

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi, J.

**MAT 2516 of 2023
with
IA NO: CAN 1 of 2024**

**Bank of Baroda (Erstwhile Dena Bank) & Ors.
VS.
Goutam Roy & Anr.**

For the Appellants : Mr. Dipanjan Datta,
Ms. Sukanya Datta,
Mr. Sayan Datta,
Ms. Rituparna Saha,
Mr. Subhajit Chowdhury, Advocates

For the : Mr. Falguni Bandyopadhyay,
Writ petitioner Ms. Riya Ballar, Advocates
/private
respondent

Heard & Judgement on : June 26, 2024

DEBANGSU BASAK, J.

1. Appeal is at the behest of the employer and is directed against the judgment and order dated November 24, 2023 passed in WPA 1809 of 2013. By the impugned judgement and order learned Single Judge allowed the writ petition, set aside the order of the Disciplinary Authority on the

ground that the Disciplinary Authority acted without jurisdiction in passing the order of termination from services in respect of the private respondent.

2. Learned advocate appearing for the appellants submits that, a disciplinary proceeding was initiated as against the private respondent on the basis of the *prima facie* satisfaction that an inquiry into the misdeeds of the private respondent were required to be undertaken. He submits that, the service conditions of the private respondent is governed by the provisions of Dena Bank Officer Employees (Discipline and Appeal) Regulations, 1976 (Regulations of 1976). He submits that, the initial satisfaction of the Authority to initiate an inquiry as against the private respondent was admittedly done by an Authority prescribed by the Regulations of 1976. An inquiry was held whereupon, the charges levelled as against the private respondent were found to be proved. The Inquiry Report was accepted by a writing dated April 12, 2010 issued by the Assistant General Manager. Assistant General Manager while accepting the Inquiry Report proceeded to pass an order of dismissal from services with immediate effect so far as the private respondent is concerned. He refers to Regulation 5 of the Regulations of 1976 and submits that, the Disciplinary Authority or any authority higher than it, may impose any of the penalties specified in Regulation 4 on any officer employee. He refers to the Regulation 4 of the Regulations of 1976. Regulation 4 deals with

major penalty and dismissal from services as one of the major penalties prescribed. He refers to Regulations 7 and submits that such regulation prescribes action to be taken on the Inquiry Report. He contends that, in the facts and circumstances of the present case, Regulation 7 was complied with.

3. Learned advocate appearing for the appellant submits that, the learned Single Judge proceeded on the basis that since an Authority who was higher than the authority prescribed under Regulation 5 passed the order of dismissal from service, the same was bad in law. He submits that, learned single Judge misconstrued and miscomplied Regulation 5, particularly sub-regulation (3) thereof. He submits that sub-regulation (3) allows the Disciplinary Authority or any Authority higher than it to impose penalty as specified in Regulation 4 of the Regulations of 1976. He submits that, the Disciplinary Authority, is defined in Regulations 3(g) of the Regulations of 1976. He refers to the schedule of the Regulations of 1976 and submits that, since, the private respondent was being proceeded against in the capacity of a scale II officer, the Disciplinary Authority prescribed in the Schedule was the Regional Manager in scale IV. Moreover, such schedule prescribes that, if the Region is headed by Assistant General Manager/Deputy General Manager, then Chief Manager posted at Regional Office or one of the Chief Managers in the Region

nominated by General Manager (Personnel) would be the Disciplinary Authority.

4. In the facts and circumstances of the present case, learned Advocate for the appellants submits that, the decision to initiate an inquiry against the private respondent, who was a scale-II officer in rank was taken at the level of General Manager. Inquiry was held at the level of the General Manager and the decision to impose the punishment was taken at the level of the Assistant General Manager. According to him, Assistant General Manager is one of the prescribed Disciplinary Authorities under the Regulations of 1976 for a Scale II officer.

5. Learned advocate appearing on behalf of the private respondent submits that, the charges as against the private respondent were not proved in the inquiry. The powers of discipline were exercised by an authority who was not the Disciplinary Authority prescribed under the Regulations of 1976. That apart, the Disciplinary Authority did not give any reason as to why the punishment for dismissal from services was proved as against the private respondent. In support of such contention, he refers to the order of the so-called Disciplinary Authority dated April 12, 2010.

6. Relying upon **(2011) 5 SCC 435 [Joint Action Committee of Air Line Pilots' Association of India (ALPAI) & Ors. vs. Director General of Civil Aviation & Ors.]** he submits that, when a statute prescribes a

particular authority to do an act, such authority alone should discharge the function as prescribed by statute. Even a person senior to such prescribed Authority cannot exercise such power.

