IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF

WPA 2728 (W) of 2020
With
CAN 1 of 2022

Pratul Kumar Nayak
Vs.
United Bank of India & Ors

For the Petitioners	**: Mr. Sidhartha Banerjee, Adv., Ms. Chittapriya Ghosh, Adv., Mr. Gautam Acharya, Adv., Ms. Priyanka Saha, Adv.**
For the respondent Bank	**: Mr. RN Majumder, Adv. Mr. S.M. Obaidullah, Adv. Mr. R. Chowdhury Adv**
Reserved on	**: 27.03.2025**
Judgment on	**: 11.06.2025**

Subhendu Samanta, J.

1. Petitioner was working as a Head Cashier, United Bank of India Raghurampur Branch, under Purba Medinipur region. He was served with a memo Dated 17th March 2018 issued by Chief Manager (DIR) and a competent Authority, by such he had been suspended from service with immediate effect pending disciplinary action and disposal thereof. Subsequently a charge sheet dated 17.11.2018 was issued against the petitioner alleging gross misconduct in terms of Clause 5

(a) and Clause 5 (k) read with Clause 5 (j) of memorandum of settlement dated 10.04.2002.

2. Petitioner submitted written statement of defence against the said charge sheet. Chief Manager (DIR) and Disciplinary Authority also forwarded a list of documents relied by the authorities to the petitioner. By placing the written statement of defence, the petitioner denied and disputed the allegation contained in the charge sheet, inquiry officer was appointed. The Disciplinary Authority vide its order dated 31st May, 2019 has passed the final order of punishment as a major punishment imposed upon petition to the effect that **"removal from service with superannuation benefits, i.e., Pension and/or Provident funds and Gratuity as would be due otherwise under the rules or regulations prevailing at the relevant time and without disqualification from future employment"** in terms of Clause 6 (b) of Memorandum of Settlement dated 10th April, 2010 with immediate effect.

3. Petitioner approached to the appellate authority, the appellate authority after hearing the petitioner has affirmed the final order of punishment issued by the disciplinary authority by its order dated 16.09.2019.

4. Being aggrieved by against the order dated 16.09.2019, petitioner approached this court through a writ petition being WP No. 20728 (w) of 2019 for seeking necessary direction. After hearing the parties a Co-ordinate Bench of this Court vide its order dated-November 19, 2019 remanded back the matter to the appellate

authority to take a fresh decision with regard to ground Nos. (X) to (XIV) of Paragraph (XVI) of memo of appeal filed by the petitioner.

5. In terms of the said direction the concerned authority has passed the impugned order on 21st January 2020.

6. Hence this writ.

7. It is the contention of the petitioner that order of the disciplinary authority as well as the appellate authority and punishment thereof against the petitioner is arbitrary and illegal. The petitioner is suffering double jeopardy in this matter. The concerned authority/respondent authority has already imposed punishment upon the petitioner on the earlier occasion against the selfsame alleged charges. Now the impugned order of punishment by the disciplinary authority is a complete non-application of mind. He submits that it would be revealed from the charges that for Para-B of the charges the concern authority has passed a punishment to the petitioner in terms of "sensor" vide a memorandum dated 22nd December 2017 issued by Chief Manage (Admin).

8. He further submits that according to Clause 9 of bipartite settlement "sensor" come under punishment for gross misconduct. The authority concern has already imposed the punishment. Thus they cannot again impose punishment for the same offence. It is the further contention of the Learned Counsel for the petitioner that at the time of serving show cause upon the petitioner the respondent authority has served 16 Nos. of relied documents but during the

course of departmental proceedings the concerned authority has used 17 Nos. of documents to pass the purported order. He submits that the alleged confession letter of petitioner dated 15.02.2018 never handed over to the petitioner. It is the further contention of the Learned Counsel for the petitioner that the concerned authority has not followed direction of this Court passed in Writ Petition No. WP 20728 (w) of 2019. He prayed for setting aside the entire order of punishment.

9. The Learned Counsel appearing on behalf of the Bank Authorities submits that the instant writ petition is not maintainable. As the petitioner is of workmen under definition of Section 2 (3) of Industrial Dispute Act, 1947, the grievance of the petitioner is available under the Industrial Disputes Tribunal, so the instant writ is not maintainable.

