

**IN THE HIGH COURT AT CALCUTTA
In the Circuit Bench at Jalpaiguri**

APPELLATE SIDE

MAT 62 of 2024

With

IA CAN 2 of 2024

The Regional Manager and Disciplinary Authority,

R.B.O., VI, Cooch Behar &Ors.

VS

GhanashyamGurung

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Biswaroop Chowdhury

For the Appellants

Mr. Abhishek Sarkar, Adv.

For the Respondent

Mr. Bikramaditya Ghosh, Adv.,
Mr. Supriya Singh, Adv.,
Mr. Swarup Das, Adv.,
Mr. V. Rai, Adv.

CAV on

13.11.2024

Judgment on

30.01.2025

Biswaroop Chowdhury, J. :-

1. This Appeal is directed against the Order dated 22/05/2024 passed in Writ Petition WPA-773 of 2022 by a Learned Single Judge of this Court. Learned Single

Judge by order dated 22/05/2024 was pleased to allow the Writ Petition WPA-773 of 2022 by setting aside and quashing enquiry report dated 24th December 2019, the order of dismissal from service passed by the Disciplinary Authority/Appellant no-2 dated 30th December 2019 and the order of Appellate Authority dated 7th October 2021, which were under challenge in the said Writ Petition.

2. The Writ Petitioner joined service of State Bank of India the Appellant no-2 herein after retirement from the Indian Army. He joined on 24/04/2000 as Assistant in the Hasimara Branch of Appellant no-2. He was subsequently promoted to the post of Senior Associate. Upon his promotion he was transferred from Hasimara Branch to the Hamiltongunj Branch of State Bank of India. On or about December 12-2019, the petitioner was served with a Memorandum listing three charges and calling upon him to show cause to the charges within two days of the receipt thereof. It was stated that if the charges listed therein were found to be proved it would attract the penalty under clause 6 of the Provisions for Disciplinary Proceedings for Award Staff under Memorandum of settlement dated 10/04/2002. The writ petitioner on receipt of the charge sheet dated December 12, 2019, was perturbed and bewildered. The petitioner felt that he would be able to receive able guidance from his seniors associated with the state Bank of India Staff Association (Bengal Circle) who had the necessary experience of dealing with such matters. He was posted in a very remote area of Hamiltonganj, Jalpaiguri District from where he could not contact with the leaders of the said Union. In desperation the petitioner forwarded a copy of the charge sheet to an office bearer of the Union in Kolkata with whom he was acquainted by Whatsapp. During the night of December 12, 2019, the petitioner's mother fell seriously ill as she was suffering

from old age ailments. The petitioner was thus not in a position to seek permission for inspection of the concerned documents on December 13, 2019. December 14 and 15 2019 were Bank Holidays being 2nd Saturday and Sunday. Thus the petitioner had no opportunity at all to inspect the concerned documents relied in the charge sheet. On or about December 16, 2019, which was the 4th day of receipt of the charge sheet, the Disciplinary Authority served a notice on the petitioner informing the petitioner that no reply had been received and that a Departmental Enquiry into the charges framed against him would accordingly be held appointing Sunil Seth as the Enquiry Officer. As the Writ Petitioner did not receive any communication from the Union at Kolkata, he requested the Disciplinary Authority for extension of time by 15 days to reply to the charge sheet.

3. On December 17, 2019 in the late evening the petitioner received phone calls regarding advise to response to the charge sheet. The petitioner immediately prepared a reply to the charge sheet on December 18, 2019. During Office hours on December 18, 2019 the petitioner fell ill and was admitted to a local Government hospital at Hamiltanganj.

4. Since the petitioner could not submit the reply on December 18, 2019 the same was submitted by his wife subsequently on December 19, 2019. A separate letter to the Bank was also submitted by his wife. On December 18, 2019 the petitioner suffered Bifasciular Block CAG-Myarrrdial bridging. He fell ill during Office hours while on duty in the presence of the Disciplinary Authority) and was taken to local Government Hospital and thereafter on December 19, 2019 the Authority of the said Government Hospital referred the petitioner to North Bengal Medical College and Hospital, Department of Cardiology) by a referral card vide

Registration Number RG. 1900502233. Finally as per advice the petitioner was ultimately admitted to Neotia Get-well Healthcare Center, on December 20, 2019 at Siliguri. On December 23, 2019 the Banks Medical Officer Administrative Office Siliguri addressed to the General Manager NeotiaGetwell Health Care Center sanctioned the admissible payment for the petitioners' treatment. On December 26, 2019 the petitioner had coronary artery angiography. Ultimately a device had to be implanted on December 26, 2019. He was released from Nursing Home on December 28, 2019. The mother of the petitioner passed away on December 20, 2019 while the petitioner was in hospital. Merely two days after his release from hospital the petitioner came to know from notice dated December 30, 2019 that the Enquiry proceedings is complete and he is awarded the punishment of Dismissal from service. The petitioner being aggrieved by the Order passed by the Disciplinary Authority preferred an appeal before the Appellate Authority on February 11, 2020. On October 7, 2021 the Appellate Authority rejected the appeal filed by the petitioner.