7. Referring to the facts and circumstances of the present case, he submits that, Assistant General Manager, may be an Authority who is noted to be a Disciplinary Authority. However, an Assistant General Manager can exercise powers of a Disciplinary Authority only when the other prescribed authorities are absent. In the facts of the present case, there is no material on record, according to him, to suggest that the two other authorities were absent. Therefore, according to him exercise of powers by the Assistant General Manager, was uncalled for.

8. Relying upon **(2011) 5 SCC 142 [Chairman-cum-Managing Director, Coal India Limited & Ors. vs. Ananta Saha & Ors.]**, learned advocate appearing for the private respondent submits that, in a disciplinary proceeding, the authority passing an order of punishment, must give reasons for the initiation of the inquiry and the conclusion thereof. In the facts and circumstances of the present case, he contends that, no reasons appear from the order of the Disciplinary Authority imposing the punishment.

9. Private respondent herein was an employee of the Bank. He was an officer of scale-II when, the private respondent was placed under

suspension. Private respondent was served with a charge sheet dated June 15, 2009. The charge sheet was issued in terms of Regulations of 1976.

10. Administration, appointed a senior manager as the Inquiry Officer to inquire into the charges levelled as against the private respondent, on July 8, 2009. Inquiry proceedings were held between August 21, 2009 and November 20, 2009. Inquiry Officer submitted his report dated February 13, 2010. In such report, Inquiry Officer found the charges against the private respondent to be proved and the private respondent to be guilty.

11. The Articles of Charges demonstrate that, six allegations were levelled as against the private respondent. Essentially, the charges as against the private respondent were with regard to him flouting the Rules and Regulations of the Bank relating to opening of Bank Accounts and grant of credit facilities. Private respondent allowed opening of Bank Accounts and granted credit facilities in violation of his discretionary powers as well as the Rules and Regulations of the Bank governing the same. Such action of his resulted in financial loss to the Bank.

12. The Inquiry Report is detailed. It runs into several pages. Inquiry Officer took the pains of considering the evidence led during the enquiry, rival contentions and each and every account that was opened during the tenure of the private respondent at the Branch concerned. Inquiry Officer, after discussing the evidence led, arrived at the finding that, private

respondent flouted the discretionary powers as well as Rules and Regulations of the Bank in allowing credit facilities thereby causing financial loss to the Bank.

13. It is one of the contentions of the private respondent that, there was a delay of two years from the date of the transactions and the initiations of the departmental proceedings. Nothing is placed on record before us to suggest that disciplinary proceeding cannot be initiated after lapse of two years from the date of the misdeeds. In the facts and circumstances of the present case, the misdeeds of the private respondent were discovered by the Bank and within a reasonable period of time thereafter the Bank decided to proceed in respect thereof.

14. By a writing dated April 12, 2010, the Assistant General Manager concurred with the view of the Inquiry Officer and proceeded to impose the punishment of dismissal from service so far as the private respondent is concerned.

15. One of the contentions, as noted above, is that the Assistant General Manager is not an authority prescribed for the purpose of issuing an order as a Disciplinary Authority.

16. In this context, relevant provisions of the Regulations of 1976 as relied upon on behalf of the appearing parties are set out hereinafter :-

"3. (g) "Disciplinary Authority" means the authority specified in the Schedule which is Competent to impose on an Officer Employee any of the penalties specified in regulation 4;"

5. Authority to institute disciplinary proceedings and impose

(1) The Managing Director or any other authority empowered by him by general or special order may institute or direct the Disciplinary Authority to institute disciplinary proceedings against an Officer Employee of the bank.

(2) The Disciplinary Authority may himself institute disciplinary proceedings.

(3) The Disciplinary Authority or any Authority higher than it, may impose any of the penalties specified in regulation 4 on any Officer Employee.

7. Action on the inquiry report:

(1) The Disciplinary Authority, if it is not itself the Inquiring Authority, may, for reasons to be recorded by it in writing, remit the case to the Inquiring Authority for fresh or further inquiry and report and the Inquiring Authority shall thereupon proceed to hold the further inquiry according to the provisions of regulation 6 as far as may be.

(2) The Disciplinary Authority shall, if it disagrees with the findings of the Inquiring Authority on any Articles of Charge, record its reasons for such disagreement and

record its own findings on such charge, if the evidence on record is sufficient for the purpose.

(3) If the Disciplinary Authority, having regard to its findings on all or any of the Articles of Charge, is of the opinion that any of the penalties specified in regulation 4 should be imposed on the officer employee it shall, notwithstanding anything contained in regulation 8 make an order imposing such penalty.