10. It is the further contention of the respondent that the concerned disciplinary authority as well as the appellate authority has properly followed the Principles of natural justice, proper opportunity being heard to the petitioner has already been given. The petitioner was placed his defence by filing the written statement, after hearing the petitioner the concerned authority has passed the order of punishment according to the Bipartite Settlement.

11. It is the further contention of the respondent bank that this writ court cannot interfere with the well deserved decision of the disciplinary authority.

12. Having heard the Learned Counsel for the parties to determine the entire issue it is required to set out. The charges framed against the petitioner.

Ref No.: PD/DIR/12/3355/4985/2018

17.11.2018

During the tenure of your service as Single Window Operator at Bank's Raghurampur Branch since 29.05.2017, you had allegedly committed the following irregular acts;

A. On 15.02.2018, you had misappropriated Rs. 3.00 Lacs from the cash department at Raghurampur Branch. A Cash Shortage of Rs. 3.00 Lacs was found by the Branch Manager, the joint custodian of cash, while undertaking cash verification of closing cash on 15.02.2018. The Branch Manager found difference of the said amount in physical cash while verifying with the safe guide register. You have confessed to have taken away the cash from Branch for self use to meet the expenses of treatment of some kidney related ailment of your son and also you had borrowed a large sum of money from outside. On "being asked, you made good the shortage of Rs. 3.00 Lac within 30-35 minutes. Thus, you have allegedly committed a fraud to Bank's treasure to the extent of Rs. 3.00 Lac for your personal gain and purpose.

B. During the tenure of your service as Sub Staff of Brajballavpur Branch from 07.08.2014 to 26.05.2017, you have committed the following irregularities:

1. You have accepted bribe of Rs. 7000/- on 15.12.2016 from a customer Sri Arabinda Pal for facilitating a loan for him which you have confessed and the amount so taken was returned by you by crediting the account of Sri Arabinda Pal on 19.01.2017.

2. You have taken money from three BC agent with a promise to arrange Govt/Bank's job for them and handed over stamp papers to this effect to three BC agent/complainant. Thus, you were found to be indulged in illegal/fraudulent activities and duped 3 BC agents of the Branch. Your above act which is unbecoming of an employee of the Bank has tarnished the image of the Bank.

Thus, your above fraudulent acts during the course of Bank's business tantamount to gross misconduct in terms of Clause 5 (a)

and Clause 5 (k) read with Clause 5 (j) of the Memorandum of Settlement dated 10.4.2002, which read as under: -

(a)-" engaging in any trade or business outside the scope of his duties except with the written permission of the Bank"

5 (k)-"giving or taking a bribe or illegal gratification from a customer or an employee of the Bank"

5 (J)- "doing an act Prejudicial to the interest of the Bank or gross negligence involving or likely to involve the bank in serious loss".

You are hereby directed to submit your written statement of defence to the aforesaid charges within a period of 7 (seven) days from the date of receipt of this letter, failing which it will be presumed that you have no defence to offer and under the circumstances the Bank will be at liberty to proceed against you as would be deemed fit and proper.

13. The alleged earlier punishment which was imposed upon petitioner vide memo dated 22.02.2017 required to be set out herein under

Ref. No. PRBMRO/ADMN/Complaint/ 1527/2017-18

Date: 22-12-2017

Dear Sir,

Re:- Complaint of a customer Sri Arabinda Pal against you for taking Rs.7000/- illegally alongwith KYC documents in consideration of arranging sanction of Loan.

With reference to Letter No PUMED/ADMN/SWO/233/2017-18 dated 31.05.2017 and your reply dated 19.06.2017 and inquiry conducted by Sr. Manager (Admin), Purba Medinipur Region, it is observed that:

1. You have received the money from the complainant Sri Arbinda Pal and deposited back in his A/c no-1318010580848on 19.01.2017 and it has been confessed by you in your letter dated 19.06.2017.

2. You are in a habit of taking money from Bank's customers and general public of the locality in the pretense of arranging their loan sanctioned from Bank or business purpose.

3. You have also in the habit of taking money from BC agents in the pretense of arranging employment in the bank or other departments.

4. You are maligning the image of the Bank in the locality and general public with such type of activities.

Your such type of dubious activities has been taken by the competent authority very seriously and you are warned to refrain from such activities in future.

