

06.03.2024
SI No.2
Court No.8
(gc)

MAT 2272 of 2023
With
CAN 1 of 2023

Bangiya Gramin Vikash Bank & Ors.
Vs.
Debajyoti Roy

Mr. Baidurya Ghosal
Miss. Aatreyee Dutta
Mr. Saikat Mukherjee
... for the Appellants.
Mr. Debabrata Saha Roy,
Mr. Indranath Mitra,
Mr. Sankha Biswas
... for the Respondent/
Writ petitioner.

1. The appellant is aggrieved by an order dated August 23, 2023 arising out of a writ petition in which the authority of the General Manager to act as a disciplinary authority was set aside and the Chairman was directed to act as a disciplinary authority on the basis of the Bangiya Gramin Vikash Bank (Officers and Employees) Service Regulation, 2010 (in short '2010 Regulation').
2. The only issue required to be decided in this appeal is whether the General Manager could act as a disciplinary authority in view of the fact that charge

sheet was issued by the Chairman on the basis of the 2010 Regulation.

3. A disciplinary proceeding was initiated against the respondent by issuing a charge sheet by the Chairman on December 3, 2012 to which the writ petitioner replied on April 22, 2013. However, the said explanation was considered by the General Manager and found it unsatisfactory. On that basis, the bank decided to hold departmental enquiry against the petitioner in respect of the charges leveled against him in the letter dated December 3, 2012.
4. The writ petitioner alleges that the notice issued by the General Manager as disciplinary authority dated May 16, 2013 is without jurisdiction, since under the 2010 Regulation, the Chairman is the disciplinary authority and accordingly, the initiation of the said proceeding suffers from inherent lack of jurisdiction. The writ petitioner filed a writ petition being W.P. 2654 (W) of 2013 in which he has challenged the charge sheet issued by the Chairman on several grounds. Subsequently, another writ petition being W.P. 26780 (W) of 2013 was filed

questioning the authority of the General Manager to act as a disciplinary authority.

5. In the first writ petition being WP 2654 (W) of 2013, an interim order was passed by which liberty was given to the bank to proceed with the disciplinary proceedings initiated against the writ petitioner but not to pass any final order without the leave of this Court. On the basis of the aforesaid order, the General Manager issued the letter dated May 16, 2013 appointing an enquiry officer to proceed with the enquiry.
6. This notice was challenged in the subsequent writ petition.
7. In the second writ petition, the authority of the General Manager to act as a disciplinary authority *vis a vis* the enquiry proceeding against the petitioner was challenged. The contention of the writ petitioner was that by reason of the fact that the disciplinary proceeding was initiated against the petitioner in terms of 2010 Regulation and the rules existing at that point of time which clearly stipulates that the Chairman would be the disciplinary authority, it was not open for the General Manager to act as a disciplinary authority on the basis of the

amended Regulation of 2013 and proceed with the disciplinary proceeding.

8. Learned counsel for the writ petitioner submits that the proceeding was held ex parte, however, no plausible explanation was offered for not participating in the enquiry proceeding in spite of the order passed by the learned Single Judge on April 12, 2013 by which liberty was given to the bank to proceed with the disciplinary proceeding. The interim order was not challenged. The interim order was not challenged.
9. Learned counsel has submitted that in the event it is contended and held that the initiation of the disciplinary proceeding was bad and *void ab initio*, the entire proceeding is required to be quashed. Notwithstanding non-participation of the writ petitioner in the said proceeding, there cannot be any doubt that if the authority assumed jurisdiction which the said authority does not possess any order passed by such authority is void ab initio. In the instant case, there cannot be any doubt that initial proceeding was initiated by the Chairman who was the “competent authority” at the relevant time within the

meaning of Regulation 2(g) of 2010 Regulation to initiate the departmental proceeding. The charge sheet was duly signed by him. Before the enquiry proceeding could commence, there has been no change in the regulation by which the General Manager could assume the authority of a disciplinary authority *vis a vis* the writ petitioner.

10. Mr. Indranath Mitra, the learned Counsel appearing on behalf of the writ petitioner/respondent has submitted that in a similar situation in ***Biplab Das vs. Bangiya Gramin Vikash Bank & Ors. (FMA 2937 of 2015 with CAN 5640 of 2015, dated 17th February, 2017)***, the initiation of the disciplinary proceeding was set aside since it was found that the Chairman of the bank was not competent to issue the charge sheet in relation to the employee against whom the bank had decided to initiate disciplinary proceeding. It is submitted that the applicability of the amended rule to a pending disciplinary proceeding came up for consideration before a Coordinate Bench in ***Central Bank of India Vs. Dulal Chandra Santra reported at 2019 SCC OnLine***

Cal 9202: (2019) 2 CHN 382, it is argued that in the said decision after taking into consideration Clause 37 of the Settlement, the Hon'ble Division Bench held that the imposition of punishment cannot be on the basis of a settlement which was yet to take effect which is somewhat similar to the issue involved herein, namely, the assumption of authority by the General Manager of a disciplinary authority and rejected the representation made by the writ petitioner and appointed an enquiry officer to proceed with the enquiry on the basis of a rule which was yet to be operative.