5. The appellants contested the writ application by filing Affidavit in opposition.

6. The Appellants contended that on 12th December 2019, the writ petitioner who was working as a Senior Associate State Bank of India was served with a Memorandum bearing Ref. No RBO-VI/COB/HR/19-20/113 dated 12.12.2019 listing three charges and calling upon him to submit his reply to the said charges within two days from the date of receipt thereof. The decision to issue the said Memorandum of charges to the writ petitioner was undertaken pursuant to the detection of serious irregularities being committed by the petitioner during his

tenure as Senior Associate (Single Window Operator) at the Hamiltonganj Branch of the State Bank of India. It is further contended that the writ petitioner with malafide intent siphoned off funds from various deceased customers' accounts by using his own user ID 4594029 without any approval or authority. As a result of the financial irregularities committed by the petitioner, the Bank had to incur serious reputational loss as well. Accordingly upon detection of such irregularities the matter was informed to the Land Office of the Bank at Siliguri and thereafter the Zonal Office vide its letter No-SIL/GB/19-20/1518 dated 09/12/2019 communicated the matter to the Chief Vigilance Officer of the Bank for necessary advice and further action. On 10.12.2019 it was communicated by the Chief vigilance Officer of the Bank for necessary advise and further action On 10.12.2019 it was communicated by the Chief Vigilance Officer of the Bank vide Letter No. VIG/KOL/N-2125/6345 dated 10.12.2019 and thereafter by the Banks Deputy General Manager (Vigilance) vide Letter No. VIG/RS/615 dated 11.12.2019 and the Bank's Deputy General Manager (B and O) vide Letter No. AO/SIC/GB/VIG/1563 dated 17-12-2019 that Disciplinary Authority be advised to initiate Disciplinary proceedings expeditiously against the petitioner GhanashyamGurung and ensure completion of the same before 31-12-2019 bearing in mind the date of retirement of the petitioner. The appellants also contended that in view of such exigencies the petitioner was given two days time to submit his reply as the two days in between 14th December 2019, and 15th December2019 were holidays being the 2nd Saturday of the week and Sunday respectively. The Appellants submitted that the petitioner could have submitted his reply on 16.12.2019 (Monday) but on 16.12.2019 the petitioner deliberately

submitted a prayer seeking 15 (fifteen) days time to reply to the Memorandum of charges knowing fully well that he was due to retire on 31.12.2019, and the Disciplinary Proceedings against him could not be proceeded with by the Bank beyond his date of retirement.

7. The petitioner by a written Communication vide Ref No. RBO-VI/COB/HR/19-20/1132 dated 16.12.2019 was duly informed of the decision of the Bank to hold a Departmental Enquiry into the charges against him. The petitioner was also informed about the name and designation of the Enquiry Officer and informed of his rights and privileges at the enquiry proceedings. Ultimately on 19.12.2019 the petitioner submitted his written reply to the show cause notice dated 16.12.2019 denying and disputing all the charges set forth in the Memorandum of charges dated 16.12.2019 but without any supporting documents. The Appellants have also contended that inspite of the delay committed by the petitioner, in the submission of his reply to the show cause notice the said reply dated 19.12.2019 was duly taken into consideration by the Disciplinary Authority. By Letter dated 17-12-2019 the Enquiry Officer had duly informed the petitioner of his appointment as Enquiry Officer in the Departmental proceedings and also communicated the date time and venue of the preliminary hearing. Again on 21.12.2019 the Enquiry Officer through two officials of the Bank sent another letter to deliver to the petitioner but the petitioner avoided to receive the same. As such when in spite of all efforts of the Enquiry Officer the petitioner or his authorized representative did not participate in the preliminary and the regular hearing the same were held ex-parte and the Enquiry Officer submitted his Enquiry Report on 24-12-2019 holding all the three charges as proved. The second

show cause notice dated 26/12/2019 was issued to the petitioner which he avoided to receive when the Zonal Office Siliguri approached him for delivery. On 30/12/2019 efforts were made by the Officials of the Bank to serve the Letter dated 30/12/2019, upon the petitioner in person by visiting him at his residence but the petitioner including his wife refused to accept service of letter dated 30/12/2019 and as a result of such non-cooperation on the part of the petitioner the Bank Officials were constrained to serve the same by pasting two copies of the same on the wall of his room and at the entrance of his drawing room.

