

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

WPA 773 of 2022

IA No. CAN 1 of 2023

Ghanashyam Gurung

Versus

The State Bank of India & Ors.

Mr. Bikramaditya Ghosh

Ms. Supriya Singh

.....For the Petitioner.

Mr. Momenur Rahman

.....For the State.

Hearing Concluded On :15.05.2024

Judgment on : 22.05.2024

Krishna Rao, J.:

1. The petitioner has filed the present application praying for setting aside the report dated 24th December, 2019, submitted by the Enquiry Officer, the respondent no. 5, the second show cause notice dated 26th December, 2019, the final order of punishment dated 30th December,

2019, issued by the Disciplinary Authority, the respondent no. 3 herein and the order dated 7th October, 2021 passed by the Appellate Authority being the respondent no. 4. On 12th December, 2019, when the petitioner was working as Senior Assistant, State Bank of India, Hamiltonganj, Alipurduar was served with the Memorandum dated 12th December, 2019 with the allegation of three charges and called upon the petitioner to submit his reply to the charges within two days from the date of receipt of the Memorandum failing which it will be construed that the petitioner has nothing to offer in his defence and the bank will be free to take such action against the petitioner. On receipt of the said Memorandum, by a letter dated 16th December, 2019, the petitioner has requested the Regional Manager to grant 15 days time to submit proper reply to the said Memorandum. On 16th December, 2019, the Disciplinary Authority had again issued a notice informing the petitioner that the bank has decided to hold a departmental enquiry into the charges framed against the petitioner by a Memorandum dated 12th December, 2019. It was also informed to the petitioner that Shri Sunil Seth, Chief Manager, State Bank of India, Domestic Enquiry Cell, Local Head Office, Kolkata will hold the enquiry against the petitioner and the petitioner was directed to appear before the Enquiry Officer on the date, time and venue as fixed by the Enquiry Officer. On receipt of the notice dated 16th December, 2019, the petitioner had sent a detailed reply on 19th December, 2019 by denying the charges leveled against the petitioner and requested to preserve all the relevant CCTV footages related to their interaction with Branch functionaries which

will easily prove his innocence. On 17th December, 2019, the Enquiry Officer had issued a notice to the petitioner fixing the date of preliminary enquiry on 20th December, 2019 at 10.00 a.m. Though the notice was received by the petitioner for hearing of the preliminary enquiry but the petitioner did not appear before the Enquiry Officer. On 21st December, 2019, the Enquiry Officer has again issued a notice to the petitioner by fixing the date of preliminary enquiry on 23rd December, 2019. On 23rd December, 2019, the petitioner has not appeared and on 24th December, 2019, the Enquiry Officer submitted enquiry report to the Disciplinary Authority. On 26th December, 2019, the Disciplinary Authority had issued a second show cause notice to the petitioner informing the petitioner that after going through the enquiry report, the Disciplinary Authority is proposed to inflict the punishment of dismissal without notice under Clause 6(a) of the Memorandum of Settlement for Award Staff dated 10th April, 2022, further gratuity payable to the petitioner will be forfeited as per Section 4(6)(a) of the Payment of Gratuity Act, 1972. The Disciplinary Authority by the said second show cause notice, had advised the petitioner to appear before him on 27th December, 2019 for personal hearing and to represent his case about the quantum of punishment if the petitioner so desire.

- 2.** By a letter dated 30th December, 2019, the Disciplinary Authority has forwarded a penalty order to the petitioner by imposing the penalty of “Dismissal without notice” under Clause 6(a) of the Memorandum of

Settlement dated 10th April, 2002, on the disciplinary proceedings for Award Staff. Further, Gratuity payable to the petitioner be forfeited as per Section 4, Sub-Section 6(a) of the Gratuity Act, 1972. Being aggrieved and dissatisfied with the order of punishment issued by the Disciplinary Authority, the petitioner has preferred an appeal before the Appellate Authority and the Appellate Authority by an order dated 7th October, 2021, has rejected the appeal of the petitioner and hence the petitioner has filed the present writ application.

3. Mr. Bikramaditya Ghosh, Learned Advocate representing the petitioner submits that the Disciplinary Authority had issued the Memorandum of Charge on 12th December, 2019 by giving only two days time to the petitioner to submit his reply. As two days time was not sufficient for the petitioner to give appropriate reply to the charges leveled against the petitioner, the petitioner has requested for 15 days time to submit his detailed reply. In spite of receipt of the request submitted by the petitioner, on the same day i.e., on 16th December, 2019, the Disciplinary Authority had appointed an Enquiry Officer and directed the petitioner to appear before the Enquiry Officer. On 19th December, 2019, the petitioner had submitted a detailed reply by denying the charges leveled against the petitioner. He submits that in the meantime on 17th December, 2019, the Enquiry Officer had issued a notice to the petitioner by fixing the date of preliminary hearing on 20th December, 2019 at 10 a.m. He submits that on 18th December, 2019, when the petitioner was on duty had suffered by Bifascicular Block CAG–

Myocardial Bridging and from the office itself, the petitioner was taken to the local Government Hospital and thereafter on 19th December, 2019, the petitioner was referred to North Bengal Medical College and Hospital (NBMCH), Department of Cardiology for better management and for consideration of pacemaker placement.

