

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Original Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.O 401 of 2012

Reserved on : 12.03.2024

Pronounced on: 21.05.2024

Sri Arun Kumar Ghosh

...Petitioner

-Vs-

Canara Bank & Ors.

...Respondents

Present:-

Mr. Partha Sarathi Bhattacharya

Mr. Debashis Banerjee

Mr. Rakesh Jana

... for the Petitioner

Rajarshi Bharadwaj, J:

1. The present petition has been initiated to contest the charge-sheet dated 08.10.2007 and its accompanying articles of charges, alongside the entirety of the inquiry proceedings conducted against the petitioner. Furthermore, it challenges the findings of the Enquiry Officer dated 03.07.2008, as well as the orders issued by the disciplinary authority on 26.11.2008. Additionally, it disputes the correspondence from the respondent Bank, referred to as the "respondent no. 1," specifically the letters dated 04.08.2009 and 17.08.2009, along with the order dated 16.04.2010 from the Appellate Authority.

2. The facts in a nutshell are that the petitioner was appointed on 21.02.1974 as a clerk and was posted at Bistupur in Jamshedpur upon qualifying the recruitment process in the respondent Bank. He was subsequently promoted as a scale-1 officer and was posted at Konark in Odisha on 15.04.1982. The petitioner at the relevant point was also actively involved in the Employees' organization activities and thus stood in the election of officers' association in the year 1995.

3. The petitioner was thereafter promoted to scale-II post as a manager and was posted to Patna for Regional Inspection of the Bank. The petitioner joined the Zonal Inspectorate in Hyderabad in 2001, following the absorption of the Patna Regional Inspectorate into the Hyderabad Inspectorate. While serving in this capacity, the petitioner conducted inspections on branches in West Bengal, Assam and Bhubaneswar, resulting in substantial monetary recoveries for the respondent Bank. Due to the nature of his duties, which involved identifying weaknesses, the petitioner accrued adversaries. Nevertheless, his commendable work as an Inspector was recognized through letters of appreciation from the respondent Bank's senior management.

4. Following five years of service in the Bank's Inspectorate, the petitioner was assigned to the Housing Cell in Hare Street, Kolkata in around July 2004, then relocated to the Housing Cell in Sarat Bose Road, Kolkata in August 2004. The primary function of these housing cells was to ensure the disbursal of housing loans, with the respondent bank imposing rigorous targets on loan disbursal amounts. A communication from the General Manager of the Circle Office dated 15.09.2005 revealed that the respondent bank had set a target of Rs. 4 crores for the petitioner to achieve. Due to his cautious approach, the petitioner, as a manager, refrained from recommending dubious loans forwarded by higher management, thus failing to meet the targets. The respondent Bank's relentless pursuit of targets compelled employees to hastily approve numerous loans.

5. However, the petitioner was thereafter transferred to a newly inaugurated Berhampur Branch as the Branch-in-Charge, designated as the Manager by a communication dated 16.11.2005 and thus was relieved from his posting in the housing cell while he was not on duty due to illness. The petitioner joined the Berhampur Branch and assumed his charges on 8.12.2005. Given that the petitioner assumed primary responsibility for the Berhampur branch, he was tasked with stringent objectives to meet and attain the operational costs necessary for the branch's sustainability. He faced persistent and significant pressure from the management to meet these objectives, failure to which would have resulted in branch closure. Notably, the Berhampur branch, belonging to the respondent bank, was situated in a commercially vibrant area. Within a 1.5-kilometer radius of the said branch, numerous established banks operated profitably, against whom the petitioner was expected to compete for clientele.

6. On 24.12.2005, a program known as the "CAN TRADE Scheme" (hereinafter referred to as "the scheme") was instituted by the respondent bank to ease the criteria for granting and monitoring working capital loans (OCC loans). Before the implementation of this scheme, bank officials were required to conduct visits and inspections to monitor loans within one month and borrowers had to submit monthly stock statements (which could be extended from six months to twelve months depending on security and schemes like Traders Scheme or SOCC). Following the implementation of the scheme, the frequency of visits and inspections was extended to three months and borrowers were permitted to submit their stock statements every six months. During the petitioner's incumbency as the branch manager entrusted with the oversight of Baharampur Bank, he duly executed multiple loan disbursements pursuant to the prescribed scheme.

7. However, during the petitioner's absence on 14.05.2006, a transfer order was issued by the Deputy General Manager, transferring the petitioner to Asansol, effective from 19.07.2006, formally conveyed to the petitioner on

20.07.2006. Concurrently, a complaint was lodged by a borrower against one Mr. Dhananjay Sarkar, the Divisional Manager, alleging undue interference during a loan inspection which was handed over to the petitioner. However, such involvement in borrower selection was unwarranted, evident from the altercation during the inspection, prompting the petitioner to seek appropriate action against the Divisional Manager.