Yours faithfully

14. It is the contention of the petitioner that he is suffering from double jeopardy, vide memo dated 22.12.2017 he was imposed punishment of “sensor”, and again the said charge was placed in the impugned charge dated 17.11.2018.

15. This issue was also raised before the appellate authority wherein the appellate authority, in the impugned order, has set aside

the issue. For better understanding, portion of the order impugned order is set out below-

> **After going through the submissions, I find that above submissions are based on misconception. The appellant had failed to understand the fact that the letter issued by the Chief Manager (Admn) of Purba Medinipur Region was issued in his administrative capacity. The appellant through the above pleadings had tried to intertwine the calling of explanation by the controlling authority with that of the disciplinary proceedings initiated against him by the Bank. The appellant is also aware of the fact that the Chief Manager (D & IR Division) of the bank is designated as the disciplinary authority for award staff employees of the Bank. I find that the charge sheet no. PD/DIR/12/3355/4985/2018 dated 17/11/2018 issued against the appellant under Clause 5 (Gross misconduct) was issued by the Chief Manager (D & IR Division) and hence, I do not find any anomaly in disciplinary proceedings initiated against the appellant as alleged by him.**
>
> **The appellant was not awarded any punishment prior to the questioned order of the DA dated 31.05.2019 on the issue. Hence, I find that the contention of the appellant that he has been prosecuted for the same offence is false and does not merit consideration.**

16. Let me consider whether the decision of the concern authority is unreasonable, perverse or illegal in present facts and circumstances of this case. Vide memo dated 22.12.2017, it appears that one enquiry was conducted by Senior Manager (Admin) Purba Medinipur region in respect of complaint of a customer namely Arabind Pal against petitioner for taking Rs. 7,000/- illegally in consideration of arranging sanction loan. On the basis of such enquiry Chief Manager (Admin) had cautioned to petitioner by memo dated 22.12.2017. The above mentioned memo issued by Chief Manager (Admin) does not reflect the fact that any departmental proceedings had ever been initiated against the petitioner for alleged complaint by one customer namely Arabinda

pal. It is the contention of the appellate authority that Chief Manage (Admin) of Purba Medinipur region has issued the Memo in his administrative capacity.

17. The term double jeopardy means imposition of punishment twice upon a convict for similar offence. The alleged illegality by the petitioner reflected in the complaint of a customer namely Arabinda Pal, never placed before any disciplinary authority moreover petitioner was never asked to submit his explanation/defence again such complaint. Thus the memo dated 22.12.2017 cannot be set to be a punishment of caution/“sensor” by petitioner.

18. Moreover it appears that view of the Appellate Authority in terms of the direction of this court vide its impugned order dated 21st January, 2020 in respect of memo dated 22.12.2017 issued by the Chief Manager (Admin) to the petitioner, is plausible and acceptable; thus the plea of double jeopardy as raised by the Learned Counsel for the petitioner is turned down.

19. During the course of argument the Bank Authority has raised a point that the instant writ petition is not maintainable in terms of Bipartite Settlement between the Bank Authority and the present petitioner. It is the contention of the Bank Authority that petitioner has its alternative remedy before the Industrial Tribunal, thus this writ court must not entertain petitioner.

20. Several decisions have been placed by the Bank Authority as well as the petitioners on that point. It appears that this issue has

already been agitated before this court in writ petition No. 20728 (W) of 2019, wherein a Co-ordinate Bench vide order dated 19.11.2019 has settled the issue that the writ petition is maintainable whereas allegation of violation of natural justice has been raised. None of the parties have preferred appeal against the order, rather both of them has accepted the order, thus the issue of maintainability as raised by the Learned Counsel for the Bank Authority appears to be not tenable at the stage.

21. Another issue for non-supplying of a particular document/letter dated 15.02.2018 is raised by the petitioner. It has been argued by the petitioner that during the course of departmental proceeding the said document was not handed to the petitioner. Learned Counsel for the petitioner argued that for non-supplying of the relevant document, the petitioner could not bring out his grievance in the departmental proceeding, by such, natural justice has been violated. Thus the impugned order of punishment required to be set aside.

