashing of the entire proceedings as discussed (supra) as well as for setting aside the punishment with a further prayer for reinstatement in the service along with other ancillary reliefs.

6. In course of hearing, learned Advocate for the writ petitioner at the very outset draws attention of this Court to the articles of charges as framed against the present petitioner. Attention of this Court is also drawn to page No. 47 of the writ petition that is the copy of a letter dated November 28, 2016 as written by the writ petitioner to the enquiry authority. It is submitted on behalf of the writ petitioner that on conjoint perusal of the articles of charges, the letter dated November 28, 2016 as written by the writ petitioner to the enquiry authority and the proceedings of the enquiry authority it would reveal that the proceedings of the enquiry authority is vitiated for non-consideration of the material evidence on the part of the enquiry authority in view of the fact that in none of the loan accounts as mentioned in the articles of charges no loan documents have been exhibited in order to prove the alleged guilt of the delinquent.

7. It is further submitted that despite representation made by the writ petitioner the witnesses as mentioned in the letter dated November 28, 2016 were not tendered as management witnesses (MWs). It is further submitted that in the event the witnesses as mentioned in the letter dated November 28, 2016 were permitted to be cross-examined by the writ petitioner, the result of the enquiry proceeding would have been otherwise. It is, thus, submitted that in the enquiry proceeding the principles of natural justice has been grossly violated.

8. In course of hearing learned Advocate for the writ petitioner also draws attention of this Court to the Canara

Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 (hereinafter referred to as the said 'Regulation'). Attention of this Court is also drawn to the Regulation 6(13) of the said Regulations. It is submitted that the said Sub-Regulation has also not been complied with since no materials have been placed before the disciplinary authority as required to be done under the said Regulation 6(13). It is, thus, submitted that the authorities of the Bank while coming to a conclusion of guilt of the present writ petitioner and while imposing penalty has placed their reliance upon some extraneous evidence which are not available in the record.

9. Learned Advocate for the writ petitioner, thus, submits that it is a fit case for invoking the plenary power of this Court by issuing appropriate writ of mandamus.

10. *Per contra*, learned Advocate for the respondent/Bank submits before this Court that the enquiry proceeding, the proceedings before the disciplinary authority, appellate authority and the reviewing authority have been done in accordance with the said Regulation and in absence of any material to prove that there occurred violation of the principles of natural justice and/or procedural irregularity in the said proceedings there cannot be any justification to invoke the writ jurisdiction of this Court.

11. It is further submitted on behalf of the respondent/Bank that in this writ petition, this writ court ought not to act as an appellate authority since the scope

of the instant writ petition is much narrow than an appeal.

12. On perusal of the entire materials as placed before this Court and after hearing the learned Advocates for the contending parties it appears to this Court that it is undisputed that the writ petitioner being the delinquent while posted as Manager of Hatibagan Branch of respondent Bank was placed on suspension and he was served with articles of charges under two heads with statements of imputations. It reveals to this Court that before the enquiry officer on being asked the delinquent pleaded his innocence and claimed to defend himself by an officer of his choice which has been permitted by the disciplinary authority.

13. On perusal of the proceedings of the enquiry authority it reveals that on behalf of the management several witnesses have been examined and they were cross-examined by the delinquent and/or its representative and some documents have been marked as material exhibits.

14. Though learned Advocate for the writ petitioner was very vocal with regard to non-allowing the cross-examination of some witnesses whose names have been mentioned in his letter dated November 28, 2016, it reveals to this Court that during the pendency of the enquiry proceeding the delinquent has taken no steps to tender those personal of the Bank as defence witnesses. Though a plea was taken that in the event the persons whose names has been mentioned in the letter dated

November 28, 2016 have been tendered for cross-examination the result of the enquiry proceeding would have been otherwise but in considered view of this Court the submission as made by the learned Advocate for the writ petitioner is unknown to the procedural law in view of the fact that it is the discretion of the management whom to tender as witnesses to prove the charges against the delinquent.

15. As rightly pointed out by the learned Advocate for the respondents/Bank that for the reason based known to the delinquent, the delinquent has not tendered the said persons (whose names have been mentioned in the letter dated November 28, 2016) as defence witnesses and, therefore, the writ petitioner cannot claim that he has been denied with right of examination or cross-examination.

16. As rightly submitted by the learned Advocate for the respondents/Bank that immediately after conclusion of evidence of the prosecution witnesses on behalf of the delinquent, defence brief was submitted and no materials have been placed that even after submission of such defence brief, the enquiry officer has declined to give an opportunity to the delinquent to adduce defence witnesses.

17. In view of such, this Court finds that the allegation of violation of principles of natural justice on the part of the respondents/Bank has no leg to stand upon.

18. So far as the other submission of the learned Advocate for the writ petitioner that the relevant loan

documents have not been produced before the enquiry officer is no way important for the disposal of the instant writ petition since the management of the Bank is the best judge to produce what documents are required to be placed before the enquiry officer to prove the guilt of the delinquent.

19. On perusal of the entire proceedings of the enquiry proceeding it does not transpire to this Court that the enquiry officer's finding is based on any extraneous evidence and/or the enquiry officer had adopted a procedure which is contrary to the said Regulation.

20. This Court has also occasion to go through the finding of the disciplinary authority and it appears to this Court that before the disciplinary authority the entire proceeding of the enquiry authority has been placed and the disciplinary authority applied its independent mind and thereafter passed the order of punishment.

21. It further appears to this Court that both before the appellate authority and the reviewing authority the entire materials of the enquiry proceeding were placed again who also applied their independent minds over the materials as available against the delinquent and, thus, came to a factual finding with regard to the guilt of the present writ petitioner.

22. In view of the discussion made hereinabove, this Court thus finds that the instant writ petition being WPA 22880 of 2019 is devoid of any merit and is hereby dismissed.

23. With the dismissal of the instant writ petition all interim application, if there be any, stands hereby disposed of.

24. There shall be no order as to costs.

25. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)