

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side**

**APOT 254 of 2024
IA GA 1 of 2024
IA GA 2 of 2024
Arun Kumar Ghosh
Vs.
Canara Bank and Others**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant : Mr. Partha Sarathi Bhattacharya, Sr. Adv.
Mr. Debashis Banerjee, Adv.
Mr. Rakesh Jana, Adv.

For the Respondent Bank : Ms. Reshmi Ghosh, Adv.
Mr. Ranjit Singh, Adv.
Mr. Amal Singh, Adv.
Ms. Tutul Das, Adv.
Ms. Pooja Seth, Adv.
Mr. Ratul Deb Banerjee, Adv.

Hearing concluded on : August 20, 2024

Judgment on : August 29, 2024

DEBANGSU BASAK, J. :-

1. Appellant has assailed the judgement and order dated May 21, 2024 passed by the learned single judge in WPO No. 401 of 2012.
2. By the impugned judgement and order learned single judge has dismissed the writ petition of the appellant challenging a decision arrived at against the appellant in the disciplinary proceedings.

- 3.** Learned senior advocate appearing for the appellant has contended that, there have been serious breach of the principles of natural justice so far as the appellant is concerned, in the disciplinary proceeding resulting in prejudice to the appellant. In support of such contention, he has drawn the attention of the court to the chargesheet issued as against the appellant. He has contended that, in the disciplinary proceeding, appellant requested for specified documents. He has referred to regulation 6 of the service regulations governing the disciplinary proceedings. He has contended that, request for documents had been wrongfully turned down resulting in prejudice to the appellant. In this regard, he has referred to the correspondence of the appellant and the response of the enquiry officer. He has also referred to Regulation 6 (11) of the Canara Bank Officer Employees (Discipline and Appeal) Regulations, 1976 in this regard and contended that, the inquiring authority did not adhere to the procedure prescribed for grant of requested documents to the appellant resulting in breach of principles of natural justice and serious prejudice to the appellant.
- 4.** Learned senior advocate appearing for the appellant has referred to the enquiry report. He has also drawn the attention of the court to the 2nd show cause notice issued to the appellant as also the response of the appellant thereto.

5. Learned senior advocate appearing for the appellant has drawn the attention of the court to the order of the disciplinary authority dated November 26, 2008. He has contended that, the same does not contain any reason as to why the disciplinary authority arrived at the finding of guilt as against the appellant. Points that the appellant had raised in the response to the 2nd show cause notice have not been dealt with by the disciplinary authority in the order dated November 26, 2008.
6. Learned senior advocate appearing for the appellant has submitted that, after the disciplinary authority imposed the punishment of compulsory retirement, appellant by a letter dated May 11, 2009 filed an appeal to the appellate authority under Regulation 17 of the Canara Bank Officer Employees (Discipline and Appeal) Regulations, 1976 with a prayer for condonation of the delay. The appellant had by a letter dated July 8, 2009 requested for terminal dues without prejudice to the rights and contentions in the appeal. Canara Bank had by a letter dated August 4, 2009 has observed that, in view of the financial loss caused to the bank by the appellant the gratuity and the bank's contribution of provident fund have been impounded.
7. Learned senior advocate appearing for the appellant has contended that, in the chargesheet, no charge had been framed as

against the appellant for alleged financial loss nor has any figure of loss allegedly caused by the appellant to the bank, quantified during the disciplinary proceedings. He has referred to the order of the appellate authority and contended that, the appellate authority also did not quantify any loss to have been suffered by the bank. Therefore, according to him, no amount receivable by the appellant on compulsory termination of services can be withheld by the bank. According to him, causing of loss has not been alleged in the chargesheet. During the enquiry proceedings, no attempt had been made by the bank to quantify the alleged loss. Neither the disciplinary authority nor the appellate authority has quantified the alleged loss allegedly caused by the appellant to the bank. Therefore, withholding of service benefits on compulsory retirement is wrong.

