

HIGH COURT AT CALCUTTA
In The Circuit Bench At Jalpaiguri
Appellate Jurisdiction

Present:

The Hon'ble Justice Jay Sengupta

WPA 379 of 2024

Ankur Saha

Vs.

The Bank of Baroda & Others

For the petitioner : Mr. Aritra Bhattacharya
Mr. Rhitam Chatterjee

.....Advocates

For the respondent nos.1 to 6 : Mr. Prasanta Joardar
Ms. Khushboo Agarwal

.....Advocates

Heard lastly on : 01.08.2024

Judgment on : 07.10.2024

Jay Sengupta, J:

1. This is an application challenging an order of removal from service bearing reference No.- Rajkot: ZO: HRM: 04/807 dated 19.11.2022 including the memorandum, the articles of charges contained therein, the findings of

the inquiry authority and the order of the Executive Director and Appellate Authority dated 03.05.2023 and all subsequent proceeding in connection with the purported disciplinary proceeding.

2. Learned counsel for the petitioner submits as follows. The petitioner joined the Bank of Baroda in the year 2011, in the MM2 Scale in Branch operations. After successfully completing tenure of around 10 years of uninterrupted, continuous and without a break service he was transferred under Inter Zonal Transfer exercise from Kolkata Zone to Rajkot Zone, Gujarat, on 05.09.2024 while being posted in the Scale of SM4 in Branch operations in the Siliguri Branch to Savarkundla Branch, Rajkot as Branch Head/Chief Manager. Accordingly, the petitioner joined his duty as the Branch Head at Savarkundla Branch that was at Rajkot Zone on 08.09.2021. The petitioner did not avoid and/or was reluctant to transferable job and/or extensive travel in connection with his employment positions with the respondent Bank at any point in time in his career. Also, during the entire tenure of his career with the respondent Bank, the petitioner was not charged and/or convicted and/or proved for any moral turpitude and/or misconduct including, but not limited to misappropriation of money, breach of trust, abuse of his employment positions, etc. The career and conduct of the petitioner so far had been clean and he discharged his official responsibility with complete honesty, integration, devotion and dedication. The petitioner went on/proceed to sanctioned privilege leave from 4th October, 2021 to 16th October 2021. During the continuance of his sanctioned leave, in an unfortunate turn of event, he accidentally fractured his

left leg. Without delay he informed authorities by Email on 13th October, 2021 about his leg fracture and his inability to join and resume duties upon the expiry of sanctioned leave till he recovered. He attached all relevant medical reports with this Email. The respondent Authorities sent an Email on 20th October, 2021 asking him to provide specific date of his reporting to duty. The petitioner sent another Email on 21st October, 2021, informed authorities about his prevailing medical condition and probable date of joining as 15th November, 2021. However, it was only a probable date, consistency as to specific date of joining upon recovery could not be always guaranteed and/or predicted with absolute certainty. It depended on several variables, contributing factors affecting timely recovery. On 9th November, 2021 the petitioner suffered vomiting, was admitted to hospital, on 10th November, 2021, diagnosed with Viral Hepatitis, informed authorities on 12th November, 2021 via Email, through his wife's Email id, attached therewith all relevant medical records, medical certificates, supporting documents, discharge certificate etc. On 15th November, 2021 the petitioner received Email from the respondent authorities and/or competent authorities which said that merely forwarding Email for extension of leave on medical grounds without supporting documents could not be considered. However, meanwhile already well in advance and/or without delay, the petitioner had provided and addressed to the respondent authorities through Email communications attaching therewith all relevant medical documents, medical prescriptions, medical certificates, supporting documents, etc. On 21st November, 2021 the petitioner again sent Email attached all relevant medical records. On 1st