4. Mr. Ghosh submits that by a letter dated 23rd December, 2019, the department of the petitioner i.e., the Bank's Medical Officer, Administrative Office, Siliguri has transferred an amount of Rs. 3 lakhs to the General Manager, Neotia Getwel Health Care Center, Siliguri being the treatment charges of the petitioner. He submits that the petitioner was seriously ill and was under medical treatment at Neotia Getwel Health Care Center, Siliguri from 20th December, 2019 to 28th December, 2019.
5. Mr. Ghosh submits when the petitioner was under medical treatment, unfortunately his mother was also passed away on 20th December, 2019. He submits that just after two days of his discharge from hospital, the petitioner has received the order of punishment dated 30th December, 2019, wherein the petitioner came to know that the Enquiry Officer had completed the enquiry proceeding and had submitted his report with the Disciplinary Authority and the Disciplinary Authority on the basis of enquiry report, had passed the impugned penalty order of punishment against the petitioner.

- 6.** Mr. Ghosh submits that the petitioner was not provided with the list of documents and list of the prosecution witnesses relied upon by the Enquiry Officer. He also submits that the enquiry report was never served upon the petitioner and no opportunity was given to the petitioner to take exception to the enquiry report. He further submits that the petitioner had no knowledge as to what are the documents were exhibited by the Enquiry Officer during the enquiry and how many witnesses have been examined before the Enquiry Officer on the basis of which the Enquiry Officer has come to the conclusion that the alleged charges against the petitioner is proved.
- 7.** Mr. Ghosh submitted that no opportunity was given to the petitioner to cross-examine the witness and no opportunity was given to the petitioner to adduce evidence on behalf of the petitioner. He submits that no second show-cause notice dated 26th December, 2019, was served upon the petitioner.
- 8.** Mr. Ghosh submits that the Disciplinary Authority had issued the Memorandum of Charges against the petitioner on 12th December, 2019 and without considering the request of the petitioner by allowing further time to submit reply to the charges leveled against the petitioner and immediately on 16th December, 2019, the Enquiry Officer was appointed and the Enquiry Officer on the very next date i.e. on 17th December, 2019 has fixed the preliminary enquiry on 20th December, 2019 but on the said date, the petitioner was under medical treatment at Neotia Getwel Health Care Center, Siliguri. The Enquiry Officer had

again issued a notice on 21st December, 2019 by fixing another date of preliminary hearing on 23rd December, 2019. He submits that the bank had the knowledge that the petitioner was under medical treatment and admitted in hospital but the bank continues with the enquiry.

- 9.** Mr. Ghosh submits that as per the case of bank, two notices were issued by the Enquiry Officer to the petitioner for preliminary hearing but second notice was not served upon the petitioner and during both the dates of preliminary hearing, the petitioner was in hospital as indoor patient for his treatment. He submits that the Enquiry Officer has not conducted any regular hearing.
- 10.** Mr. Ghosh submits that without proper enquiry, the Enquiry Officer has treated both enquiries as ex parte and submitted enquiry report to the Disciplinary Authority.
- 11.** The Disciplinary Authority without supplying the copy of the enquiry report to the petitioner had issued second show cause notice by proposing punishment but the second show cause notice was also not served upon the petitioner and on 30th December, 2019, the Disciplinary Authority has issued penalty order of dismissal from service against the petitioner.
- 12.** He further submits though the petitioner had preferred an appeal but the Appellate Authority has also not considered the circumstances on which the petitioner was not able to appear before the Enquiry Officer

but only taking into consideration of the order passed by the Disciplinary Authority had rejected the appeal filed by the petitioner.