8. The Learned Single Judge while disposing of WPA-773 of 2022 by Judgment dated 22-05-2024 was pleased to observe and direct as follows:

“22. Considering the above facts this Court finds that the respondent bank had the knowledge that the petitioner is going to be superannuated from his service on 31st December 2019, and only with the intention to complete the enquiry against the petitioner before his superannuation, have hurriedly proceeded with the enquiry. The petitioner was not given sufficient time to submit his reply to the Memorandum of charges immediately within four days from the date of issuance of Memorandum of charges on 16th December 2019, the Enquiry Officer was appointed. The Enquiry Officer within a day ie. on 17th December 2019, had issued notice for preliminary hearing on 20th December 2019. As the petitioner was admitted in hospital and he could not attend the preliminary hearing and again on 21st December 2019, the Enquiry Officer had issued notice by fixing the date of preliminary hearing on 23rd December 2019, though the Bank had the knowledge that the petitioner was

admitted in hospital and the notice dated 21st December 2019 was also not served upon the petitioner.

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

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

24. The Enquiry Officer had not issued any notice of regular enquiry and suo moto came to the conclusion that the regular enquiry is concluded ex-parte. The Enquiry Officer has not examined any witness but come to the conclusion that all the charges have been proved. The Enquiry Office without examine any witnesses had relied upon the documents but it is not clear how the documents comes to the hand of Enquiry Officer and how the said documents have been proved.

The Appellate Authority in his order dated 7th October 2021 recorded that:-

‘The preliminary and the Regular Hearing were held ex-parte and neither the CSE nor his representative attended. The Enquiry Officer submitted the Enquiry Report on 24/12/2019, holding all

the 03 (three) charges as proved. The Enquiry Report was sent through two officials of Zonal Office, Siliguri for service to him in person to enable him to make his submission (if any) on the findings of the EO. The CSE however avoided to receive the Enquiry Report.

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

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

26. In view of the above, enquiry report dated 24th December 2019, the order passed by the Disciplinary Authority dated 30th December 2019 and the Order passed by the Appellate Authority dated 7th October 2021, are set aside and quashed.”

9. The Appellants being aggrieved by the order dated 22/05/2021 passed by Learned Single Judge in WPA-773 of 2022 has come up with the instant appeal.

10. Heard Learned Advocate for the Appellants and Learned Advocate for the respondent and perused the materials on record.

11. Learned Advocate for the Appellants submits that the Writ Petitioner while posted at Hamiltonganj Branch as SWO had perpetrated a fraud in a planned way by misusing his official position and with mala-fide intent misappropriated Rs. 7,89,700/- from the account of deceased customers. Sri Gurung was well aware about the fact that he was going to retire from the service on 31/12/2019 and as per the norms of Disciplinary Action and Procedure for Workmen Staff no steps could have been taken by the Bank Authority for his wrong after his retirement. Learned Advocate further submits that the Writ Petitioner was caught for his misdeeds and charge sheet was duly served on him and asked to submit his reply. With a malice intention, Sri Gurung, instead of filing his reply filed a letter on 16/12/2019, by requesting more time for his reply just to buy some time to execute his ill motive, which was not feasible for the Bank due to the norms of Disciplinary Action and procedure for Working Staff. Thereafter petitioner was asked to attend the enquiry dated 20.12.2019 vide letter dated 17.12.2019 which was also acknowledged by Shree Gurung. Finally on 17.12.2019 Shree Gurung filed his reply without producing any supporting document thereto. Learned Advocate further submits that without having any other option to avoid enquiry Shree Gurung admitted himself to the Hospital on 20.12.2019 at about 4.30 P.M. as a 'walk in' patient. The plea of admission in Hospital from 12-12-2019 shows nothing but just a bluff.

12. As the wife of Mr. Gurung submitted a letter before the Enquiry Officer stating about his medical condition, the Enquiry Officer vide letter dated 21.12.2019, sent through officials of the Bank requested to send his representative to defend his case, but his wife avoided to receive the same. Learned Advocate also