December, 2021 the petitioner received one Memo via Email from the respondent authorities that he did not report for duty nor submitted required medical documents. Hence, w.e.f. 15th November, 2021 his leave would be treated as unauthorised leave. He was also informed decision over the period of 18th October, 2021 to 14th November, 2021 was yet to be taken. Asked to submit medical records again, the petitioner on the very same date 1st December, 2021 sent another Email, explained his medical condition, inability and that the Doctor had prescribed him for one month rest. Attached medical documents. The respondents authorities said the medical documents were insufficient and/or not convincing and/or acceptable without properly examining them. Again, the petitioner received Email on 6th December, 2021 from the respondent authorities that his leave would be treated as unauthorised leave. The petitioner responded by sending Email on 9th December, 2021. Again, 23rd December, 2021 the petitioner received Email from the respondent authorities, he again responded through Email on 26th December, 2021. Salary of the petitioner was stopped with effect from 15.11.2021. On 15th January, 2022 petitioner received Explanatory note from the respondent authorities, reply letter was of 18th January, 2022. On 01.02.2022 petitioner received Article of Charges through a Memorandum sent to him by the respondent authorities. Statement of Defense was sent on 10.02.2022, wherein the petitioner categorically and clearly refuted all charges brought against him. The said charges had been framed in a prejudged manner and/or not specific and/or are vague and omnibus in nature. On 30.06.2022 Inquiry Authority findings upheld the charges as

proved. The petitioner sent reply on 19.07.2022 and categorically and clearly refuted all charges brought against him. It is extremely important to mention that the respondent authorities failed to properly examine and evaluate his medical documents. Firstly, there was unavoidable circumstances and/or compelling circumstance as to the serious and grave ailments and/or medical conditions of the petitioner which prohibited the petitioner to avail prior permission. Well in advance and/or without delay, the petitioner sent all medical documents, right from 13.10.2021 to the respondent authorities several times at different points of material times. The absence and/or leave availed by the petitioner was not wilful and/or deliberate. Earlier, the petitioner had preferred writ petition before the Hon'ble Calcutta High Court in the Circuit Bench at Jalpaiguri being W.P.A. No.2894 of 2022 in the matter of Ankur Saha Vs. Bank of Baroda and Ors. challenging an order of transfer dated 01.09.2021. The petitioner was working in a branch at Siliguri. He was transferred to Rajkot. Aggrieved, this writ petition was filed as the petitioner had reasons to believe that the transfer was mala fide. However, during pendency of this Writ Application the departmental proceedings had concluded and an order of punishment for removal from service was imposed on the petitioner. The said writ petition became infructuous. After hearing the said matter, the Hon'ble High Court Single Bench was pleased to hold, inter-alia, in its solemn Order dated 02.12.2022 as follows. "...This order shall not prejudice any further proceeding that may be initiated by the petitioner at a later stage. This writ petition is disposed of." It was pertinent to mention that meanwhile during the pendency of the

Disciplinary Proceedings the petitioner had preferred one Writ Application before the Hon'ble Calcutta High Court in the Circuit Bench at Jalpaiguri being W.P.A. No.2675 of 2022 in the matter of Ankur Saha Vs. Bank of Baroda and Ors. challenging the report of the Inquiry Authority (IA) as also the said Memorandum vide Reference No.- RAJKOT: ZO: HRM: 04/50 dated 01.02.2022 and Article of Charges contained therein. After hearing the said matter, the Hon'ble Single Bench was pleased to hold inter-alia in its solemn Order dated 08.12.2022 as follows. "The final order of punishment has not been challenged. Under such circumstances the writ petition has now become infructuous. The petitioner shall file the appeal. This Court has not gone into the merits of the issues involved and the appellate authority will decide the issues independently. Such appeal shall be disposed of within two months from filing." It was pertinent to mention that during pendency of the said Writ Application, the disciplinary proceedings had concluded and a punishment for removal was imposed on the petitioner vide one Order bearing Reference No.-RAJKOT: ZO: HRM: 04/807 dated 19.11.2022 issued to him by the concerned office of the Disciplinary Authority and Zonal head (GM) purportedly in exercise of power under Sub-Regulation 5(3) read with Regulations 4 and 7 of the Bank of Baroda Officer Employees' (Discipline and Appeal) Regulations, 1976. The petitioner preferred appeal on 29.12.2022. Decision of Appeal pronounced on 03.05.2023. 17.07.2023 petitioner preferred review. Throughout the entire process of adjudication of the said appeal preferred by the petitioner no proper reasonable opportunity of hearing was provided to the petitioner by the concerned authority(ies) in