13. *Per contra*, Mr. Momenur Rahman, Learned Advocate representing the bank submitted that a serious charge was leveled against the petitioner and the Memorandum of Charges was duly served upon the petitioner on 12th December, 2019, giving an opportunity to the petitioner to file reply to the said charges but instead of submitting the reply within two days after the period of four days, the petitioner had submitted his representation requesting 15 days time to file reply knowing fully well that on 31st December, 2019, the petitioner is going to be superannuated from his service.
14. Mr. Rahman, Learned Advocate representing the bank submits that even on 16th December, 2019, the Disciplinary Authority had informed the petitioner about the appointment of Enquiry Officer and advised the petitioner to appear before the Enquiry Officer but inspite of receipt of the said request, the petitioner has not appeared before the Enquiry Officer. He further submits that on 17th December, 2019, the Enquiry Officer has also issued notices to the petitioner to appear for preliminary enquiry before the Enquiry Officer twice but inspite of receipt of the notice, the petitioner failed to appear before the Enquiry Officer and thus the Enquiry Officer had submitted enquiry report to the Disciplinary Authority. The Disciplinary Authority has forwarded enquiry report to the petitioner but the petitioner refused to receive and has not submitted any reply to the Disciplinary Authority. The

Disciplinary Authority also served second show cause notice by intimating the proposed punishment and personal hearing but the petitioner has neither submitted reply nor had appeared in person and as such the Disciplinary Authority has no other alternative to impose penalty upon the petitioner by an order dated 30th December, 2019.

15. Mr. Rahman submitted that the petitioner was going to be superannuated from his service on 31st December, 2019 and the said fact was within the knowledge of the petitioner and to avoid the proceeding till his superannuation, the petitioner has not attended the enquiry. He submits that the proper opportunity of hearing was provided to the petitioner but the petitioner has not availed the opportunity and now the petitioner cannot say that the petitioner was not given an opportunity of hearing. He submits that the Bank has complied with all procedure and passed an order of penalty against the petitioner.

16. Heard the Learned Counsel for the respective parties, perused the materials on record. The charges leveled against the petitioner are as follows:

“Charge No. 1 : You had with malafide intent siphoned off funds from deceased customers’ accounts as per the following details:

S.No	A/c. No.	Name	Amount Debited	Date of Txn.	Customer died on
1	11235755181	Sila Topwar	49000/-	05.11.2019	25.09.2018
			49000/-	07.11.2019	-do-
			49000/-	19.11.2019	-do-
			49000/-	21.11.2019	-do-
			49000/-	25.11.2019	-do-

2	11235727845	Joysing Lama	40000/-	03.10.2019	22.09.2017
3	34008196399	Sitamani Kamkar	49000/-	05.09.2019	26.11.2016
			49000/-	13.09.2019	-do-
			12000/-	30.09.2019	-do-
4	34053572429	Daniel Munda	29000/-	05.11.2019	23.10.2018

Charge No. 2 : You had put through initial debit transactions of Rs. 100/- each in inoperative accounts for making the accounts operative and using your own user ID 4594029, fraudulently siphoned off funds lying in those accounts as per the following details:

S. No	A/c. No.	Name	User Id	Amount Debited	Date of Txn.	KYC updated on
1	11235680420	Lakho Kharia	4594029	41700/-	21.11.2019	16.12.2014
2	31449597335	Jemas Orao	-do-	19000/-	30.09.2019	30.09.2010
3	11235756468	Tulsi Ram Gurung	-do-	49000/-	03.10.2019	17.01.2018
				49000/-	04.10.2019	-do-
				49000/-	09.10.2019	-do-
				49000/-	15.10.2019	-do-
				49000/-	24.10.2019	-do-
				26000/-	07.11.2019	-do-
4	30371951529	Mungri Urao		34000/-	07.11.2019	22.10.2019

Charge No. 3 : Due to the above serious irregularities committed by you, Bank is likely to incur a financial loss to the tune of Rs.7,89,700/-. In addition to the financial loss attributable to you, the Bank has suffered serious reputational loss due to this malafide action on your part.”

As per the Charge Memo, two days time was granted to the petitioner to submit reply to the charges. The petitioner has requested to allow 15 days time to the petitioner to submit reply but instead of allowing the petitioner to submit his reply, the Disciplinary Authority by a letter dated 16th December, 2019, appointed an Enquiry Officer

and directed the petitioner to appear before the Enquiry Officer. On 19th December, 2019, the petitioner had submitted his detailed reply to the Disciplinary Authority to the charges leveled against the petitioner. On 17th December, 2019, the Enquiry Officer had issued notice to the petitioner by fixing the date of preliminary hearing on 20th December, 2019.