8. Learned advocate appearing for the bank has referred to the chargesheet. She has contended that, the chargesheet alleges loss being caused by the appellant to the bank by reason of the appellant granting credit facilities in violation of the scheme of the bank. She has referred to the order dated November 26, 2008 passed by the disciplinary authority with regard to the quantification of the loss caused by the appellant to the bank. Learned advocate appearing for the bank has referred to the letter

dated August 17, 2009 issued by the bank to the appellant. She has submitted that, the request for gratuity and bank's contribution of provident fund had been turned down in view of Regulation 19 of the Canara Bank Staff Provident Fund Regulations which allows the bank to deduct the financial loss sustained by the bank from the bank's contribution to the provident fund. She has also referred to the response of the appellant dated August 27, 2009.

- 9.** Learned advocate appearing for the bank has referred to the Canara Bank Officer Employees (Discipline and Appeal) Regulations, 1976 and in particular to regulation 4 (h) and contended that, bank was entitled to impose compulsory retirement as a major punishment.
- 10.** Learned advocate appearing for the bank has referred to Canara Bank Officer Employees (Conduct) Regulations, 1976 as also Canara Bank Staff Provident Fund Regulations and contended that, both gratuity as well as bank's contribution of provident fund can be withheld for the financial loss caused by an employee. According to her, the appellant had caused financial loss to the bank and that, such financial loss was quantified during the enquiry proceeding.

11. In support of her contentions that, the decision arrived at by the bank in the disciplinary proceeding up to the appellate authority stage and the decision of withholding of gratuity and bank's contribution of provident fund should be upheld, learned advocate appearing for the bank has relied upon **2018 Volume 9 Supreme Court Cases 529 (Union Bank of India and others versus CG Ajay Babu and Another)**.
12. Appellant had been working as a manager of the Asansol branch when he suffered a chargesheet dated October 8, 2007 for alleged misconduct while he was working as Manager in Charge of Berhampore branch of the bank.
13. In the chargesheet, 13 heads of charges had been levelled against the appellant. It had been alleged that appellant during his tenure as such Manager in Charge for the period from December 8, 2005 till August 12, 2006 sanctioned various credit facilities. A detailed investigation had been conducted which revealed a number of irregularities such as credit investigation not been conducted, pre-/post sanction inspection not being done, credit requirement not being properly assessed, loans sanctioned through middlemen etcetera and the accounts becoming NPA. Article of charges had also alleged that, the appellant exposed the bank to

financial loss/risk without quantifying the quantum of loss allegedly suffered.

14. Although allegation of causing financial loss/risk to the bank had been made in the chargesheet, no amount of financial loss caused to the bank had been quantified in the chargesheet. Statement of imputation forming part of the chargesheet had noted various credit facilities with the liability of such credit facility. Imputation of charge however has not alleged that the liability of the borrower standing in the respective accounts of such borrower was the financial loss/risk which the bank had suffered. It had merely alleged that, lapses allegedly made by the appellant had exposed the bank to huge financial loss/risk without attempting to quantify such financial loss/risk.

15. Appellant had submitted a detailed reply dated November 10, 2007 to the chargesheet. He had denied all allegations levelled against him in the chargesheet. During the inquiry, appellant had requested for various documents by a letter dated November 20, 2007. The documents that the appellant had requested for involves copies of current account opening forms, latest branch inspection report, copy of annexure 4, 3 to 13 verifying the signatures of the concerned persons for the relevant period, copies of documents relating to visit to the branch during the period, copies of

investigation findings, copies of registers maintained by the appellant in ordinary registers for non-supply of appropriate register/format on spot visit, all periodical statements relating to special watch/NPA for the period, copies of stock statement received from the parties for the relevant period, copies of interface reports for the relevant period.

16. Appellant had by another writing dated January 16, 2008 requested for details of loan sanctioned by the bank after his transfer from the branch including enhancement of limits if there be any in the accounts covered by the chargesheet as also the reply given by DGM to the letter dated October 10, 2006 referred to in the chargesheet.

17. The response of the inquiring authority to the request for documents made by the appellant is contained in the writing dated February 6, 2008. Such response has dealt with the letter dated January 16, 2008 of the appellant. The response for the request of documents is that, the appellant may obtain such documents from the branch personally at his own cost after obtaining appropriate category of leave from the competent authority. Immediately, appellant had by a letter dated March 4, 2008 informed the inquiring authority that it was difficult for him to attend the concerned branch due to personal safety, availing leave was

difficult and that there was cost of travel involved. In such view, he had made a request that the documents sought for be made available by the bank to him.