complete violation of the direction passed by the Hon'ble Single Bench of the Hon'ble Calcutta High Court. Also, the said Order passed by the concerned Appellate Authority was passed long after the stipulated two months period after the petitioner had preferred the said appeal on 29.12.2022, which was again in complete violation of the clear direction. Secondly, the Regulation 17(5) of the Bank of Baroda Officer Employees'(Discipline and Appeal) Regulations, 1976, provided that the Appellate Authority should dispose of the appeal within a period of ninety days from the date of its receipt from the appellant (the petitioner in this instant petition). In the case of the petitioner the Order against the appeal of the petitioner was passed by the concerned Appellate Authority long after the lapse of the stipulated 90 (ninety) days period. In the case of the petitioner neither at any point in time nor in the said Order passed by the concerned Appellate Authority dated 03.05.2023 any reason(s) whatsoever was recorded inwriting and/or communicated to the petitioner. Thirdly, Regulation 21 of the Bank of Baroda Officer Employees' (Discipline and Appeal) Regulations, 1976, provided that: ".....Power to relax time limit and to condone delay". If this extension of time very much after the 90 (ninety) days period and/or the Hon'ble Court stipulated two months period after the petitioner had preferred the said appeal was the requirement for the respondent authorities for adjudication of said appeal, the competent authority and/or respondent authorities did not communicate to the petitioner or show any good and sufficient reasons or sufficient cause for doing so. This clearly showed the biased, prejudiced, mala fide and negligent attitude and predisposition through which the case

had been adjudicated by the concerned authority(ies). Throughout the Disciplinary Proceeding the petitioner was deprived of principles of natural justice. The appellate authority in its said Appeal Order stated, inter-alia, in paragraph No.4 that appellant had an option of requesting virtual inquiry available in the Bank as introduced in the Bank vide Circular No. BCC BR:112:515 dated 29.08.2020. It was nowhere observed that the petitioner had ever requested for virtual inquiry during the Disciplinary Proceedings. The petitioner in the entire course of the Disciplinary Proceeding was never communicated and/or informed by the respondent authorities and/or competent authorities at any point in time about the said Circular, nor did they arrange and/or facilitate such a virtual inquiry to conduct the hearing(s) in connection with the Disciplinary Proceedings. Therefore, no effective and/or reasonable opportunity of hearing was provided to the petitioner by the respondent authorities. The petitioner first time knew about such a Circular only when it was mentioned in the said Appellate Authority Order. Throughout the Disciplinary Proceeding the petitioner was deprived of principles of natural justice. On 01.02.2022 the charges communicated to the petitioner. Among the four charges, only the first charge concerning the “unauthorised absence” was at best specific charge, rest were vague, unclear and omnibus in nature. The opinion of the empanelled Doctor was signed on MEX – 7 dated 11.02.2022. Respondent authorities did not take proper opinion of the empanelled doctor before rejecting several of his applications for the grant of sick leave and authorising the absence and/or leave availed by the petitioner due to his serious and grave ailments and/or medical

conditions. There were compelling circumstances and/or unavoidable circumstances in the case of the petitioner that ought not to have been overlooked. The absence by the petitioner was not at all wilful and/or deliberate. Blood report of the petitioner was of 17.01.2022. Appellate authority in its said Appeal Order stated inter-alia in the paragraph No.10 that the petitioner's recent blood report dated 17.01.2022 was mentioning about uric acid in blood and not hepatitis, which was absolute lie and untruth. Clear mentioning of bio-chemistry and liver function test and clear indication of hepatitis and/or viral hepatitis were there. Appellate authority in its said appeal order stated, inter-alia, at paragraph No.11 that the appellant never requested or informed the IA about his non-availability on 05.05.2022 and never requested for rescheduling the inquiry on the other day, which spoke volumes about his approach to cooperate with inquiry. This was an absolute false and incorrect statement. Time and again the petitioner informed the respondent authorities well in advance and/or without delay, about his compelling inability to attend physically the hearing(s) of the Disciplinary Proceedings. This clearly reflected how with a pre-conceived notion, prejudged and prejudiced mind the respondent authorities framed charges against him. Petitioner informed well in advance and/or without delay about his inability to attend hearing on 05.05.2022 on 30.04.2022 itself, on 02.05.2022 and then again on 03.05.2022 via Email addressed to the respondent authorities. These showed biased, prejudiced mindset of the respondent authorities. The Appellate authority in its said Appeal Order stated inter-alia in the paragraph No.16 that the conclusions drawn by the

