IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)
APPELLATE SIDE

Present :

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 4221 of 2023

Sagar Sengupta

Vs.

State of West Bengal &Ors.

For the petitioner : Mr. Indranath Mitra.

For the Respondent Nos. 4 to 6 : Mr. Uday Sankar Chattopadyhay,
Mr. Suman Sankar Chatterjee,
Ms. Rajashree Tah,
Ms. Trisha Rakshit,
Ms. Aishwarya Datta,
Ms. Bidisha Chakraborty.

For the State : Mr. Pradip Kumar Roy, Ld. Sr. Adv,
Mr. Joydeep Roy.

Heard on : 30.04.2025

Judgment on : 20.05.2025

<u>Partha Sarathi Chatterjee, J.:-</u>

Preface:

1. The present writ petition has been filed challenging the legality and propriety of- (i) the Memorandum of Charges dated 09.12.2021 issued against the petitioner in connection with a disciplinary proceeding; (ii) the findings recorded by the Enquiry Officer (in short, EO); and (iii) the termination order

dated 01.11.2022. The petitioner also seeks quashing of the aforesaid documents. In addition, the petitioner prays for a direction upon the concerned respondents to reinstate him to his original position, and to release all consequential service benefits in his favour.

Petitioner's case:

2. Before delving into the contours of the controversy surrounding the writ petition, it is necessary to outline the key facts as projected therein, which are as follows:

a) The petitioner began his service career as a Junior Clerk at Bhatpara-Naihati Co-operative Bank Limited (hereinafter referred to as 'the Bank'). In 1998, he was promoted to the post of Grade IIB Officer and was assigned the role of Establishment Officer in the Establishment Section.

b) On 10.09.2020, the Chief Executive Officer-in-Charge & Accountant issued a notice asking the petitioner to show cause as to why legal action should not be taken against him. The petitioner submitted a reply to the said show cause notice. However, on 18.09.2020, the Chief Executive Officer-in-Charge lodged a complaint against the petitioner at the jurisdictional police station. Pursuant to the said complaint, Bhatpara P.S. Case No. 349 dated 18.09.2020 was registered under Sections 201/204/403/406/409/424 of the Indian Penal Code, 1860, against the petitioner. Subsequently, by an order dated 20.09.2020, the petitioner was transferred to the North Garifa Branch.

c) Upon conclusion of the investigation, a charge sheet was filed against the petitioner on 03.02.2021. The petitioner surrendered before the concerned learned Court on 02.03.2021 and was granted bail on the same day. In compliance with the transfer order, the petitioner joined his new assignment on 07.03.2021.

d) By an order dated 15.03.2021, the petitioner was placed under suspension in contemplation of a disciplinary proceeding. Thereafter, on 09.12.2021, the Chief Executive Officer & CDO (HQ) of the Bank issued a Memorandum of Charge dated 9.12.2021 containing four articles of charge against the petitioner. However, the said memorandum did not include any list of documents or witnesses.

e) The substance of the charges levelled against the petitioner may be summarised as follows:

(i) While serving as an Officer Grade II-B of the Bank, the petitioner, who was entrusted with the custody of the 'Peon Book' and other important documents of the Bank, failed to properly discharge the duties assigned to him. His conduct was prejudicial to the interests of the Bank and resulted in substantial financial loss. Accordingly, he was alleged to have committed misconduct within the meaning of Rule 106 [Appendix to Chapter V, Clause 14, Sub-Clause (VI)] of the West Bengal Co-operative Societies Rules, 2011 (hereinafter referred to as "the 2011 Rules").

ii) On 14.07.2020, the petitioner was allegedly captured on the Bank's CCTV footage entering the Bank premises at 09:33:52 AM and proceeding to the first floor (Administrative Office) at 09:34:14 AM. However, on the same day, he recorded his official entry time as 10:38 AM. This discrepancy is said to constitute misconduct under Rule 106 [Appendix to Chapter V, Clause 14, Sub-Clauses (i), (ii), and (iii)] of the West Bengal Co-operative Societies Rules, 2011 (hereinafter referred to as "the 2011 Rules").