submits that the Enquiry Officer submitted his report on 24.12.2019 and the same was sent through two officials of Zonal office, Siliguri for service to him in person to enable him to make his submission, though they chose not to receive the Enquiry report. Another show cause notice was issued to Shree Gurung on 26.12.2019 conveying the proposed penalty for his misconduct and advising him to appear for personal hearing on 27.12.2019. However the letter could not be delivered due to medical situation and thus with due permission from the Hospital Authority opportunity for personal hearing was provided to Shree Gurung on 28.12.2019 on the date for discharge. Though Shree Gurung participated in the said hearing but except denying the charges he has not made any evidentiary submission. As no fresh point was being attributed by him the Authority Ordered on 30.12.2019 for misconduct the penalty of 'Be dismissed without notice'. Learned Advocate submits that Shree Gurung being dissatisfied with the Order of the disciplinary Authority preferred an appeal which was rejected and communicated to him by a letter dated 07.10.2021. It is submitted by the Learned Advocate that in this case upon detection of the offence committed by the delinquent all necessary/lawful opportunity has been given to him having due regard to the time available at hand as per norms of the Land. Learned Advocate further submits that the Hon'ble Writ Court did not consider that natural Justice does not mandate that the delinquent should be allowed to go scot free after having committed misappropriation of public money when time available for conducting the proceeding is short. What remains to be seen is whether reasonable opportunity to defend oneself is given or not. In the instant case since the delinquent was due for retirement on 31.12.2019 the enquiry ought to be

completed while the person remained in service. Upon retirement the relationship of employer and employee ceases as such disciplinary proceeding has to be completed within such date of superannuation. Therefore given the time frame at hand opportunity was provided to the delinquent at every stage of enquiry. Learned Advocate also submits that not only the delinquent did not appear he also did not send any representative at enquiry. On the contrary the delinquent even avoided service of communication to him which shows his intention to avoid an enquiry when opportunity was given to him by Bank at every stage giving regard to the time at hand. It is submitted by the Learned Advocate that a public servant having control over public money in trust has to maintain a high degree of honesty to his work. But in this case the act of misappropriation of public money done by the delinquent has brought the premier Banking Organisation into disrepute in the eye of public.

13. Learned Advocate for the respondent Writ Petitioner submits that the entire Disciplinary proceeding was conducted and concluded in extreme haste which is against basic tenet of the principles of Natural Justice since on the face of the record the Writ Petitioner was not afforded any opportunity to defend himself. Learned Advocate further submits second show cause notice where in punishment of dismissal from service and consequent withholding of gratuity was sought to be inflicted upon the writ petitioner was not served upon the writ petitioner and the bank has failed to produce any document demonstrating service on the Writ Petitioner. The fact that during the period when the proceedings were initiated and concluded in a hurried manner Writ Petitioner was admittedly under Medical treatment during the period 26th December 2019 till 28th December 2019 and such

facts were known to the Bank Authority since the Bank Authority themselves have paid and disbursed a substantial amount on account of medical expenses of the Writ Petitioner at the concerned hospital. Learned Advocate submits that in terms of Clause 19(3) of the State Bank of India Officer Service Rules 1992 an employee can only be deemed to be in service in the event disciplinary proceeding has been initiated against him before he ceases in the Bank service by the operation of or by virtue of any of the said Rules or the provisions of the said Rules. Accordingly Rule 19(3) permits completion of pending Disciplinary proceeding even after delinquent employee superannuate after initiation of the disciplinary proceeding or in the course of Disciplinary proceeding. However the service condition of the Writ Petitioner does not permit fresh initiation of disciplinary proceeding for whatsoever reasons after superannuation. Admittedly petitioner is superannuated on 31 December 2019. The Learned Advocate submits that the Disciplinary Authority as well as the Appellate Authority were aware of the said Rule 19(3) of the State Bank of India Officers Service Rules 1992 and accordingly there was no occasion of the part of the said Authority to proceed with the Disciplinary proceeding despite their knowledge that the Writ Petitioner was admitted in Hospital with serious Medical condition affecting his cardiac health. Having acted in hot haste without appreciating the implication of Rule 19(3) of State Bank of India Officers Service Rules 1992 the Appellants cannot initiate an Enquiry afresh contrary to the Rules. Learned Advocate relies upon the following judicial decisions. No. 1 Bhagirathi Jena VS. Board of Directors OSFG and ors. reported in (1999)3 SCC 666 No.2 Devi Prakash Tiwary Vs Uttarpradash Cooperative Institutional Service Board Lucknow

and ors reported at 2014 7 SCC 260. No. 3 State of U.P VS Sri Krishna Pandey reported in (1996) 9 SCC 395.

14. Now in order to consider and decide as to whether the decision to conduct Departmental Enquiry by appointing Enquiry Officer was bad in law or not and whether the Enquiry Proceedings by Enquiry Officer is arbitrary and unjust and whether the Enquiry Report by Enquiry Officer and punishment by Disciplinary Authority is perverse or not it is necessary at the outset to refer to the Bipartite Settlement dated 10th April 2002 between Indian Banks' Association and All India Bank Employees Association and National Confederation of Bank Employers with regard to Disciplinary Action and Procedure contained therein, which was under Section 2(p) and Section 18(1) of the Industrial Disputes Act 1947 read with Rule 58 of the Industrial Disputes (control) Rules 1957. Clause 1, Clause 11, and Clause 12 of the Bipartite Settlement should be taken into consideration.