8. In a communication dated 21.07.2006 addressed to the General Manager, the petitioner highlighted instances of non-cooperation and insolence exhibited by office staff, specifically by one Mr. Sadhukhan and one Mr. Ajoy Majumder.

9. As the sole sanctioning authority, the petitioner's responsibilities primarily encompassed branch procurement and loan sanctioning and not direct oversight of loan follow-ups. However, due to the negligence of one Mr. Ajoy Majumder in verifying stocks for loan accounts, the petitioner was compelled to issue inter-office directives on 27.07.2006, emphasizing the necessity of obtaining stock statements and enforcing penal charges for delayed submissions, as per the Working Capital Finance Manual.

10. Following the transfer, the petitioner commenced duties at the Asansol branch on 12.08.2006. Subsequently, a show-cause notice dated 02.05.2007 was issued to the petitioner, alleging irregularities discovered by the disciplinary authority. The petitioner was further issued a Charge-Sheet dated 08.10.2007, alleging various irregularities. Consequently, on 10.11.2007, the petitioner responded to the aforementioned charge-sheet. Seeking access to pertinent documents for the preparation of his defence, the petitioner made formal requests on 20.11.2007, 16.01.2008 and 04.03.2008. Despite repeated pleas, the requested documents were not furnished.

11. On 01.12.2007, the respondent bank duly appointed an enquiry authority and presenting officer. During the preliminary enquiry held on 14.01.2008, the petitioner pleaded not guilty to the charges levelled against him. However, the enquiry proceeded on 29&30.4.2008 without the

production of the essential documents as requested by the petitioner. Consequently, the enquiry officer prepared a report based on the furnished information's, and forwarded it to the disciplinary authority.

12. On 05.08.2008, the petitioner was served with the enquiry report, to which he responded on 08.09.2008. Following deliberation, on 26.11.2008, the disciplinary authority issued an order of compulsory retirement to the petitioner in terms of Regulation 4(h) of the Canara Bank Officers & Employees (Discipline and Appeal) Regulation 1976. Subsequently, on 11.05.2009, the petitioner lodged an appeal against the disciplinary verdict. However, the appellate authority passed an order thereby confirming the order of the Disciplinary Authority.

13. Further, through correspondence dated 04.08.2009, the Deputy General Manager of Canara Bank notified the petitioner, urging him to receive the agreed-upon sum of Provident Fund from Canara Bank's Asansole Branch, contingent upon the execution of a receipt properly discharged with the requisite stamp duty and witnessed by the Branch In-Charge of Canara Bank, Asansole Branch, on or before 12.9.2009. It was further highlighted that due to identified deficiencies and resultant financial detriment to the respondent Bank, the gratuity and the Bank's contribution to the provident fund of the petitioner had been withheld.

14. Thus, the petitioner being discontented with the charge-sheet dated 08.10.2007, the charges outlined therein, the entire enquiry process, findings of the Enquiry Officer dated 03.07.2008, disciplinary orders of 26.11.2008, Bank's letters of 04.08.2009 and 17.08.2009, the Appellate Authority's order of 16.04.2010 and the reviewing authority's communication of 26.10.2011 has preferred the present petition.

15. The Learned Counsel representing the petitioner has advanced the following arguments:

- I. The petitioner asserts that the entirety of the investigative proceedings, since its inception, relies on hearsay evidence move specifically, during

- the preliminary investigation forming the basis for issuing the charge-sheet against the petitioner, individuals whose statements were allegedly recorded by the investigator were not presented as witnesses to authenticate their statements. Consequently, this denied the petitioner the opportunity to cross-examine the said individuals.
- II. The respondent bank, upon commencing disciplinary proceedings via a charge-sheet dated 08.10.2007, failed to recognize that misconduct necessitates malicious intent. Mere negligence, errors or lapses in judgment, even if present in the performance of duties by the petitioner, do not constitute misconduct unless accompanied by malicious intent.
- III. The Bank and its representative acting as the inquiry officer neglected the obligation to forward requests for document submission to the relevant authority holding custody of said documents. The inquiry authority failed to acknowledge that it was the custodian's responsibility to produce the requested documents at the specified time and place. The petitioner suffered prejudice due to the non-production of documents, particularly registers maintained in prescribed forms as mandated by the Bank.
- IV. The inquiry officer, in assessing higher credit limits for fixed assets, failed to comprehend that these limits were established strictly in accordance with the turnover method outlined in the working capital finance manual. The officer also overlooked that loan calculations were based on projected turnover, as indicated in the sanction memos and reiterated by the petitioner in his response to the inquiry officer.
- V. Furthermore, the inquiry officer failed to recognize that as the sanctioning authority, it was impractical for the petitioner to conduct post-sanction visits personally. Such visits were intended to be carried out by subordinates, as outlined in the relevant sections of the Working Capital Finance Manual. Upon noticing irregularities in post-sanction visits, the petitioner was compelled to issue a letter to ensure

compliance, which had to be delivered to the subordinate officer manually.