iii) As per the CCTV camera footage, at 10:00:26 AM, the petitioner was allegedly seen opening the almirah located to the right of his designated seating area and taking out the Peon Book (red in colour). He then placed it on the table of Mr. Chandranath Bhattacharya, Officer on Special Duty (OSD). Mr. Bhattacharya entered the Administrative Office at 10:01:53 AM, took the Peon Book, and left the Administrative Office with it, proceeded upstairs, and returned downstairs after a short while. Subsequently, the petitioner received the Peon Book and made an attempt to conceal it. This conduct is alleged to constitute a breach of trust and, accordingly, amounts to misconduct under Rule 106 [Appendix to Chapter V, Clause 14, Sub-Clauses (i), (ii), (iii), and (viii)] of the West Bengal Co-operative Societies Rules, 2011 (hereinafter referred to as "the 2011 Rules").

iv) On 14.07.2020, the petitioner was allegedly directed to hand over the Peon Book. In response, he claimed that the book had been misplaced. He, in connivance with Mr. Bhattacharya, committed the offence. This act is alleged to constitute misconduct, amounting to suppression of official records, and falls within the scope of Rule 106 [Appendix to Chapter V, Clause 14, Sub-Clause (viii)] of the West Bengal Co-operative Societies Rules, 2011 (hereinafter referred to as "the 2011 Rules").

f) The petitioner submitted his reply/statement of defence to the charge sheet. He was subsequently informed that, by an order dated 25.02.2022, an EO had been appointed. The EO conducted the enquiry proceedings. On 06.05.2022, the Chief Executive Officer & CDO was personally present during the enquiry and put certain questions to the petitioner. The petitioner alleges that, although no formal intimation was given regarding the closure of the enquiry proceedings, a termination letter dated 01.11.2022 was issued, terminating his service with effect from the same date.

g) The termination letter indicated that the EO had submitted his findings on 18.10.2022. However, no copy of the enquiry report was ever furnished to the petitioner. The termination letter further suggested that the order had been issued under the dictation of the Special Officer.

3. The specific case presented in the writ petition is that, in accordance with Rule 106(15)(1) of the West Bengal Co-operative Societies Rules, 2011 (in

short, the 2011 Rules), the Board and the General Body of Members, in the general meeting, shall serve as the 'Disciplinary Authority' (hereinafter referred to as 'DA') and 'Appellate Authority' (hereinafter referred to as 'AA'), respectively. However, the charge sheet was issued by the Chief Executive Officer & CDO of the Bank. Since the disciplinary action was initiated at the behest of the Special Officer, an authority other than the DA, the action is claimed to be vitiated. Furthermore, no enquiry report was ever provided to the petitioner. Despite the Special Officer not being the DA or the AA, the termination letter was issued by the Special Officer.

4. The petitioner alleges that, at the time of filing the writ petition, the Board was defunct and therefore, as no appellate forum was available to the petitioner, the petitioner was compelled to prefer the present writ petition.

Respondents' case:

5. Upon deciding that the writ petition should be decided after the exchange of affidavits, a co-ordinate Bench of this Court directed the respondents to file an affidavit-in-opposition, with liberty granted to the petitioner to file a reply thereto.

6. The crux of the defence set out in the affidavit-in-opposition, duly affirmed and filed by the Chief Executive Officer of the Bank on behalf of respondents nos. 4, 6, and 8, is that the petitioner, in his reply to the show-cause notice, admitted his involvement in the crime. All relevant documents, including the 'Dak Khata' and attendance register, were seized. The petitioner was examined on 06.05.2022 at the Administrative Office of the Bank. Apart from the CCTV footage and one Chandranath Bhattacharya, the then OSD, another perpetrator of the crime, there were no witnesses to the crime.

7. During the enquiry proceedings, the Enquiry Officer specifically asked the petitioner whether he had anything else to prove that he was not guilty. The petitioner replied that he had nothing else to produce. Only after this enquiry, the petitioner was verbally informed that the enquiry had been concluded.

8. In the affidavit-in-reply, the petitioner categorically denied having admitted his guilt in his response to the show-cause notice. He contended that he had merely stated that, in compliance with the directions of his superior officer, he had committed a serious mistake. The petitioner further asserted that, during the enquiry proceedings, no witness was examined, no document was formally taken on record, and no minutes of the enquiry were furnished to him. He also argued that, since the charge sheet was issued by an officer lacking the requisite authority, the entire disciplinary proceeding stood vitiated.