DA after seeking the medical opinion from Bank's empanelled doctor. Apart from this, appellant was also advised by the Bank to either submit medical report from Murshidabad Hospital or present himself before the doctor at Rajkot, but the appellant gave a deaf ear to Bank's advice. This was a complete false, biased and incorrect statement. The said photocopy of the MEX-7 document clearly showed that the opinion of the doctor was taken by the respondent authorities only on 11.02.2022, long after the framing of the charges i.e., Memorandum including Article of Charges dated 01.02.2022. Page No.108 of the captioned writ petition clearly revealed that the CSO i.e., the petitioner received the physician's opinion on 02.06.2022. Also, the petitioner had mentioned in the appeal that the said opinion of the Doctor dated 11.02.2022 was never shared with him until he received the copy of the same through speed post bearing no.-EG030371811IN dated 27.05.2022. It clearly revealed that the petitioner indeed got himself checked up and treated at the Civil Hospital, Murshidabad and transmitted those documents to the respondent authorities well in advance and/or without delay regularly from time to time several times. Interestingly, in the Reviewing Authority's Order dated 30.03.2024 at paragraph No.2 it was inter-alia mentioned that at no instance did the Zonal or the Regional Authorities advise him (the petitioner) to act as per the empanelled Doctor's opinion and present himself for medical examination at Murshidabad or at Rajkot. This was absolutely contradictory to what had been stated in the said Appellate Authority's Order at paragraph no.16 and actually bolstered the point of the petitioner that the opinion shared by the said empanelled Doctor of the Bank was not in the

nature of direction or instruction or advice. The petitioner found it difficult after joining as the Branch Head/Chief Manager of the Sevarkundla Branch, Bhabnagar Region, Rajkot Zone, Gujarat to find suitable accommodation due to his natural preference of non-veg food. One of the considerable causes behind his health and medical issues could be his compulsion to get adjusted to adverse food options, because in Rajkot, Gujarat he was compelled to get adjusted vegetarian food habits as against his usual food habits that substantially surrounded non-vegetarian food – this adverse food option issue adversely impacted the health of the petitioner after he joined there as aforesaid on 08.09.2021. Also, it was pertinent to mention that non-hostile working environment was the basic limb of dignified employment. It must be made clear, the petitioner was not avoiding and/or reluctant to transferable job and/or extensive travel in connection with his said employment positions at any point in time in his career. Also, during the entire tenure of his career with the respondent Bank, the petitioner was not charged and/or convicted and/or proved for any moral turpitudes and/or misconduct(s) including but not limited to misappropriation of money, breach of trust, abuse of his employment positions etc. Pursuant to the Bank's office Circular No. HP:BR:113:261 dated 26.12.2021 inviting applications from eligible and willing officers to fill up vacancies of Internal Auditors in Bank's Zonal Internal Audit Divisions (for short, ZIADs) the petitioner applied and participated in the process of selection. Subsequently, through this said selection process the petitioner was selected as one of the internal auditors for ZAID. In this regard, a letter communication was issued