18. Inquiring authority had dealt with the request for documents in the meeting held on April 29, 2008. Inquiry authority had held that the appellant was given enough time for personal visit to the concerned branch to verify the documents as well as obtain copies of the documents. Branch had been suitably instructed to provide necessary assistance to the appellant for obtaining copies of the required documents. Consequently, inquiring authority had decided to proceed without the documents requested for by the appellant being furnished to him.

19. Canara Bank Officer Employees (Discipline and Appeal) Regulations, 1976 has laid down an elaborate procedure for a disciplinary proceeding and its appeal. In Regulation 6 it has laid down the procedure for imposing major penalties. Regulation 4 has specified the major penalties with Regulation 4 (h) specifying compulsory retirement as a major punishment that can be imposed in the disciplinary proceeding.

20. It would be appropriate to set out Regulation 6 (11) of the Regulations of 1976 which is relevant herein :-

“11) The Inquiry Authority shall, on receipt of the notice for the discovery or production of the documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept with a requisition for the production of the documents on such date as may be specified.”

21. Regulation 6 (11) has cast an obligation on the inquiring authority on receipt of the notice for discovery of production of documents. It has specified that, the inquiring authority shall, on receipt of the notice for the discovery or production of the documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept with a requisition for the production of the documents on such date as may be specified.

22. In the facts and circumstances of the present case, inquiring authority had received requisition for discovery and production of documents contained in the letter dated January 16, 2008 from the appellant. It had dealt with such requisition by a writing dated February 6, 2008. In its letter dated February 6, 2008, inquiring authority did not allude to Regulation 6 (11) of the Regulations of 1976. It did not ascribe any reason as to why it was not adhering to the prescription in such regulation requiring the inquiring authority to make such documents available to the delinquent. No reason has been ascribed by the inquiring authority in its letter

dated February 6, 2008 as to why it was deviating from the prescription laid down in Regulation 6 (11) of the Regulations of 1976.

23. Even if one has to read Regulation 6 (11) of the Regulations of 1976 to be directory in nature and not mandatory, despite the user of the word “shall” therein, then also, inquiring authority must ascribe sufficient reason as to why it was deviating from the procedure prescribed by such provision.

24. In our understanding of Regulation 6 (11) of the Regulations of 1976, enjoins a mandatory obligation upon the inquiring authority to forward the notice for discovery or production of documents or a copy thereof, on receipt thereof, to the authority in whose custody or possession the documents are kept with a requisition for the production of the documents on such date as may be specified.

25. It is therefore, the obligation of the inquiring authority to requisition the documents sought for by the delinquent, from the authority in whose custody or possession such documents are lying, for production of the same on the date specified. We hasten to add that, inquiring authority has the power to deviate from the procedure prescribed in Regulation 6 (11) of the Regulations of 1976 but must do so only if circumstances mandate a deviation

and after recording the reasons for deviating from the prescribed procedure.

26. In the facts and circumstances of the present case, the inquiring authority not only deviated from the procedure prescribed under Regulation 6 (11) of the Regulations of 1976 but also did not ascribe any reason as to why it was deviating therefrom, in its response dated February 6, 2008 or in the minutes of the meeting dated April 29, 2008.

27. Appellant had asked for documents which are relevant to the charges. Inquiring authority has not denied production of such documents requisitioned on the ground of irrelevance. In fact, the response of the inquiring authority was that, the appellant may collect the same at his own cost. Therefore, such documents being relevant and relating to each of the charges levelled as against the appellant, nonproduction of the same during the inquiry obviously had breached the principles of natural justice coupled with causing prejudice to the appellant in the inquiry proceeding. Appellant had been prevented unreasonably from meeting the charges levelled against him in the enquiry proceeding.