Clause-1. A person against whom disciplinary action is proposed or likely to be taken shall in the first instance be informed of the charge against him and he shall have a proper opportunity to give his explanation as to such particulars. Final Orders shall be passed after due consideration of all relevant facts and circumstances.

Clause-11. When it is decided to take any disciplinary action against an employee such decision shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation as also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the Officer conducting the enquiry to cross examine witnesses on whose evidence the charge rests and to

examine witnesses and produce other evidence in his defence. He shall also be permitted to be defended:-

X) by a representative of a registered trade union of bank employees of which he is a member on the date first notified for the commencement of the enquiry.

y) where the employee is not a member of any trade union of bank employee on the aforesaid date, by a representative of a registered trade union of employees of the bank in which he is employed.

15. Thus upon reading clause 1, and clause 11, of the Bipartite Settlement it will appear that clause 1 of the said settlement provides the procedure where it is proposed to take a disciplinary action against an employee granting him proper opportunity to give his explanation. Clause. 11 provides the procedure where a decision is taken to cause disciplinary action against an employee, where such decision is to be communicated within three days thereof and clause 12(a) provides the procedure with regard to issuance of charge sheet giving opportunity to submit explanation and evidence and fixing date of Enquiry. Thus upon harmonious construction of clause 1,11 and 12(a) of the Bipartite Settlement it will appear that prior to taking decision of disciplinary action a show cause notice is to be issued upon the employee giving necessary particulars with proper opportunity to the employee concerned to give explanation. It is upon considering the explanation the Disciplinary Authority will decide as to whether to proceed further against the employee by appointing Enquiry Officer to conduct the Enquiry. Hence a Disciplinary Authority who intends to proceed in a reasonable

manner and in an impartial way will give reasonable time to the employee concerned to submit explanation to the show cause notice containing the statements of different charges. Upon receiving the explanation the Disciplinary Authority shall apply its mind whether to proceed further against the Employee concerned. Hence reasonable time should be given to the employee to give explanation to the show cause. What is reasonable period depends upon facts and circumstances of each case. In the instant case two days time was given to the writ petitioner to submit explanation to the show cause. It is an admitted position that the writ petitioner was due to retire on 31/12/2019 and show cause notice was issued on 12/12/2019 which was 19 days before date of super-annuation, giving 2 days time to submit reply.

16. It is a reality that when an employee is about to retire, and counting days he as well as the office will be busy to prepare the papers regarding his retirement and in the event some urgent pending files are to be completed he will concentrate on those files only. In such a situation when the said employee receives a notice of show cause that Disciplinary Action is proposed against him, he will be at a loss unable to decide as to what to do. It will take few days to recover from the anxiety and trauma, and only then the employee may be able to apply the mind and give explanation. In the instant case the writ petitioner who was at the verge of retirement was given only two days time to submit reply to the show cause notice when such reply can be filed after perusing relevant documents lying in another branch of the Bank where the respondent/writ petitioner was earlier posted. Thus it cannot be said that the time granted to the writ petitioner to submit reply to the show cause notice was reasonable. Although the writ petitioner prayed for fifteen

days time which is excessive but the Disciplinary Authority was well within their power to reject such prayer and grant 7 days time to submit reply to the show cause. However the respondent/writ petitioner submitted reply to the show cause on 19/12/2019, ie, three days after the date fixed for filing reply but prior to the submission of reply Enquiry Officer was appointed on 17/12/2019. Even after receipt of the reply to the show cause the Disciplinary Authority did not consider the same, and was reluctant in this regard.

17. The Hon'ble Supreme Court in the case of Kerala Agricultural University VT. P. Murali reported in AIR. 2024. S.C 4906. while interpreting Rule 15(2)(a) of the Kerala Civil Services (classification Control and Appeal) Rules 1960 was pleased to observe as follows:

“12. A plain reading of Rule 15(2) of the Kerala Civil services (classification control and Appeal) Rules 1960 which is applicable for imposing major penalties specifically lays down that the disciplinary authority or the appointing authority or any other authority, empowered by Government in this behalf before holding a regular disciplinary inquiry must record its satisfaction that there is a prima facie case for taking action against the delinquent employee so as to hold a formal inquiry against him. In other words the aforesaid rule in explicit terms provides for recording a prima facie satisfaction for holding a disciplinary inquiry against any delinquent employee.