to the petitioner by the respondent authorities dated 27.04.2022, importantly, after the said Disciplinary Proceeding had been instituted and pending against the petitioner. It was extremely important in the context of this instant matter because in respect of the concerned said ZIAD selection the Bank's office Circular No. HO:BR"113:261 dated 26.10.2021 one of the mandatory eligibility criteria was that "No Disciplinary Action is pending/proposed against the officer." It was, therefore, important to state that at the time of making the application for the said ZIAD selection there was no Disciplinary Proceeding pending against the petitioner, however, at the time of the communication of his selection as the internal auditor for the ZIAD, Bangalore, by necessary implication indicated to an irreversible certainty that the respondent authorities waived and/or expunged and/or condoned and/or dropped the said Disciplinary Proceeding which was pending against the petitioner. The said representation and/or conduct of the respondent authorities gave rise to legitimate expectation in the minds of the petitioner. In no way the period of alleged unauthorised absence can be stretched till 19.11.2022. At most this time-period can be computed from the 15.11.2021 to 01.02.2022 (the date of issuing the Memorandum including the Article of Charges i.e., the institution of disciplinary proceedings against the petitioner). In view of the "MASTER CIRCULAR ON LEAVE, SPECIAL LEAVE, LEAVE FOR GOING ABROAD AND UNAUTHORSED ABSENCE" issued by the Bank vide Ref: BCC:BR:96: 284 dated 05.08.2004 wherein under its heading "Unauthorised Absence Officers-Award Staff" in Annexure – 3 point No.-10 it was provided: "No employee on unauthorised absence

shall be permitted to resume duty unless he/she submits in writing to his reporting authority (Branch Head/Regional Head/Zonal Head as the case may be) the reasons/causes of his/her unauthorised absence and permission thereof is granted in writing by the reporting authority.” Earlier as per the Order issued to the petitioner by the District Panchayat Election Officer and the District Magistrate, Alipurduar vide Order No.10 dated 16.06.2023 the petitioner duly attended training (vide Attendance Register dated 26.06.2023 from 3.00 p.m. to 5.00 p.m.) as the First Polling officer for the purpose of conduct of poll duty in the West Bengal Panchayat General Election – 2023. However, during the said poll, the petitioner was kept on stand-by and hence did not have to discharge his duty as the First Polling Officer. In this year, in the Parliament General Election – 2024 (Election to the 18th Loksabha) the petitioner had duly attended training in respect of the said Election and had duly discharged his lawful duty in the national cause as a Presiding Officer vide Trainee Code: Unless the Bank i.e., the respondent authorities forwarded to the concerned Election Authorities the name of the petitioner as an existing working employee officer of the Bank, the Election Authorities could not issue such said Orders and used the human resource of the petitioner in his discharge of said election related duties. Major penalty proceeding completely disproportionate. The burden was on the respondent authorities to prove on the preponderance of probabilities that the absence of the petitioner had been wilful and/or deliberate. The respondent authorities had not placed a single piece of convincing evidence in this regard.

3. Learned counsel appearing on behalf of the respondent nos. 1 to 6 submitted as follows. The writ petitioner viz. Ankur Saha, employee of respondent Bank was lastly posted as Chief Manager at Savarkundla Branch, Bhavnagar Region, Rajkot Zone of Bank of Baroda w.e.f. 08.09.2021. He went on sanctioned leave from 04.10.2021 to 16.10.2021 to his hometown and he was supposed to resume his duties at Savarkundla Branch, Bhavnagar Region, Rajkot Zone on and from 18.10.2021, but, the writ petitioner did not reported because of his left leg fracture as stated in his email dated 13.10.2021. Though considering the medical condition of the writ petitioner, sick leaves were granted was a clarification was sought vide email dated 20.10.2021 for his email dated 13.10.2021 wherein he stated that "I will not be able to travel back and join duty till recovery". Later, the writ petitioner vide his email dated 21.10.2021 submitted that he would be only able to report on his duties latest by 15.11.2021 only. Again on 12.11.2021, wife of the writ petitioner informed on behalf of the writ petitioner to the respondent no.3 that the writ petitioner was admitted to hospital on 10.11.2021 and also attached few documents along with discharge certificate wherein it was absolutely clear that he was discharged on 11.11.2021. Thus, inspite of having sufficient time to report on 15.11.2021, the writ petitioner failed to report on his duty on 15.11.2021 as stated in his own mail dated 21.10.2021 which compelled the respondent Bank to sought clarification regarding the same and intimated the writ petitioner that he had proceeded on an unauthorised absence without prior permission/sanction of leave from the competent authority as per the