- VI. The disciplinary authority, subsequent to the inquiry conducted by the officer, erroneously operated under a flawed and misconceived notion that all accounts were approved under the open cash credit framework, rather than the Scheme, despite clear indications in sanction memorandums P-10, P-11, P-18. These loans were unequivocally sanctioned under the CANTRADE Scheme, implemented during the Bank's centenary year, explicitly specifying the submission of stock statements every six months and inspections every three months.
- VII. The disciplinary authority, in imposing the penalty of compulsory retirement, failed to provide any rationale for deeming such a penalty proportionate with regards to the petitioner. Without such justification regarding the proportionality of the punishment, the order imposing compulsory retirement is inherently flawed, as this punishment effectively severs the employer-employee relationship between the respondent bank and the petitioner. Therefore, due to the absence of reasons justifying the proportionality of the punishment, the separate order imposing punishment should be annulled.
- VIII. The respondent Bank has violated the principles of disciplinary proceedings by attempting to enforce a secondary punishment for purported charges against the petitioner, thereby subjecting him to double jeopardy. Under a mistaken understanding, the respondent bank imposed this secondary punishment, in addition to compulsory retirement, by confiscating the gratuity amount and the Bank's contribution to the provident fund. Moreover, the Bank erred in its letter dated 17.08.2009 by assuming that regulation 19 of the Canara Bank Staff Provident Fund Regulation would be applicable to the petitioner, despite the petitioner not being subjected to dismissal but rather to compulsory retirement.

- 16.** Learned Counsel on behalf of the Respondent Bank has contended that:
- I. The petitioner, while serving as the Branch-in-Charge at the Berhampur, West Bengal Branch of the respondent bank from December 8, 2005 to August 12, 2006, facilitated the disbursement and sanctioning of several OCC loans/limits in clear breach of the prescribed regulations and procedural standards of the bank. Despite being fully cognizant of the established rules and guidelines, the petitioner intentionally disregarded them, thereby exhibiting conduct deemed unfitting for an officer of the respondent bank.
 - II. The petitioner, while serving as Branch-in-Charge at Berhampur Branch, engaged in unauthorized sanctioning and disbursement of OCC limits, contravening established protocols. An inquiry unearthed these transgressions, prompted the authority to seek clarification from the petitioner. The misconduct led to substantial financial detriment for the Respondent Bank, totalling approximately Rs. 1,57,78,387/-, in addition to accrued interest and ancillary costs. The petitioner's method of facilitating financial assistance through intermediaries was designed to exploit the situation for personal gain. The petitioner's actions not only compromised the integrity of the banking institution but also jeopardized its financial stability. The investigation highlights a breach of fiduciary duty and a blatant disregard for regulatory frameworks governing financial transactions. The subsequent proceedings seek to rectify the losses incurred and hold the petitioner accountable for his actions.
 - III. It is asserted that in light of the substantial financial detriment suffered by the Respondent Bank attributable to the demonstrated wrongdoing by the petitioner, the competent authority directed the forfeiture of Gratuity and the Bank's Contribution to the Provident Fund. Such determination and subsequent measures undertaken by the respondent bank fell squarely within its purview of authority and were duly

authorized by pertinent regulations. The stance and actions of the Respondent Bank were duly communicated to the petitioner through correspondence dated 04.08.2009 and 17.08.2009. Additionally, it is emphasized that in accordance with the Canara Bank Provident Fund Regulations and provisions outlined in the Payment of Gratuity Act, the forfeiture of the petitioner's Gratuity and Bank's Contribution to the Provident Fund was warranted given the financial losses incurred by the Bank as a result of the petitioner's proven misconduct. The petitioner was subjected to the penalty of "Compulsory Retirement," thereby effectively terminating his employment with the Bank.