11. Mr. Mitra has also relied upon the decision of the Hon'ble Supreme Court in ***Rakesh Kumar Agarwalla & Anr. Vs. National Law School of India University, Bengaluru & Ors. reported at (2021) 1 SCC 539 Paragraph 71*** in support of his submission that once the service regulations which are framed under Section 30 of the Regional Rural Banks Act, 1976 prescribed a particular body to exercise a power, it must be exercised only by that body and cannot exercise by others unless it is delegated.

12. Per contra, the learned Counsel for the appellants/bank has submitted that the reason of the amendment 2010 Regulation on 29th November, 2013, the notice issued by the General Manager on 16th May, 2013 stands ratified and it cannot be contended at this stage that the General Manager did not have the authority to consider either the representation or on such consideration appointed enquiry officer. There is no irregularity per se on the part of the General Manager in claiming himself to be disciplinary authority of the petitioner and/or in passing the final order. However, it appears that bank had accepted that in the event of a de novo enquiry, he may be given a further opportunity.
13. Learned Counsel for the writ petitioner has also relied upon a decision of a Coordinate Bench in **Swapan Kumar Saha Vs. Bangiya Gramin Vikash Bank & Ors. (MAT 827 of 2020)** and the order passed in the review application being **RVW 72 of 2021** reported at **2023 SCC OnLine Cal 2175** in order to emphasise that the Court in an appropriate situation

can take note of the amended provisions in order to substantive justice.

14. The undisputed facts that emerge from the discussion are that the General Manager did not have the authority to act as a disciplinary authority on 16th May, 2013. The charge sheet was issued by the Chairman who was the competent authority at the relevant time. The letter dated 3rd December, 2012 not only disclosed the charges levelled against the writ petitioner but also the writ petitioner to respond for the same to take appropriate action. At that stage, no decision was taken by the Chairman to conduct an enquiry against the writ petitioner. It was after receiving the representation made by the writ petitioner on 22nd April, 2013 the General Manager had taken a decision to hold a disciplinary proceeding by appointing an enquiry officer. The question arises whether the General Manager was competent to consider the said representation having regard to the fact that the charge sheet was issued by the Chairman of the bank as a competent authority. The answer to this question is simple. The Chairman is the only

authority who could have decided the said application and not the General Manager, as General Manager was not the competent authority within the meaning of Rule 2(g) of the unamended Regulation. It is well-settled starting from the decision of the Privy Council in ***Nazir Ahmed Vs. King Emperor reported at AIR 1936 PC 253*** and if the act prescribes a particular authority to act in a particular manner, the said authority is obliged to act in that manner only and not in any other manner. This has been reiterated in ***Rakesh Kumar Agarwalla*** (supra) in paragraph 71 where it has been categorically stated relying on the decision in ***Marathwada University v. Seshrao Balwant Rao Chavan reported at (1989) 3 SCC 132 Paragraph 20*** that “it is a settled principle that when the Act prescribes a particular body to exercise a power, it must be exercised only by that body. It cannot be exercised by others unless it is delegated”.

15. We have not been shown any rule which would show that the power to consider and appoint an enquiry officer has been delegated to the General Manager. In any event, the amendment to the definition of competent

authority was only notified and gazetted on 20th November, 2013, where only few changes have been indicated place in the existing Regulation of 2010. The Regulation 2010 in Clause 1(2) has clearly mentioned that the Regulation was to come into force on the date of their publication in the official gazette, hence, no authority could have assumed the jurisdiction unless the amended rules are notified in terms of Regular 1(2) of the 2010 Regulation.

16. We are inclined to accept the submission of Mr. Mitra with regard to the proceeding being vitiated subsequent to the issuance of the charge sheet having regard to the fact that the General Manager did not have the authority to consider the representation and thereafter appoint an enquiry officer. It was beyond his jurisdiction to consider the said representation and thereafter to take a decision with regard to the appointment of an enquiry officer. The existing rules did not permit him to assume such jurisdiction. This was similar to the case in **Central Bank of India** (supra) where on noticing that the 1995 settlement did not take effect prior to 1st November, 1997

and the workman was dismissed from service by an order dated 8th January, 1996, that is, at a point of time when the 1995 settlement was yet to take effect the initiation of the proceeding, 1966 settlement was held to be valid and the order of the learned Single Judge was reversed.