following Banking Regulation: The Bank of Baroda Officer Employees' (Conduct) Regulations, 1976 stated the powers conferred by section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), the Board of Directors of Dena Bank in consultation with the Reserve Bank and with the previous sanction of the Central Government hereby makes the regulations. A breach of any of the provisions of these regulations should be deemed to constitute a misconduct punishable under the Bank of Baroda Officer Employees' (Disciplinary and Appeal) Regulations, 1976. Also, the Master Circular to all Branches/Offices bearing No. BCC:BR:96:284 dated 05.08.2004 clearly stated that leave of any kind cannot be claimed as of right. The writ petitioner on 21.11.2021 and 01.12.2021 once again through his email submitted the same said reason that he has been diagnosed with viral hepatitis. The writ petitioner attached some diagnosed sheets and pathological report (liver function as well as uric acid) in his email dated 21.11.2021 and further seek for sick leave till his recovery. The medical documents viz. diagnosed sheets and pathological report, forwarded by the writ petitioner were not found convincing enough for his prolong absence on taking panel doctor's advice as such. That the writ petitioner did not report to his duty, despite of giving repeated opportunities. He was informed of his unauthorised absence and loss of pay if he did not resume his duties but the writ petitioner every time took shelter of his medical papers and on other hand he applied for the post of Internal Auditor as notified on 26.10.2021. It was of utmost importance to mention here that from the date of submission of application for said post to the date of

verification of eligibility by regional office no disciplinary proceeding were pending or initiated against the writ petitioner making him qualifying for the said post. It appeared prima facie to the Zonal head including Bank Authorities that he was intentionally extending his absence and was avoiding joining in Rajkot Zone. Even after knowing the said fact, the Zonal head including Bank Authorities kept intimating the writ petitioner about his unauthorised absence and had continuously asked him to resume his duties and he did not joined his duties for the reasons best known to him. A Disciplinary Inquiry was initiated and the Inquiry Authority forwarded the finding report along with memorandum dated 01.02.2022 to writ petitioner. The writ petitioner denied all charges and allegations. Several dates of hearing were fixed and communicated to the writ petitioner i.e., on 26.04.2022 and 05.05.2022 which continued on 06.05.2022 (on telephonic request of writ petitioner due to some medical appointment on 05.05.2022), but inspite of having the knowledge about the severity of matter, the writ petitioner never himself or through his representative or virtually appeared in the hearings rather every time he refrained himself from taking part in the hearings. The respondents had served notice regarding the hearing on 05.05.2022 on 29.04.2022 through speed post as well through email and further served a reminder on 02.05.2022 at 18.41 hours but the writ petitioner once again excused to appear and intimated the respondent bank at 21.34 hours and not before that only after receiving the said reminder mail from the respondent bank that he was having an appointment on the said date. Thus, it clearly reflected the intention of the writ petitioner trying

to avoid the hearing intentionally. Thus, the writ petitioner himself avoided to appear and defend his case each time before the Authorities taking shelter of medical ground without showing lack of devotion towards his duty as he was well aware that he was the branch head in the said branch which would hinder rendering public services. Thus, every reasonable opportunity provided to the writ petitioner to defend his case was in vain. The writ petitioner nowhere ever requested or shown readiness to appear before the Authority even through virtual mode. As such, having no other option, the proceedings proceeded ex-parte and the inquiry was concluded imposing a penalty of "Removal from service, which shall not be a disqualification for future employment" for his unauthorised absence from duty for prolonged period from 15.11.2021 to 19.11.2022 vide Disciplinary Authority's Order dated 19.11.2022. During the above evaluation, it came to the knowledge of the inquiry authorities that the writ petitioner had applied for the post of internal auditors for ZIAD and also got selected for Bengaluru zone which was itself contradicting to his reasons for not resuming the duty at Rajkot. The writ petitioner being aggrieved preferred an appeal before the Appellate Authority for reconsidering the Penalty Order dated 19.11.2022 wherein conclusions were drawn on the basis of various observations that the appeal preferred by the writ petitioner had no merits as the Appellate Authority did not find any substantive ground to interfere with the Disciplinary Authority's Order dated 19.11.2022 and hence, the appeal was rejected on 03.05.2023. After the said Order dated 03.05.2023, the writ petitioner maintained silence over the matter and almost after two months, the writ petitioner on 17.07.2023