Submissions:

9. Mr. Mitra, learned advocate representing the petitioner, argued that in accordance with the Rule 106 (15)(1) of the 2011 Rules, only the Board was the DA but Chief Executive Officer despite having no authority, issued the charge sheet and therefore, according to him, the charge sheet and the subsequent actions taken based on it are bad in law.

10. He further argued that admittedly, charge sheet did not contain any list of documents and list of witnesses and as such, from this angle also, the charge sheet cannot be considered to be valid. During enquiry proceeding, no witnesses were examined and no documents were taken on record. A burden was imposed upon the petitioner to prove that he was not guilty.

11. He contended that the enquiry report was used against the petitioner. However, the same was not furnished to the petitioner. This act of non-supply of enquiry report, in his view, is violative of the petitioner's rights enshrined under Article 14 and 16 of the Constitution of India. He argued that the termination order was issued at the behest of the Special Officer and as such, according to him, the termination order cannot be sustained.

12. He informed that during pendency of this writ petition, the petitioner attained the age of superannuation and he was allowed to retire. The criminal case is still awaiting final adjudication. No service-related and retirement benefits have been released in favour of the petitioner to date.

13. To bolster his submission, he cited the decisions, reported at *(1984) 2 SCC 656 (A.C. Jose vs. Sivan Pillai & Ors.)*, *(2006) 5 SCC 789 (K.K. Parmar & Ors. vs. H.C. of Gujarat thr. Registrar & Ors.)*, *(2012) 13 SCC 182 (Pradip Kumar vs. Union of India & Ors.)*, *(2011) 5 SCC 142 (Chairman Cum Managing Director, Coal India Limited & Ors. vs. Ananta Saha & Ors.)*, *(2011) 5 SCC 435 (Joint Action Committee of Air Line Pilots' Assn. of India vs. DG of Civil Aviation)*, *(1993) 1 SCC 419 (P.V. Srinivasa Sastry & Ors. vs. Comptroller and Auditor General & Ors.)*, *(1986) 4 SCC 326 (A.K. Roy & Anr. vs. State of Punjab & Ors.)*, *(1991) 1 SCC 588 (Union of India & Ors. vs. Mohd. Ramzan Khan)*.

14. In rebuttal, Mr. Chattopadhyay, the learned advocate appearing on behalf of respondent nos. 4 to 6 (the Bank and its functionaries), submitted that a large-scale racket was involved in the misappropriation of substantial funds from the Bank, and the petitioner was complicit in this conspiracy. According to him, the petitioner actively assisted the principal perpetrator, and his

misconduct formed an integral part of the fraudulent transaction that led to the financial loss suffered by the Bank. He further contended that the petitioner had, in fact, admitted to his wrongdoing. In view of this admission, Mr. Chattopadhyay argued that the petitioner's challenge to the disciplinary enquiry and the subsequent order of termination is untenable. He emphasized that, under these circumstances, the petitioner is not entitled to seek any leniency.

15. He argued that the Special Officer of the bank acted as per the direction of the Bank and therefore, according to him, the Special Officer was very much empowered to act as DA and as such, in his view, there were no infirmities in the charge sheet and termination order.

16. Mr. Roy, learned Senior Advocate appearing on behalf of the State concurred with Mr. Chattopadhyay and opposed the petitioner's contention. Mr. Roy submitted that taking note of the materials, the DA had rightly issued termination order. He asserted that there was no flaw in the decision-making process.

Analysis:

17. It is well-settled that a disciplinary proceeding comprises several distinct stages, namely, its initiation, the conduct of an inquiry into the charges brought against the delinquent employee, and the issuance of a final order by the disciplinary authority. Article 311(1) of the Constitution of India provides a safeguard for civil servants by stipulating that no individual holding a civil post under the Union or a State, or serving in the civil services of the Union or any All-India Service, shall be dismissed or removed by an authority subordinate to the one by whom they were appointed. Notably, Article 311

does not specify who is competent to initiate disciplinary proceedings. However, it is open to the employer to frame rules identifying the authority empowered to initiate such proceedings. In *P.V. Srinivasa Sastry & Ors. (supra)*, the Court held that in the absence of any specific rule to this effect, a higher or controlling authority, under whose supervision the delinquent functions, is competent to initiate disciplinary action.