- 17.** On 18th December, when the petitioner was on duty had suffered Bifascicular Block CAG-Myocardial bridging and was taken to the Government Hospital from where on 19th December, 2019, he was referred to North Bengal Medical College and Hospital, Department of Cardiology. The petitioner was thereafter taken to Neotia Getwel Health Care Center for further treatment wherein the petitioner was admitted from 20th December, 2019 till 28th December, 2019, wherein the petitioner under gone Coronary Artery Angiography. In the meantime the mother of the petitioner also passed away on 20th December, 2019.
- 18.** The respondent bank relied upon the communication dated 21st December, 2019, issued by the Enquiry Officer to the petitioner wherein again a date for preliminary enquiry was fixed on 23rd December, 2019. The respondents have not filed any documents to show that the second notice was served upon the petitioner. On the said date, the petitioner was admitted in the hospital for his treatment. Without considering the fact that the notice was not served upon the petitioner and the petitioner was admitted in the Hospital for his treatment, the Enquiry Officer has submitted enquiry report to the

Disciplinary Authority by holding that the charges against the petitioner as proved.

- 19.** The Enquiry Officer without conducting any regular enquiry and without examining any witnesses has taken into consideration of all alleged documents and submitted enquiry report. Though the Enquiry Officer has submitted enquiry report to the Disciplinary Authority but the Disciplinary Authority has not supplied the enquiry report upon the petitioner.
- 20.** On 26th December, 2019, the Disciplinary Authority has issued a second show cause notice to the petitioner by proposing the penalty of dismissal from service without notice but the said show cause notice was also not served upon the petitioner as the petitioner was admitted in the hospital. The respondent bank was well aware of the fact that the petitioner was admitted in the hospital as the bank has sanctioned an amount of Rs.3,00,000/- for the treatment of the petitioner and directly transferred the said amount to the General Manager, Neotia Getwel Health Care Center, Siliguri.
- 21.** On 30th December, 2019, the Disciplinary Authority had issued penalty order of dismissal from service against the petitioner.
- 22.** Considering the above facts, this Court finds that the respondent bank had the knowledge that the petitioner is going to be superannuated from his service on 31st December, 2019 and only with the intention to complete the enquiry against the petitioner before his superannuation,

have hurriedly proceeded with the enquiry. The petitioner was not given sufficient time to submit his reply to the Memorandum of Charges. Immediately within four days from the date of issuance of Memorandum of Charges, on 16th December, 2019, the Enquiry Officer was appointed. The Enquiry Officer within a day i.e. on 17th December, 2019, had issued notice for preliminary hearing on 20th December, 2019. As the petitioner was admitted in hospital and he could not attend the preliminary hearing and again on 21st December, 2019, the Enquiry Officer had issued notice by fixing the date of preliminary hearing on 23rd December, 2019 though the Bank had the knowledge that the petitioner was admitted in hospital and the notice dated 21st December, 2019, was also not served upon the petitioner.

- 23.** This Court finds that the enquiry officer had issued notices for preliminary hearing but had submitted enquiry report on 24th December, 2019, recording that *“the preliminary hearing has been conducted Ex-Parte under the advices of the DA and under the circumstances, the regular hearing of the enquiry was also conducted Ex-parte on the same day.”*

From the above recording of the Enquiry Officer, it is crystal clear that the Enquiry Officer has not acted independently and without giving any opportunity of hearing to the petitioner for regular enquiry has come to the conclusion, the regular enquiry concluded Ex-Parte.

- 24.** The Enquiry Officer had not issued any notice of regular enquiry and suo moto come to the conclusion that the regular enquiry is concluded

ex-parte. The Enquiry Officer has not examined any witness but come to the conclusion that all the charges have been proved. The Enquiry Officer without examine any witnesses had relied upon the documents but it is not clear how the documents comes to the hand of the Enquiry Officer and how the said documents have been proved.

- 25.** The Appellate Authority in his order dated 7th October, 2021, recorded that :

“The Preliminary and the Regular Hearing were held ex-parte as neither the CSE nor his representative attended. The Enquiry Officer submitted the Enquiry Report on 24/12/2019, holding all the 03 (three) charges as proved. The Enquiry Report was sent through two officials of Zonal Office, Siliguri for service to him in person to enable him to make his submission (if any) on the findings of the EO. The CSE, however, avoided to receive the Enquiry Report.

After examining the enquiry report and all relevant records, papers and documents and in absence of any submission by the CSE, the Disciplinary Authority concurred with the views of the EO and held all the 3 charges as proved.”

The Appellate Authority also failed to consider that on 24th December, 2019, the petitioner was admitted in the hospital but recorded that the petitioner had avoided receiving the enquiry report. The contention of the Appellate Authority is also not having any base as no evidence is brought on record to say that the petitioner has avoided to receive enquiry report.

- 26.** In view of the above, enquiry report dated 24th December, 2019, the order passed by the Disciplinary Authority dated 30th December, 2019

and the order passed by the Appellate Authority dated 7th October, 2021, are set aside and quashed.

27. WPA No. 773 of 2022 is allowed. Accordingly, **CAN 1 of 2023 is disposed of.**

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)