13. In the instant case, no material at any stage has been brought on record to establish that any such satisfaction was recorded before appointing an inquiry committee and passing of the order of termination

by the Vice Chancellor on the basis of the inquiry report. It is for the reason that the Division Bench has allowed the Writ Petition after setting aside the order of the Learned Single Judge. We do not find any flaw with the reasoning adapted by the Division Bench and as such do not deem it necessary to interface with the judgment and order impugned herein.”

18. Clause 1, and clause 11 of Bipartite settlement also contains similar provisions like that of Kerala Civil Services Rules as according to clause-1 of Bipartite Settlement a person against whom disciplinary action is proposed to be taken shall in the first instance be informed of the particulars of the charge against him and he shall have a proper opportunity to give his explanations as to such particulars, and final Orders shall be passed after due consideration of all relevant facts and circumstances. Clause 11 provides about the decision to take disciplinary action against an employee and clause 12 provides for appointment of Enquiry Officer and appearance before such officer;

19. Whenever a clause in Disciplinary proceeding Rules provides for submitting explanation to the show cause of the particulars of the allegation it is implied that such explanation has to be considered by the Disciplinary Authority and in the event the Disciplinary Authority is not satisfied with the explanation and intends to proceed with the enquiry such satisfaction that there is prima facie case against the employee concerned must be recorded in the order of appointment of Enquiry Officer. Even if the employee submits explanation after appointment of Enquiry Officer there is no legal bar in considering such explanation and if satisfied to recall the order of appointment of Enquiry Officer. In the instant case prior to

submission of written explanation by writ petitioner/employee Enquiry Officer was appointed and after submission of explanation to show cause the same was not considered by the Disciplinary Authority. Thus the Disciplinary Authority acted arbitrarily in this regard.

20. Now if we come to the functions discharged by Enquiry Officer it will appear that the Enquiry Officer also acted in an arbitrary manner in proceeding with the enquiry knowing fully well that the writ petitioner/employee is admitted to hospital. The Disciplinary Authority ought to have kept the Enquiry Proceedings in abeyance till the writ petitioner was discharged from hospital. The appellants with regard to granting few days time to submit reply to show cause and concluding Enquiry Proceeding when the writ petitioner was in hospital took the plea that as time was short and Disciplinary Proceedings was to be completed before date of Super-annuation of the respondent/ writ petitioner which was 31/12/2019 there was not haste. It is an admitted position that Disciplinary Proceedings was initiated eighteen days before the super-annuation of the Writ Petitioner. Although Disciplinary proceedings is required to be completed before retirement of an employee and after retirement the said proceedings becomes infructuous but that does not mean that the proceedings are to be completed at any cost by giving a go-bye to the principles of natural justice. The object of Enquiry is to ascertain the truth thus all relevant documents should be placed before Enquiry Officer and necessary witnesses should be examined and the employee against whom enquiry is conducted should get reasonable opportunity to face the enquiry and defend himself. The appellants have also taken the plea that although the writ petitioner was hospitalized but his wife was informed to send a representative to defend the

case of the writ petitioner on the dates fixed for enquiry. We are unable to understand as to how a representative will appear on behalf of the writ petitioner without perusing relevant documents and without obtaining material instructions from the petitioner with regard to the facts of the case as the same cannot be obtained when the petitioner is in hospital. It is to be considered that Departmental Enquiry in connection with a Disciplinary proceedings is not adjudication of property dispute which can be done by the representative of the party and in his absence, but it is a proceedings to prove the guilt of an employee in course of his service. Thus the presence of employee concerned is very much necessary to hear the statements made against him and even if he is represented by a lawyer or representative to instruct him accordingly. The presence of the employee concerned will also act as a check and balance to the witnesses in making statements indiscriminately against the employee concerned without proper verification. Thus the contention of the Appellants that the writ petitioner could have appointed a representative while in hospital cannot be sustained.

21. Upon considering the act of the Appellants it will further appear that the appellants not only proceeded arbitrarily against the writ petitioner by giving a go-bye to the principles of natural justice but also ignored the humanitarian aspect by not taking into consideration about the illness of the petitioner and demise of his mother. It is only the date of super-annuation which remained in the mind of the Authority, and no other principles.

22. It is true that prior to retirement of an employee disciplinary proceedings can be initiated. However it is always not reasonable to institute disciplinary

proceedings at the verge of retirement of an employee, when few months left for super-annuation. It is because of three reasons.