22. In support of his contention he cited a decision of Hon'ble Apex Court passed in **South Bengal State Transport Corporation Vs. Swapan Kumar Mitra and Ors** reported in **AIR 2006 Supreme Court 3533.**

> **On the question, whether copies of the documents relied on the Inquiry Officer and the disciplinary authority must be served on respondent No. 1 before passing any order of removal from service, it is no doubt true that such order of punishment, ought not be passed without supplying the copies of the documents to the respondent No. I. Now the question is whether non-**

> **supply of the documents, as referred to herein before, would vitiate the departmental proceeding in its entirety and directions for reinstatement should be passed or directions to supply copies of documents relied on the by authorities should be made and thereafter direct reinstatement of respondent No. 1 into service on condition that the disciplinary authority shall continue with the disciplinary proceeding from the stage of supplying copies of the documents to the respondent No. I to reach a fresh and final conclusion. It cannot be disputed that serious prejudice would be caused to the respondent No. 1 if the documents on which reliance was placed by the authorities in removing him from service were not supplied to him. This will cause denial of reasonable opportunity of hearing to him. This view was also expressed by the decision of this Court in the case of Union of India v. Mohd. Ramzan Khan (1991 (1) SCC 588), which was approved by the Constitution Bench of this Court in Managing Director, ECIL Hyderabad and others v. B. Karunakar and others (1993 (4) SCC 727). This Court in Ramzan Khan's case (supra) at paragraph 18, has clearly observed as follows:**
>
> **"... wherever there has been an inquiry officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires and non furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter."**

23. Petitioner further argued that due to non-supply of the document, serious prejudice has been caused upon the petitioner. So the impugned order of punishment required to be set aside.

24. Learned Counsel appearing on behalf of the Bank Authority submits that all the documents have been served before initiation of the proceeding. He submits that during departmental enquiry full sets of documents including three exhibits and 17 MEs were handed over to the petitioner. Enquiry proceedings was started to the record of receiving of the documents and contends thereof by the petitioner. At this juncture, before the writ court, the issue has been raised purportedly. Learned Counsel for the Bank Authority submits that writ court is not as appellate authority to the decision of the Bank. Under Article 226 of Constitution of India, the High Court has only supervisory power; neither any serious prejudice has been caused upon the petitioner nor departmental enquiry suffers arbitrariness.

25. In support of his contention he cited a decision of Hon'ble Apex Court passed in **JD Jain the Management, State Bank of India** reported in **1982 Supreme Court SCC 673**

> **In an application for a Writ of Certiorari under Article 226 of the Constitution for quashing an award of an Industrial Tribunal, the jurisdiction of the High Court is limited. It can quash the award, *inter alia*, when the Tribunal has committed an error of law apparent on the face of the record or when the finding of facts of the Tribunal is perverse. In the case before us, according to the Tribunal as Kansal was not examined, the evidence before it was hearsay and as such on the basis thereof the appellant could not be legally found guilty.**

26. **Lalit Popli Vs. Canara Bank and Ors (2003) 3 Supreme Court 583**

> **17. While exercising jurisdiction 'under Article 226 of the Constitution The High Court does not**

> **act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority.**
>
> **18. In B.C. Chaturvedi v. Union of India the scope of judicial review was indicated by stating that review by the court is of decision-making process and where the findings of the disciplinary authority are based on some evidence, the court or the tribunal cannot reappreciate the evidence and substitute its own finding.**

27. Having heard the Learned Counsel for the parties and considering the matter of non-supplying of a document, it appears to me that the alleged document i.e. a letter of explanation of the petitioner dated 15.02.2018 is in question here. It has been alleged by the Bank Authority vide that letter dated 15.02.2018., petitioner has admitted his guilt before the authority concern. In the impugned order the same issue was dealt with by the concern authority as follows:

> **Since, the detailed facts of the case are already stated in the final order of the DA, the same is not reiterated herein for the sake of brevity. The appellant through the instant appeal inter-alia contends that the final order of the DA is illegal and that the impugned punishment imposed upon him is not commensurate with the irregularities committed by him. He has also argued that the document ME-3(Reply of appellant to explanation letter dated 15.02.2018) was not provided to him which seems to be a false allegation as before commencement of the departmental enquiry full set of documents (3 Exhibits and 17 MEs) were handed over to the appellant and enquiry proceedings started subject to recording of their satisfaction of receipt of the documents and exhibits in the enquiry and**