(4) If the Disciplinary Authority having regard to its findings on all or any of the Articles of Charge, is of the opinion that no penalty is called for, it may pass an order exonerating the officer employee concerned."

17. Regulation 3(9) defines a Disciplinary Authority to mean the Authorities specified in the schedule which is competent to impose on an officer employee any of the penalties specified in Regulation 4.

18. Regulation 4 deals with the major penalties that may be imposed under the Regulations of 1976. It obviously includes dismissal from service.

19. Regulation 15 notes the Authorities who are competent to initiate disciplinary proceeding and impose the order of punishment. Relevant, in the facts and circumstances of the present case, is Regulation 5(3) which prescribes that the Disciplinary Authority or any authority higher than it may impose any of the penalties specified in Regulation 4 on any officer employee.

20. In this context, the schedule contemplated in Regulation 3(g) requires consideration. Schedule to the Regulations of 1976 prescribes that, the Disciplinary Authority in respect of an officer of pay scale-II would be Regional Manager in Scale IV or if the Region is headed by an Assistant General Manager/Deputy General Manager then Chief Manager posted at Regional Office or one of the Chief Managers in the Region nominated by General Manager (Personnel).

21. In the facts and circumstances of the present case, it is not in dispute that the Branch at which the private respondent was working was falling within a Region which is headed by an Assistant General Manager.

22. Consequently, reading schedule to the Regulations of 1976 with Regulation 5 thereof, the disciplinary authority so far as the private respondent is concerned, are, the Chief Manager posted at the regional office or one of the Chief Managers in the region nominated by General Manager (Personnel) or the Assistant General Manager/Deputy General Manager since an Assistant General Manager/Deputy General Manager is an authority higher than the Chief Manager prescribed. Assistant General Manager/Deputy General Manager comes within the purview of a disciplinary authority as defined under Regulation 5(3) of the Regulations of 1976 as it allows the disciplinary authority or any authority higher than it to impose a penalty under Regulation 4.

23. In the facts and circumstances of the present case, the writing dated April 12, 2010 was issued by the Assistant General Manager. Therefore, such Assistant General Manager is a disciplinary authority within the meaning of Clause 5(3) of the Regulations of 1976 read with the schedule thereto.

24. In factual matrix, the ratio laid down in **Joint Action Committee of Air Line Pilots' Association of India (ALPAI) and Others (supra)** and **Chairman-Cum-Managing Director, Coal India Limited and Others (supra)** requires consideration.

25. In **Joint Action Committee of Air Line Pilots' Association of India and Others (supra)**, the issue was an order being passed by a functionary who was not the prescribed functionary under a Statute of Parliament. In such context, Supreme Court observed in Paragraphs 27 and 28 as follows:

"27. Similar view has been reiterated by this Court in Commr. of Police v. Gordhandas Bhanji, Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia and Pancham Chand v. State of H.P. observing 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.

28. in view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even a senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner."

26. In the facts of the present case, Assistant General Manager is one of the prescribed disciplinary authorities in terms of Regulation 5(3) of the Regulations of 1976 read with the schedule thereof. Therefore, Assistant General Manager cannot be construed as not to be a prescribed disciplinary authority so far as the private respondent is concerned.

27. ***Chairman-Cum-Managing Director, Coal India Limited and Others (supra)*** requires an administrative action to be informed with reasons. In the facts and circumstances of the present case, the report of the Enquiry Officer is detailed. It considers all aspects of the charges levelled and the defence taken to return a finding of guilt so far as the private respondent is concerned. The disciplinary authority is at liberty to concur with the finding of the Enquiry Officer. When it concurs with such finding law does not require him to give elaborate reasons for the concurrence.

28. Quantum of punishment to be imposed is within the domain of the employer. Charges levelled as against the private respondent are serious in nature and were found to be proved by the Enquiry Officer. Nothing is placed on record to suggest that such finding is perverse. Punishment of dismissal from service on the basis of articles of charges being established during the enquiry, cannot be said to be disproportionate to the charges proved. In any event, as noted above, quantum of punishment is within the domain of the disciplinary authority.

29. In view of the discussions above, we set aside the impugned judgment and order dated November 24, 2023. We allow MAT 2516 of 2023 along with connected application without any order as to costs. WPA 1809 of 2013 along with all connected applications therein are dismissed.

(Debangsu Basak, J.)

30. I agree

(Md. Shabbar Rashidi, J.)

D&AD