23. Firstly, when disciplinary proceedings are initiated at the verge of retirement there is shortage of time as proceedings are to be completed after complying the principles of natural justice and upon giving reasonable opportunity to the employee concerned to defend himself. Secondly when an employee is at the verge of retirement and counting days he mostly engages himself in settling the documents with regard to his retirement dues and applies his mind to the pending work at his disposal. Complicated work and work requiring considerable period are usually not assigned, to such employees. Thus when a show cause notice contemplating disciplinary proceedings is issued upon an employee it will cause a tremendous mental pressure upon him, and he will not be in a mental position to reply or defend the proceedings with full mental strength and may seek adjournment to submit reply and face the proceedings. Thirdly the object of disciplinary proceedings is to bring discipline in the organisation. Punishments are awarded in disciplinary proceedings to a delinquent employee to reform him and where the misconduct is very serious and it is not safe to retain the employee in the undertaking he is dismissed or removed from service or compulsorily retired. Thus when an employee is going to leave the undertaking within a short period it is not reasonable to take steps to reform him or terminate his service.

24. Moreover as the object of disciplinary proceedings is to reform and rectify employee and to bring discipline in the institution such proceedings should be instituted only for the purpose of reforming an employee or removing him from the organization in case of serious misconduct, and it should not be instituted for the

purpose of depriving an employee of pension and other service benefits which the employee has acquired on account of his long period of service. Thus when an employee is at the verge of retirement disciplinary proceedings may be avoided to the extent possible.

25. Now the question which comes for consideration is whether an employee who is alleged to be involved in misappropriation of funds of the undertaking or in gross negligence in dealing of funds of the undertaking causing huge loss be allowed to go scot free without any proceedings either civil or criminal. The answer is obviously in the negative. It is well settled principle of law that nobody can enrich himself unjustly at the expense of others. Thus an employee also cannot enrich himself unjustly at the expense of his employer. Even loss incurred to an undertaking due to gross negligence of an employee can be recovered from the said employee by due process of law. An employer may institute a criminal proceedings against an employee even after his retirement if after enquiry it is detected that there is misappropriation of funds involving huge amount or institute a Civil Suit against him to recover any loss incurred due to wilful act of an employee or may recover the loss incurred by adjustment from retirement benefits which are permissible under law.

26. However when Disciplinary Proceedings are concerned against an employee who is at the verge of retirement and is involved in causing financial loss to the undertaking disciplinary proceedings may be avoided and proceedings for recovery of financial loss may be instituted. In the proceedings for recovery of financial loss the proceedings should be confined to only hearing the employee concerned about his involvement in financial irregularity causing financial loss and if finding is

arrived at about involvement of the employee the amount of financial loss may be adjusted from those retirement benefits which is permissible under law and there is no statutory bar. Such recovery proceedings may be instituted prior to retirement of the employee concerned and continued even after retirement or may be instituted after retirement of the employee. In both the cases except the amount sought to be recovered the balance amount of retirement benefits should be released. Even after arriving at a finding about involvement of employee if there is statutory bar to recover the said amount the same should not be recovered. Thus particular amount from retirement benefits should be kept aside from those heads which is permissible under law.

27. In the instant case the appellants apart from instituting disciplinary proceedings in violation of the principles of natural justice, have awarded punishment on 30/12/2019 to the Writ Petitioner 'Dismissal from Service' when the date of retirement/super-annuation of the Writ Petitioner was on 31/12/2019. The acts of the appellants are astonishing. When a person is proceeding towards the door and just few steps to go out it is very silly to push him and make him fall. Such is the situation in the case of the writ petitioner.

28. In the event the appellants were fully satisfied about involvement of the petitioner they could have awarded minor punishment of fine or could have deprived him of Gratuity under Payment of Gratuity Act or could have adjusted the defalcated amount from the retirement benefit and allowed him to retire with other retirement benefits on 31/12/2019, which was just a day after the order of dismissal was passed. Such steps could have prevented the writ petitioner from suffering immense hardship. As clause-6(i) of Bipartite Settlement provides

punishment of fine also for gross misconduct the appellants were within their discretion to impose fine to the extent of the amount allegedly defalcated by the petitioner.

29. Moreover Clause 12(e) of the Bipartite Settlement also provides the procedure of not holding enquiry where the Bank does not intend to pass an order of discharge or dismissal from service.

30. Clause 12(e) of the Bipartite Settlement Provides as follows:

12(e) An enquiry need not be held if:

- i. The bank has issued a show cause notice to the employee advising him of the misconduct and the punishment for which he may be liable for such misconduct.
- ii. The employee makes a voluntary admission of his guilt in reply to the aforesaid show cause notice; and
- iii. The misconduct is such that even if proved the bank does not intend to award the punishment of discharge or dismissal.

31. However if the employee concerned requests a hearing regarding the nature of punishment such a hearing shall be given.

32. Hence from considering clause 12(e) of the Bipartite Settlement also it will appear that the disciplinary authority has the discretion of advising the employee concerned of his misconduct and punishment which may be imposed which is other than dismissal or discharge from service.