28. The Inquiring Authority submitted a report dated July 3, 2008 where, Inquiring Authority has held the appellant guilty to the extent of charge No. 1, 2, 3 to 11 and 13, partially 12. The Inquiry

report has not quantified the alleged loss or damage allegedly suffered by the bank at the behest of the appellant.

29. Upon such Inquiry Report having been furnished to the appellant, he had submitted a response thereto by a letter dated September 8, 2008. Disciplinary Authority had taken a decision on the Inquiry Report and the response of the appellant dated August 8, 2008, by an order dated November 26, 2008. In the 2nd paragraph of the order of the Disciplinary Authority dated November 26, 2008, Disciplinary Authority has noted that the liability in the account of the borrower stood at Rs. 1.58 crores at that point of time. Disciplinary Authority has not arrived at a finding, at least, the order dated November 26, 2008 does not state that, bank has suffered a loss of Rs. 1.58 crores at the behest of the appellant.

30. Disciplinary Authority had imposed a punishment of compulsory retirement as envisaged under Regulation 4 (h) of the Regulations of 1976.

31. Appellant had preferred an appeal against the order of the Disciplinary Authority on May 11, 2009. In such appeal, appellant had inter alia taken the point of requisition of several documents and the denial thereof by the Inquiring Authority.

- 32.** Appellant had filed a writ petition being WP No. 20673 (W) of 2009 claiming release of retiral benefits. Such writ petition had been disposed of by an order dated May 10, 2010 noticing that the appellant had preferred an appeal and directing the Appellate Authority to dispose of such appeal in accordance with law.
- 33.** Appeal of the appellant had been disposed of by an order dated April 16, 2010. Appellate Authority did not deal with the point raised by the appellant as to non-furnishing of relevant documents although it has held, appellant failed to produce any documents in support of his claim. Appellate Authority had dismissed the appeal after returning a finding that there was no reason to interfere with the order of the Disciplinary Authority.
- 34.** Appellant had submitted a review under Regulation 18 of the Regulations of 1976 against the order of the Disciplinary Authority and the confirmation thereof by the Appellate Authority, by a letter dated October 18, 2010. Such Review Application had been kept pending and the appellant issued reminders on December 29, 2010, May 21, 2011 and on July 12, 2011.
- 35.** Appellant had filed an application for review being RVW 85 of 2010 seeking review of the order dated May 10, 2010 passed in WP No. 20673 (W) of 2009. Appellant had filed an application therein. Both the application and memorandum of review had been

disposed of by an order dated April 18, 2011 by holding that, all points were kept open for consideration by the Appellate Authority at the time of hearing of the statutory appeal.

36. The Review Authority by a writing dated October 26, 2011 had rejected the review petition.

37. The decision of rejection of the Review Petition had been communicated to the appellant by a writing dated October 26, 2011. Such decision does not contain any reason as to the rejection of the review petition.

38. Terminal benefits of the appellant has been withheld on the ground of bank allegedly suffering loss at the behest of the appellant. As has been noted above such was not the charge as against the appellant. Inquiring Authority has not quantified the alleged loss allegedly suffered by the bank at the behest of the appellant. It also did not find the appellant to have personally benefited out of the loans sanctioned. Disciplinary Authority has not arrived at a conclusive finding that, the bank had suffered on specified amount of loss at the behest of the appellant.

39. ***CG Ajay Babu and Another (supra)*** had dealt with the issue of permissibility of forfeiture of gratuity in the context of the Payment of Gratuity Act, 1972 and a bipartite agreement existing between the workmen and the management of Union Bank of India.

It has observed that, gratuity can be kept forfeited only to the extent of damage or loss caused to the bank. It has also held that, forfeiture of gratuity is not automatic on dismissal from service. Forfeiture of gratuity is subject to sub-section (5) (6) of Section 4 of the Payment of Gratuity Act, 1972.

40. In ***Ramchandra S. Joshi (supra)*** the delinquent had been charged with the issue of loss caused to the bank by the delinquent. The Disciplinary Authority therein had recorded a finding and directed forfeiture of the employee's contribution of provident fund and gratuity from the terminal benefits receivable by the delinquent. Such is not the case here. On the contrary, Disciplinary Authority did not quantify the loss nor did it direct recovery of such loss from the terminal benefits receivable by the appellant.