18. In the present case, the suspension order dated 15.03.2021 identified the petitioner as a public servant within the meaning of Section 21 of the Indian Penal Code, 1860, and also in accordance with the provisions of Section 10 of the West Bengal Co-operative Societies Act, 2006. Thereafter, by invoking Rule 106 of the West Bengal Co-operative Societies Rules, 2011, a Memorandum of Charges dated 09.12.2021 was issued against the petitioner. The uncontroverted statement of the petitioner (see para 3 of the writ petition) indicates that the service conditions of a bank employee are governed by the said Act and Rules. Therefore, the West Bengal Co-operative Societies Act, 2006 and the West Bengal Co-operative Societies Rules, 2011 are the relevant statutes governing the disciplinary proceedings and shall govern the field in this matter.

19. Undeniably, Paragraph 15(1) of the Rule 106 of the 2011 Rules specifies that for the purpose of imposing any penalty, the Board which is the appointing authority, shall be the 'disciplinary authority', and the general body of the members in the general meeting shall be the appellate authority.

20. Annexure-III (at page 18) of the affidavit-in-opposition filed on behalf of the Bank reveals that, upon the expiry of the tenure of the previous Board of Directors, one Mr. Jitendra Show was initially appointed as a Special Officer

to discharge all functions and responsibilities of the Board. His appointment was thereafter periodically renewed. Meanwhile, by a notification dated 03.08.2021, one Mr. Partha Sarathi Debnath was appointed as the Chief Executive Officer of the Bank, with authority to exercise such powers and perform such duties as prescribed under the West Bengal Co-operative Societies Act, 2006, the West Bengal Co-operative Societies Rules, 2011, and the bye-laws of the Bank.

21. Section 29(8) of the 2006 Act provides that if the Board of Directors cannot function owing to an order of any Court or for any other reason, the Chief Executive Officer of the Co-operative Society or where there is no Chief Executive Officer appointment by the State Government or Registrar the highest designated employee of the Co-operative Society shall manage the affairs of the Co-operative Society till a Board is in a position to function.

22. As previously noted, the Board is the designated authority empowered to initiate and take disciplinary action within the Bank. The role of a Special Officer is generally confined to managing the day-to-day affairs of the Society/Bank in circumstances where the Board is unable to function or stands dissolved. The mere appointment of a Special Officer does not, by itself, vest in him the disciplinary powers ordinarily exercised by the Board. In Section 33 of the West Bengal Co-operative Societies Act, 2006, the legislature has employed the phrase "to manage the affairs of the co-operative society." However, Section 32 of the said Act does not contain any provision specifically dealing with the initiation or exercise of disciplinary action against the employees or staff of the society.

23. Admittedly, Rule 106 of the 2011 Rules and Appendix to Chapter-V contain the provisions relating to initiation and exercise of disciplinary action against the staff of the Society. In the Paragraph 15 (2), it was specified that an appeal shall lie against an order passed by the Chief Executive Officer, to the Chairman of the board. However, it has not been expressly provided that in a situation when the Board is unable to function or is dissolved, then Chief Executive Officer, referred to in this Paragraph assume the power of the Board to take disciplinary action. In the present case, neither the petitioner nor the Bank has placed any material on record to show whether the internal service regulations, namely, the *Bhatpara-Naihati Co-operative Bank Limited Regulations (Revised), 2009* or any other statutory provision, enactment, or rule, addresses the issue of delegation or assumption of disciplinary powers by the Special Officer or Chief Executive Officer of the Bank.

24. In the present case, it is an admitted fact that the charge sheet did not contain any list of documents or witnesses. It is well established that a charge sheet forms the foundation of any disciplinary enquiry. The principles of natural justice mandate that the charge sheet must clearly outline the allegations, along with all necessary details, to enable the delinquent employee to prepare an effective defense. Accordingly, it is imperative that the charge sheet includes a list of documents proposed to be relied upon and the names of witnesses intended to be examined. This ensures that the employee is given adequate notice of the evidence and the individuals who will testify against them, thereby facilitating a fair opportunity to defend themselves. In this regard, useful reference may be made to the decision in *Kuldip Singh vs. Commissioner of Police & Ors.*, reported in *(1999) 2 SCC 10*, wherein the

Hon'ble Supreme Court emphasized the necessity of including all relevant material in the charge sheet. It was also held therein that any document not referred to in the charge sheet cannot be used against the delinquent employee.

25. Therefore, the petitioner's contention that the charge sheet is invalid due to the absence of a list of documents and witnesses is not without merit and cannot be disregarded.