17. In **Biplab Das** (supra), the Hon'ble Division Bench set aside the initiation of the disciplinary proceeding against the writ petitioner for inherent lack of jurisdiction as it was found that the Chairman could not have issued the charge sheet as he was not the competent authority in the event the writ petitioner who was a clerk-cum-cashier, the relevant observation in this regard of the Hon'ble Division Bench in **Biplab Das** (supra) is stated below:-

“The condition of service of the writ petition is regulated by the Bangiya Gramin Vikash Bank (Officers and Employees) Service Regulation 2010 (hereinafter referred to as the said regulation). Regulation 2(1)(g) of the said regulation defines “Competent Authority” which says that “Competent Authority” means the Chairman in respect of the officer and the General Manager, in respect of the employee provided that if

there is no General Manager, the Chairman shall be competent authority in respect of the employee.

Admittedly, the petitioner is not an officer of the bank. He was a clerk-cum-cashier, thus, he was an employee of the bank. If the definition of competent authority as defined in Section 2(1)(g) is considered in its strict sense then we have no hesitation to hold that the General Manager is the competent authority to initiate a disciplinary proceeding against the writ petitioner being an employee of the bank. It is not the case of the bank that there was no General Manager in the said Bank at the relevant time and as such the chairman initiated such a proceeding against the petitioner by virtue of his power as provided in the proviso added to Regulation 2(1)(g)."

18. In **Swapan Kumar Saha** (supra), it appears that the attention of the Hon'ble Bench was not drawn to the order passed by the Hon'ble Division Bench in **Biplab Das** (supra). The said judgment was delivered on 17th February, 2017 prior to the order passed in **Swapan Kumar Saha** (supra). The later decision, namely, **Swapan Kumar Saha** (supra) was decided on 25th March, 2021. In the said decision, it appears that the learned Coordinate Bench allowed the proceeding

to continue under the amended Regulation 2010 after being informed that there was change of person in the office of the Chairman and as such the appellant can have no apprehension of the same person being appellate authority who had issued the charge sheet. In the instant case, we are concerned with the decision that the Chairman is supposed to take as a competent authority on the representation made by the writ petitioner in reply to the charge sheet. It was, thus, incumbent upon the Chairman to consider the said representation strictly in terms of the unamended Regulation 2010. Accordingly, we are of the opinion that the said decision is distinguishable on facts and hence not applicable.

19. It appears from the impugned judgment that on 23rd August, 2013, an order was passed by which the bank was called upon to obtain instruction as to whether the changes effected in the Discipline and Appeal Rules published in the Official Gazette. The bank, despite being aware of the aforesaid situation, permitted the proceedings to continue and no affidavit-in-opposition in either of the writ

applications has been filed. In this regard, the learned Single Judge has relied upon the decision of the Hon'ble Supreme Court in ***A.K. Roy & Anr. Vs. State of Punjab & Ors. reported at (1986) 4 SCC 326*** and ***Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and Others Vs. Director General of Civil Aviation and Others reported at (2011) 5 SCC 435*** for the proposition that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other modes of performance are necessarily forbidden. The said decisions also reiterate that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.

20. However, it cannot be contended at this stage that the charge sheet is vitiated as it appears that the charge sheet was issued by the Chairman who is the competent authority in the unamended 2010

Regulation. Accordingly, we are not inclined to set aside the charge-sheet. The learned Single Judge also did not interfere with the charge sheet.

21. In such facts and circumstances of the case, we are of the view that the direction passed by the learned Single Judge does not call for any interference. The disciplinary proceeding should commence from the stage of the satisfaction of the disciplinary authority to proceed against the writ petitioner. The Chairman shall consider the representation dated 22nd April, 2013 and should it decide to proceed with the disciplinary proceeding on consideration of the said representation, an enquiry officer should be immediately appointed and duly communicated to the writ petitioner. Although the writ petitioner had retired from service but by reason of Regulation 45 of 2010 Regulation and the kind of charges levelled against him the disciplinary proceeding can continue provided the competent authority is not satisfied with the explanation offered by the writ petitioner.

22. In the event any disciplinary proceeding is initiated, the same should be

completed within a period of four months from the date of appointment of the enquiry officer. The Chairman shall within a period of two weeks from date decide whether the disciplinary proceeding is required to be initiated against the writ petitioner only upon consideration of the representation dated 22nd April, 2013.

23. Needless to mention that the disciplinary proceeding shall proceed in terms of Regulation 2010.

24. The petitioner shall scrupulously adhere to the schedule and the directions that may be passed by the enquiry officer in the disciplinary proceeding if initiated and shall render all cooperation to the enquiry officer to conclude the proceeding within the stipulated time.

25. Irrespective of the result of the disciplinary proceeding, the appellant bank shall release all admissible dues to the writ petitioner in the matter within a period of four weeks from date upon compliance of all statutory formalities.

26. With the aforesaid directions and observations, the appeal and the application are, accordingly, disposed of.

27. However, there shall be no order as to costs.

28. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)