suddenly filed a Review Petition against the Appellate Authority Order dated 03.05.2023 claiming the entire Disciplinary Proceedings and outcome to be based on falsehood and prejudice. Once again on receiving the Review Application of the writ petitioner, the Reviewing Authority ascertained the entire matter of the writ petitioner and brought its observation over the case. The Reviewing Authority further confirmed the penalty imposed upon the writ petitioner and “Rejected” the Review Petition vide Order dated 27.03.2024. Reliance was placed on a recent judgement of similar nature in Anupam Das Vs Allahabad Bank and Ors., WPA No. 13189 of 2018. Therefore, it was humbly submitted that the writ petitioner was not entitled to any relief.

4. I heard the learned counsels for the parties, perused the writ petition, the affidavits and the written notes of submissions.

5. Shorn of details, the crux of the petitioner’s contentions are that after he went on a sanctioned privilege leave from 04.10.2021, he suffered a mishap and accidentally fractured his leg. He immediately informed the authorities by email on 13.10.2021 and expressed his inability to join back till he recovered. He attached all medical papers with his email. He continued to update over emails. In November, 2021, he fell ill and was admitted in a hospital on 10.11.2021 and diagnosed with viral hepatitis. Again he informed the authorities, this time through his wife’s email and attached relevant medical records. On 15.11.2021, he was surprised to receive a response from the respondent authorities that merely forwarding email for extension of medical leave could not be considered. This was despite the fact that all

relevant medical certificates were sent. To his utter surprise, on 01.12.2021 he received a memo vide email that he did not report for duty nor submitted required medical documents and therefore, the respondent stated that his leave would be treated as unauthorised leave. He was asked to submit medical papers again. On the very same date i.e., on 01.12.2021 he sent another email, explained his medical condition and stated that the Doctor had prescribed a month's rest. Relevant medical documents were attached. Yet, he again received an email on 06.12.2021 claiming his leave to be unauthorised. Exchange of emails continued. The salary of the petitioner was stopped with effect from 15.11.2021. On 01.02.2022, the petitioner received the purported article of charges. Statement of defence was sent on 10.02.2022 wherein the petitioner categorically refuted all charges. On 30.06.2022, the Inquiry Authority upheld the charges as proved. The petitioner sent reply on 19.07.2022. Incidentally, the petitioner had earlier challenged his transfer from Siliguri to Rajkot by filing a writ petition before this Court. But, during pendency of this writ application, the departmental proceeding had concluded and an order of punishment was imposed. So, the writ petition became infructuous. During pendency of the disciplinary proceeding the petitioner preferred another writ application challenging the report of the Inquiry Authority as also of the Memorandum and the Articles of Charges. This Court granted liberty to file an appeal as the final order of punishment had not been challenged. It is pertinent to mention that the petitioner could not have thereafter joined back without a formal permission

of the respondent authorities. The Petitioner's appeal was turned down on 03.05.2023. Even his review application was dismissed.

6. The first contention of the petitioner in challenging the proceeding is irrefutable in as much as the Appellate Authority passed its order long after the stipulated two months' period after the petitioner had preferred the appeal i.e., on 29.12.2022. Regulation 17(5) of the Bank of Baroda Officer Employees' (Discipline and Appeal) Regulations, 1976 purportedly provided that the Appellate Authority should dispose of the appeal within 90 days from the date of receipt. More importantly, this Court had stipulated two months' period within which the appeal proceeding had to be concluded.