26. It is well recognized that, in a departmental enquiry, the delinquent employee must be afforded a fair and reasonable opportunity to defend himself against the charges levelled. This includes the right to challenge the credibility of the evidence presented against him and to demonstrate either that the allegations are unsubstantiated or that the nature of the proven misconduct does not warrant the imposition of a severe penalty such as dismissal, demotion, or reduction in rank.

27. Indisputably, the purpose of an inquiry is not merely to establish the charges against the delinquent, but to uncover the truth. In the present case, no witness was examined, nor was any document, including the CCTV camera footage, formally brought on record. Furthermore, no enquiry report was furnished to the petitioner. The entire enquiry proceeding was conducted on a single day, i.e., 06.05.2022, during which the petitioner was merely asked to produce evidence to prove his innocence. This clearly indicates that a reverse burden was imposed on the charge-sheeted employee. The procedure adopted in the present case is therefore contrary to the principles of natural justice and the fundamental requirements of a fair disciplinary process.

28. When an officer is appointed as the Inquiring Authority or Disciplinary Authority, *he* assumes the role of an impartial adjudicator. In this capacity, it is incumbent upon *him* to independently assess whether the management has successfully established the charges of misconduct, without being influenced by any preconceived notions or biases.

29. In the present case, the respondent Bank has contended that the petitioner admitted his guilt in his reply to the show-cause notice. However, it is not the case of either party that the petitioner distorted or destroyed any part of the peon book. The allegation made by the Management was specifically against Mr. Chinmoy Bhattacharya, OSD, who was alleged to have committed such acts.

30. A plain reading of the petitioner's reply reveals that he stated he was instructed by his superior officer, Mr. Chandranath Bhattacharya, to arrive early at the bank on 14.07.2020 and to place the peon book on his table. Thereafter, Mr. Bhattacharya took the peon book upstairs and returned sometime later. In his reply, the petitioner wrote: *'Anyway, perhaps, I have done a great mistake obeying my Senior Officer (O.S.D.), but it was really beyond my imagination, his (O.S.D.'s) actual intention/motive. However, after serving more than 30 years with honesty and dignity, I have received this 'Reward', merely for following the order and instruction of my Senior Officer (O.S.D.)'.*

31. This statement, at best, reflects the petitioner's expression of regret and dismay for having followed instructions which later led to adverse consequences. In the absence of any clear, specific, and unambiguous admission of guilt, such a statement cannot be construed as a confession. An

opinion or expression of remorse, without a categorical admission or corroborating evidence, does not amount to an admission of guilt in the eyes of law.

32. As already submitted, the petitioner has attained the age of superannuation, and as a result, the employer-employee relationship between the petitioner and the respondent Bank no longer exists. It is also significant to note that no specific allegation has been made against the petitioner indicating that he personally misappropriated any funds of the Bank. In view of the prolonged lapse of time and the petitioner's retirement, there is no justification to grant liberty to the employer to initiate fresh disciplinary proceedings at this stage.

33. It is further submitted that the criminal case instituted against the petitioner is still pending final adjudication. Paragraph 19 of Appendix V of Rule 106 of the 2011 Rules provides that the provisions of the Payment of Gratuity Act, 1972, shall be applicable to the employees of the Bank. However, no rules or regulations have been placed on record to demonstrate whether, during the pendency of a criminal proceeding, the Bank is empowered to withhold or defer payment of full pension.

Order:

34. Therefore, based on the foregoing discussion and the reasons set out in the preceding paragraphs, it is held that the charge sheet, the enquiry proceedings, and the order of termination are unsustainable in law and are accordingly, quashed. Respondent Nos. 4 to 6 are directed to release the petitioner's service-related benefits, including back wages and retirement benefits, in accordance with the applicable rules. In the event there exists any

express legal bar to the release of full pension, the said respondents shall proceed to release the petitioner's provident fund, leave encashment, and group insurance amounts. The respondent nos. 4 to 6 are further directed to consider and take an appropriate decision regarding the payment of provisional pension or any interim allowance to the petitioner, as may be permissible under the rules.

35. The entire exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order. The respondents shall act on the server copy of this order without insisting upon the petitioner furnishing a certified copy thereof.

36. With these observations and order, this writ petition is, thus, disposed of. There shall be, however, no order as to the costs.

(Partha Sarathi Chattterjee, J.)