33. In the event employee makes voluntary confession punishment other than dismissal and discharge from service is passed. Thus it will appear that clause

12(e) is a process to amicably settle a dispute with regard to misconduct of an employee peacefully without resorting to usual course of enquiry.

34. The Disciplinary Authority/Appellants were well within their discretion to invoke the procedure provided under clause 12(e) of the Bipartite settlement if the intention of the Authority was to resolve the dispute/proceedings peacefully within 18 days starting from 12th December 2019 to 30th December 2019 as 18 days were left for super-annuation of the writ petitioner from the date when show cause notice was issued.

35. The Appellants/Disciplinary Authority chose the long process of Regular Enquiry by Enquiry Officer giving a go-bye to the principles of natural justice and passing harsh punishment of dismissal from service when one day was left for retirement of the writ petitioner.

36. These arbitrary and harsh acts of the disciplinary authority shocks the conscience of this Court. Thus the Enquiry Report dated 24-12-2019 and the final order of punishment dated 30-12-2019 cannot be sustained in the eye of law and the same should be set aside.

37. Now the point for consideration is whether the entire retirement benefits should be given to the writ petitioner.

38. Learned Advocate for the respondent/writ petitioner has relied on the decision of Bhagirathi Jana (supra). The Hon'ble Supreme Court observed as follows:

“8. Learned Senior Counsel for the respondent placed reliance on the judgment of this Court in *Takhatray Shivadattary Mankad V. State of Gujrat*¹. It is true that that was a case of imposing a reduction in the

pension and gratuity on account of unsatisfactory service of the employee as determined in an enquiry which was extended beyond the date of superannuation. But the above decision cannot help the respondent inasmuch as in that case there was a specific rule namely Rule 241-A of the Junagadh State Pension and Parwashi Allowance Rules, 1932 which enabled the imposition of a reduction in the pension or gratuity of a person after retirement. Further, there were rules in that case which enabled the continuance of the departmental enquiry even after superannuation for the purpose of finding out whether any misconduct was established which could be taken into account for the purpose of Rule 241-A. In the absence of a similar provision with the regulations of the respondent-Corporation, the above judgment of *Manked Case*¹ cannot help the respondent.”

39. Learned Advocate further relies upon the decision of Deb Prakash Tewari (supra). The Hon’ble Supreme Court observed as follows:

40. “In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30-6-1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the

absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.”

41. The above two judgments do not apply in this case as the material issue in the said cases were whether disciplinary proceedings can be continued after retirement. Secondly the specific allegation of misappropriation of money was not the issue. There is distinction between general misconduct and misconduct regarding misappropriation of public money as appellant/Bank deal with public money and it has duty to take steps for recovery in case of embezzlement.

42. In the instant case also there is no dispute that fresh disciplinary proceedings cannot be instituted after retirement of writ petitioner as the earlier decision of the disciplinary proceedings are liable to be set aside, but there may be recovery proceedings either before Civil Court or before the Authority by giving writ petitioner hearing on the matter.

43. It is to be remembered that at the time of releasing retirement benefits an employer has right to see that dues of the employee towards the employer is cleared and if excess payment is made to the employee for his fault the same is recovered in accordance with law. It is well settled principle of law that nobody can enrich himself unjustly at the expense of other. In the event an employee has by his intentional acts enriched himself unjustly causing loss to the employer, the employer has right to recover the loss in accordance with law either by giving a personal hearing to the employee and taking a reasoned decision or moving the competent Civil Court for necessary reliefs. As Banks deal with public money they are accountable to the public. Thus in the event of defalcation of any fund it is the duty of the Bank to identify the person involved and take steps for recovery. As the

Appellants Bank Authority are dealing with public money they have a duty to take steps for recovery of any money defalcated by any employee or outsider. Thus liberty is given to the Appellants to with hold Rs. 7, 89,700/- from the retirement benefits of the writ petitioner, from such heads as is permissible under law and release the rest. Upon withholding the sum of Rs. 7, 89,700/- the Appellants shall give a personal hearing to the writ petitioner and thereafter take a reasoned decision as to whether Rs. 7, 89,700/- should be forfeited.

44. In the alternative the appellants may move competent civil Court for necessary reliefs.

45. Hence this Appeal fails and the same is dismissed.

46. The order of Learned Single Judge dated 22-05-2024 passed in WPA-No-773 of 2022 is affirmed. However with regard to Rs. 7,89,700/- the Appellants may withheld and recover the same by giving hearing to the writ petitioner in recovery proceedings and by a reasoned order or by moving the competent Civil Court and obtaining necessary declaration to forfeit the said amount.

47. Along with MAT No. 62 of 2024 all other interlocutory applications stands disposed.

48. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(Arijit Banerjee, J.)

(Biswaroop Chowdhury, J.)