7. It is the further contention of the petitioner that throughout the proceeding, the petitioner was deprived of a proper opportunity of hearing. The petitioner was never informed by the respondent authorities at any point about a circular, which provided for arranging or facilitating a virtual inquiry that was available in the bank. Therefore, even on this score it can fairly be inferred that no effective or reasonable opportunity of hearing was provided to the petitioner.

8. The next contention of the petitioner was that amongst the charges communicated on 01.02.2022, only the first charge concerning "unauthorised absence" was a specific one.

9. The petitioner's further contention related to the biased manner in which certain steps were allegedly taken during the disciplinary proceeding. First, the respondent authorities did not appear to have taken the opinion of

an empanelled doctor before rejecting his applications for grant of sick leave and authorising the absence or leave due to his serious ailment. Moreover, the Appellate Authority, in its order, came to a perverse finding that the blood report of the petitioner dated 17.01.2022 mentioned about Uric Acid in blood and not Hepatitis. This appears to be an error, whether deliberate or not, on the face of the record.

10. The next instance of bias, as canvassed by the petitioner, is the finding of the Appellate Authority that the appellant had never requested or informed the IA about his non-availability on 05.05.2022 and never requested for rescheduling the inquiry. The petitioner relied on emails to show that he had informed the authorities well in advance about the inability to attend the hearing on 05.05.2022, on numerous occasions.

11. It is indeed surprising that in a single disciplinary proceeding, there could be so many irregularities, instances of breach of principles of natural justice and so many errors on the face of the record that would have a direct bearing on the question of whether the petitioner could be punished for the unauthorised absence or not.

12. The petitioner's further case is that the reviewing authority differed with the Appellate Authority on the point whether the petitioner was advised by the Zonal or Regional Authorities to act as per the empanelled doctor's opinion and present himself for medical examination at Murshidabad or at Rajkot.

13. The orders passed by the respondent authorities are not only replete with perverse findings and absence of adherence to principles of natural justice, to say the least, but are also quite insensitive and exceedingly harsh. One wonders as to how the respondent authorities could be so unempathetic about serious afflictions of its employee like fracture of leg and suffering from Hepatitis. Instead of extending a helping hand, it appears that from the very beginning, the respondent authorities had acted with a pre-conceived mind to somehow punish the petitioner and get rid of him. Whether this was because of the litigations initiated by the petitioner or not is anybody's guess.

14. However, it is amply clear from the materials available that the petitioner was given a raw deal by the respondent authorities, which is not sustainable in law, not only because of the violations of principles of natural justice committed by them at different stages, but also because of the number of perverse findings made by different authorities over diverse issues like informing from beforehand about the inability to attend inquiry or the findings in the blood report.

15. The sentence imposed too, of removal from service, was arbitrary and exceedingly harsh, especially considering the fact that the prolonged absence of the petitioner was due to reasons beyond his control. Fracture of a leg is no mean thing. Nor is his suffering from Hepatitis a simple issue. Yet, the respondent authorities chose to be as ruthless as possible. This is besides the fact that there were glaring examples of violations of principles of justice and perverse finding of facts as discussed earlier.

16. It is also apparent from the circular relied upon that an employee could not resume duty unless he is permitted to do so by concerned authorities. So, it is abundantly clear that if the petitioner's absence was declared by the respondent authorities to be unauthorised, he could not have on his own and without permission of such authorities joined back.

17. In view of the above discussions and in the interest of justice, the order of removal from service bearing reference No.- Rajkot: ZO: HRM: 04/807 dated 19.11.2022 including the memorandum, the Articles of Charges contained therein, the findings of the inquiry authority and the order of the Executive Director and Appellate Authority dated 03.05.2023 and all subsequent proceeding in connection with the purported disciplinary proceeding are quashed and set aside. The petitioner shall be allowed to resume service forthwith with full back wages.

18. With these observations, the writ petition is disposed of.

19. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

20. Parties shall act on a server copy downloaded from the official website of this Court.

(Jay Sengupta, J.)