> **the enquiry proper was completed subject to the satisfactions of the appellant/DR. Thus, the allegation of closing of the enquiry in a haste is also a false allegation and without any factual merit and hence, cannot be considered. As against the other contentions mentioned above, the undersigned has gone through the entire facts and records of the case and observe that the findings of the Disciplinary Authority are based on logically probative material. The charges proved against the appellant were related to misappropriation of bank's fund, acceptance of bribe and duping of BC agents with promise to arrange Bank's job after taking money as consideration from them. The appellant being a bank employee was expected to act with absolute honesty and integrity in handling funds of the customers/borrowers of the Bank and its constituents.**

28. It further appears from the document of departmental proceedings that the petitioner never raised this point regarding non-service of letter dated 15.02.2018 before the departmental authority during departmental enquiry or before the first Appellate Authority. It further appears that the observation of departmental enquiry and the first Appellate Authority as well as the observation of the authority in the impugned order justifies the imposition of punishment upon the petitioner apart from the said document.

29. The authority concern has explained the position whether the document was supplied or not, they have firmly stated that all the documents and exhibits has been handed over to the petitioner before the initiation of the departmental enquiry. Now in dealing with the fact of denial by the petitioner regarding non-supplying of the document and positive assertion of the Bank Authority regarding services of

such document- let me consider what would be the plausible and justifiable view of this court in dealing with the issue.

30. Hon'ble Supreme Court in Case of **Union of India and Ors Vs. P. Gunasekaran (2015) 2 SCC 610** has held that

Court, in exercise of its powers under Articles 226/227 of the Constitution of India can only see whether-

"a. the enquiry is held by a competent authority;

b. the enquiry is held according to the procedure prescribed in that behalf;

c. there is violation of the principles of natural justice in conducting the proceedings;

d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence."

The Hon'ble Supreme Court, however, gave a note of caution by observing that the High Court shall not –

"(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience."

31. By virtue of the guideline of Hon'ble Supreme Court in **P. Gunashekhara** it appears that the High Court cannot reappreciate the evidences, the High court cannot go into the adequacy of the evidences. At this juncture the explanation of the concern authority by the impugned order regarding supply of document appears to me very plausible. It is justified to hold that the petitioner never raised any objection for non-supply of document. Moreover, there are other

glaring evidences against the petitioner to justify the punishment imposed upon him. Thus in my view the objection raised by the petitioner for non-supply of document is appears to be not tenable.

32. Let me consider whether the punishment imposed upon the petitioner is commensurate to the offence. It is the observation of Hon'ble Supreme Court in **BC Chaturvedy Vs. Union of India (1995) 6 SCC 749** that <u>if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of High Court, which would properly mould the relative either directing disciplinary/appellate authority to reconsider the penalty imposed, or to shorten litigation, it may itself in exceptional and rare cases, imposed proper punishment with cogent reasons in respect thereof.</u>

33. The banking business and services are vital affected by catastrophic corruption. Disciplinary measures should, therefore, aim to eradicate the corrupt proclivity of conduct on the part of the employees/officers in the public offices including those in banks. It would, therefore be necessary to consider, from this perspective, the need for disciplinary action to eradicate corruption to properly channelize the use of the public funds, the life wire for effectuation of socio- economic justice in order to achieve the constitutional goals settled down in the Preamble and to see that corrupt conduct of the officers does not degenerated of efficiency of service leading to de-nationalisation of the banking system. What is more, the nationalisation of the banking service was done in public interest. Every employee/officer in the bank should strive to see that bank

operations or services are rendered in the best interest of the system and the society so as to effectuate the object of nationalisation.

34. In the present case the reputation of the petitioner regarding his earlier conduct shows that he was performing his job in a most uncleaned manner which is derogatory to the interest of the bank conducting business with public money and it must be lowered the prestige of the banking institution.

35. Thus in my view the punishment, as imposed upon the petitioner is commensurate to the offence conducted by the petitioner.

36. At this juncture I find no justification to interfere with the impugned order passed by the banking authority.

37. Hence, the instant writ petition being meritless, is dismissed and disposed of.

38. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)