41. Issue of release of terminal benefits was raised by the appellant subsequent to the order of the Disciplinary Authority. Such issue was sought to be answered by the bank by claiming that it had suffered loss and that, it was withholding the terminal benefits towards satisfaction of such loss.

42. As noted above, neither the chargesheet had quantified any loss allegedly suffered by the bank at the behest of the appellant nor did the Inquiry Authority or the Disciplinary Authority quantify

it and require realization thereof from the terminal benefits receivable by the appellant.

43. Withholding of terminal benefits therefore cannot be sustained in the facts and circumstances of the present case, in view of the discussions above.

44. The Inquiring Authority having not dealt with the request for production and discovery of documents made by the appellant before it, in accordance with law, the entire inquiry proceedings stand vitiated. The decision of the Inquiring Authority consequently also stands vitiated.

45. The appellant has established that he suffered prejudice by reason of the inquiring authority not dealing with his request for production and discovery of documents made at the inception of the inquiry proceedings.

46. Since the inquiry proceedings as also the decision arrived at on the basis of such proceeding stands vitiated, the decision of the Disciplinary Authority, based on the report of the Inquiring Authority, the decision of the Appellate Authority as also the review authority, cannot be sustained.

47. Having arrived at a finding that, the decision taken in the disciplinary proceedings up to the review stage cannot be

sustained, we have to consider whether or not to remand the disciplinary proceeding from the stage of the inquiry.

48. In the facts and circumstances of the present case, the appellant before us had superannuated on December 31, 2013. Moreover, the materials placed before us have established that, the management was acting with a closed mind as against the appellant. Charge as against the appellant is one of acting in excess of his powers as the Branch in charge during a specific period of time. Although, management had claimed to have suffered loss, no material had been placed to suggest let alone establish the actual quantum of loss suffered. Management has alleged that, since there were outstanding in the loan accounts sanctioned by the appellant, therefore, the bank was exposed to loss/risk. Any loan granted by the bank necessarily exposes the bank to loss/risk. It has neither been alleged nor established during the inquiry proceedings that, appellant had derived any personal gains out of the loan accounts sanctioned by him as the Branch in charge. All errors of judgements are not negligence. Significantly, appellant had requested for documents post his release from the branch in question with regard to the loan accounts sanctioned by him in order to find out whether the same remained outstanding or not. The Inquiring Authority did not call for such documents.

- 49.** Notwithstanding no charge being framed quantifying the loss of the bank and no such loss being quantified in the report of the Inquiring Authority, bank had proceeded to withhold the terminal benefits of the appellant on the ground of alleged sufferance of loss at the behest of the appellant.
- 50.** In our view, bank has disclosed a closed mind of not only terminating the services of the appellant but also ensuring that he does not receive any terminal benefits. In such circumstances, remanding the disciplinary proceedings to the stage of the inquiry would not subserve the interest of justice. Consequently, we quash the entire departmental proceedings initiated as against the appellant.
- 51.** Having quashed the disciplinary proceedings, the next issue that we need to answer is whether the appellant is entitled to reinstatement with full back wages or not. Full back wages on reinstatement is not automatic. The quantum of compensation would depend on the facts and circumstances of each case.
- 52.** As has been noted above, appellant superannuated on December 31, 2013. Consequently, reinstatement at this stage is ruled out. The next issue is the entitlement of the appellant post the order of compulsory retirement issued by the bank.

53. In the facts and circumstances of the present case, interest of justice would be subserved by directing the bank to grant notional benefits of the service career of the appellant till his superannuation. Bank will disburse the retiral and other benefits of the appellant, within 4 weeks from date, treating the appellant to be in service till his date of superannuation and as if he did not suffer any disciplinary proceedings and by granting him all benefits accruing to the appellant, notionally.

54. In view of the discussions above, impugned judgement and order dated May 21, 2024 is set aside.

55. APOT 254 of 2024 along with all connected applications are disposed of accordingly without any order as to cost.

[DEBANGSU BASAK, J.]

56. I agree.

[MD. SHABBAR RASHIDI, J.]