- IV. Despite being cognizant of his ineligibility to apply for the pension option, the petitioner issued a conditional letter dated 02.09.2010. The Respondent Bank rightfully rejected this request since the aforementioned Circular explicitly precludes individuals subjected to the penalty of Compulsory Retirement from exercising such an option. Consequently, the Petitioner was ineligible to exercise the option, and his request was accordingly denied by the Authority. The Respondent Bank duly notified the petitioner of his ineligibility to exercise the option and the rejection of his request in accordance with the provisions set forth in the Circular No. 297 of 2010.
- V. The petitioner lodged an application for review of the disciplinary Authority's Punishment Order. The Reviewing Authority, having thoroughly examined all pertinent documentation and the rulings issued by both the disciplinary and Appellate bodies, disposed of the Review Application. Subsequently, the Reviewing Authority dismissed the petitioner's Application and affirmed the Punishment Order. This decision by the Reviewing Authority was formally communicated to the Petitioner via correspondence dated 26.10.2011. It is contended that the Disciplinary authority fulfilled its obligations in accordance with the Canara Bank Officer Employees' (Conduct) Regulations 1976 and

Canara Bank Officer Employees' (Discipline & Appeal) Regulations 1976, and adhered to established principles of service jurisprudence when issuing the Punishment Order, taking into consideration the seriousness of the misconduct in question.

VI. During the course of the Inquiry, the petitioner was afforded ample opportunity to present his defence materials and refute the accusations levelled against him. The Inquiry adhered to established principles of Natural Justice and followed the procedures outlined in the Canara Bank Officer Employees' (Discipline & Appeal) Regulations 1976. All necessary documents were provided to the petitioner and was also granted the opportunity to authenticate the original documents pertaining thereto. It has been contended that the Respondent Bank, entrusted with managing Public Funds, had a duty to safeguard the interests of the Bank and its clientele. Hence, it was imperative to undertake appropriate actions against the petitioner by issuing a Charge Sheet and conducting subsequent proceedings.

17. Upon a thorough examination of the documents presented to the Court and taking into account the arguments put forth by the parties, this Court holds the opinion that the power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities discharged by constitutional courts under Article 226 or Article 136 of the Constitution of India is well circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority. This issue has earlier been examined by the Supreme Court in **B.C. Chaturvedi v. Union of India and Others** reported in **1995 (6) SCC 749**; **Himachal Pradesh State Electricity Board Limited v. Mahesh Dahiya** reported in **2017 (1) SCC 768** and recently by a three-Judge Bench of this Court in **Deputy General Manager (Appellate Authority) and**

others v. Ajay Kumar Srivastava reported in **2021(2) SCC 612** wherein this Court has held as under: -

“When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the court is to examine and determine:

(i) whether the enquiry was held by the competent authority;

(ii) whether rules of natural justice are complied with;

(iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.”

18. The investigation was duly executed by the authorized body in accordance with the Canara Bank Officer Employees' (Discipline and Appeal) Regulations, 1976, wherein a "Competent Authority" is defined as the body designated by the Board for the application of said regulations. Herein, the disciplinary/enquiry authority along with a Presenting Officer was appropriately established by the respondent bank's Board in the present case.

19. Further, the principle of natural justice was aptly complied with as an explanation was sought from the petitioner based on the Investigation Report, inter alia, with respect to the irregularities and illegal disbursal of the OCC loans. It was only after the consideration of the reply of the petitioner that the disciplinary Authority thought it fit to initiate the disciplinary proceeding against the petitioner. Moreover, during the course of the departmental enquiry, the petitioner was supplied with all requisite documents and was also afforded with opportunity to visit the Berhampur Branch for inspection and verification of the Original Documents sought to be relied upon by the Authority in the Proceeding. Reviewing the testimonies and minutes of the inquiry would evince strict adherence to the prescribed regulations and principles of natural justice outlined in the Canara Bank Officer Employees' (Discipline & Appeal) Regulations, 1976. Moreover, the petitioner availed the chance to present written submissions before the Inquiring Authority during the proceedings. These actions collectively signify the meticulous observance of due process and fairness in conducting the inquiry in accordance with established legal frameworks and procedural guidelines. Additionally, as per

the argument presented by the counsel representing the petitioner that the inquiry officer exhibited bias, thus resulting in prejudice against the petitioner. It is imperative to underscore that merely levelling accusations of bias is insufficient unless substantiated by evidence presented either during the inquiry process or before the disciplinary/appellate authority. It is essential for such allegations to be supported by concrete material to warrant consideration. Mere assertions devoid of substantive backing fail to meet the threshold required to establish the presence of bias, thereby necessitating tangible evidence to validate such claims in legal proceedings.

20. Moreover, it has been reiterated by the Supreme Court in **State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaya** reported in **(2011) 4 SCC 584**, that Courts shall not act as an appellate court and reassess the evidence led in the domestic enquiry nor interfere on the ground that another view is possible on the material on record. Therefore, in the present case, the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be ground for interfering with the findings in departmental enquiries.

21. Henceforth, the Adjudication decree rendered by the Disciplinary Authority/Enquiry Authority stands affirmed and remains unchallenged, thereby upholding its legal validity and authority.

22. For the foregoing reasons, the writ petition is devoid of any merits. All pending applications are accordingly disposed of.

23. There shall be no order as to costs. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

21.05.2024

PA (BS)