OD-1

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/38/2019

KALYAN KUMAR BHATTACHARYA
VS
STATE BANK OF INDIA AND ANR.

BEFORE:
The Hon'ble JUSTICE SUBHENDU SAMANTA
Date : January 17, 2025

Appearance:
Mr. Anirban Majumder, Adv.
Mr. Rittick Chowdhury, Adv.
Mr. Sayantan Mullick, Adv.
,,,for the petitioner

Mr. Subrata Kr. Sinha, Adv.
Mr. S. Pal Chaudhuri, Adv.,
Ms. T. Paul, Adv.
Ms. S. Paul, Adv.
....for the respondents

The Court: The petitioner was an employee of State Bank of India who joined in the bank on 12th August, 1969. During the tenure of his service, he was promoted to Scale– I in the cadre as of Branch Manager. He was posted as a Branch Manager, Shakespeare Sarani Branch, Calcutta. A spot audit was conducted on 17th June, 1996 by the concerned Vigilance Department of the Bank allegedly drawing serious irregularities in D.D. purchase and in overdrafts in current account of its constituents M/s. Seraikella Glass Works Limited. On 2nd August, 1996, the petitioner was suspended under the provisions of Rule 68A(1)(a) of the State Bank of India Officers' Service Rules.

Reply was made by the petitioner with the contention that all the acts were done in good faith. However, the reply of the petitioner was not considered and articles of charges were framed and served upon the petitioner. There were ten articles of charges, on the basis of which disciplinary proceeding was initiated. The disciplinary authority has passed the impugned order on 28th September, 2001. The authority has passed the order as follows:

> *"I, General Manager (D&PB), as the Appointing Authority, have carefully examined the Inquiry Report submitted by the Inquiring Authority appointed to conduct the Inquiry in respect of the charges levelled against Shri K. K. Bhattacharya, all the relevant papers of the Inquiry and the submission of Shri Bhattacharya dated 26.06.2001 on the Inquiry Report.*
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> *2. The Inquiring Authority has held that out of the 10 (ten) charges levelled against Shri Bhattacharya, charge Nos. 1, 2, 3, 4, 5(a), 5(b) and 10 have been proved, charge No.6 has been partly proved while charge Nos. 7, 8 and 9 have not been proved. I agree with the findings of the Inquiring Authority. I observe that Shri Bhattacharya allowed clean overdraft of huge amount far exceeding his discretionary powers without proper appraisal or documentation and without reporting the matter to the Controlling Authority. He also negotiated high value cheques beyond his discretionary powers some of which were returned unpaid but were not debited to the relevant account. He has, thus, acted in a reckless manner highly detrimental to the Bank's interests and has exposed the Bank to a financial loss of more than Rs.2.50 crores. After having applied my free and fair mind independently to the full facts and circumstances of the case, I am of the considered opinion that the ends of justice would be met if Shri K.K. Bhattacharya, MMGS-III, (under suspension), is inflicted with the penalty of "**Dismissal**" under Rule 67(j) of State Bank of India*

Officers Service Rules and I order accordingly. I further order that the period of his suspension with effect from 03.08.1996 be treated as such."

Against the said order of dismissal, the petitioner has approached before the Appellate Authority. The Appellate Authority after hearing the petitioner has passed the order whereby affirmed the order passed by the disciplinary authority as follows:

"8. Having gone through the appeal made by Shri Kalyan Kumar Bhattacharya and the relevant documents that have led to the Disciplinary Authority impose the punishment of "Dismissal" under Rule 67(j) of the State Bank of India Officers' Service Rules (SBIOSR), I observe that the inquiry has been held strictly in conformity with the Rules; the principle of natural justice have been respected. The penalty decision has been arrived at after due application of mind by the Disciplinary Authority. I am also in agreement with the findings and decisions. It is observed that the appellant showed undue favour to a borrower client by allowing them facilities without making an assessment of their needs and far in excess of the discretionary powers vested in him. He failed to report to his superiors the fact of exercising powers and that the conduct of the account was a cause for concern. That he showed special favours to the client is evident from the fact that returned cheques were either repurchased on were realised after long delays. The allegation that he tampered with the computer system to accommodate the borrower is held as established and this only goes to prove that he continued to bestow undue favours on this party. Moreover, he failed to protect the Bank's interest by not even completing documentation formalities. The Bank has incurred a loss of substantial amount due to the actions of the appellant, an officer with such seniority. The penalty imposed on

> *him is just and fair. He has not advanced any new points in his appeal that require deliberation. I am satisfied that the proceedings were conducted fairly and the appellant was given every opportunity to defend himself.*
>
> *Having said so, I am drawn to the conclusion that the officer does not merit any leniency for the actions that have jeopardized the Bank's interests. There is no case for revising the penalty imposed on him. I confirm the same and order accordingly."*

It is the case of the petitioner that on the basis of self-same irregularities, the CBI had started a case against the present petitioner which was registered as R.C. No. 12 of 1997. The allegation by the CBI is identical to that of the allegation raised against the present petitioner in the departmental proceeding.

It is the case of the petitioner that the said R.C. No. 12 of 1997 was registered before the learned Court of Special (CBI), Court No.2, Bichar Bhawan, vide Special Case No.89/2011. Learned Special Judge after hearing the parties and after perusing the evidences of the prosecution has disposed of the said Special Case by acquitting the present petitioner after finding him not guilty for the offence punishable under Section 120B read with Sections 420/468/467/471/201 of IPC and Section 13(1) (d) read with Section 13 (2) of the Prevention and Corruption Act, 1998. The order of the Special Court is set out as follows :-

> *"That the accused persons namely (1) Sri Kalyan Kumar Bhattacharjee and (2) Sri Subhas Chandra Varshnei are found not guilty for the offence punishable under section 120B read with*

> *Section 420, 468, 471, 201 of IPC and section 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988 and they are hereby acquitted from this case under section 235(1) of Criminal Procedure Code and they are hereby discharged from their respective bail bonds.*
>
> *Seized documents be returned to the offices from seized, after expiry of the statutory period of appeal."*

It is the positive case of the petitioner that identical allegation was raised against the petitioner before the learned Special Court. The evidences were led by the CBI and huge documents were produced. The documents were marked as Exhibits before the learned Special Court. He submits that the witnesses who appeared before the disciplinary authority also appeared before the Special Court but their evidences were totally dissimilar. On the basis of the evidences, the learned Special Court has acquitted the petitioner and discharged him from all the charges. It is the case of the petitioner that the witnesses were under pressure of the authority of the respondent. Accordingly, they have deposed in department proceeding at the behest of the respondent authority (CBI). He submits that there are no materials to justify the order of the disciplinary authority for dismissal of the present petitioner from the service.

Learned counsel appearing for the petitioner further argued that the financial loss as stated in the order of the disciplinary authority is not specific. It has also argued on behalf of the petitioner that the order of the judicial authority is more powerful and reliable than the order passed by the disciplinary authority. He submits that the disciplinary authority ought not to have passed the order of dismissal against the present petitioner. It is the argument of the learned counsel for the petitioner that, if there is any merit regarding irregularities in dealing with the purchase of D.D. and Over Draft of the current account of the constituent i.e. M/s Seraikella Glassworks Limited, the judicial authority, learned Special Court under CBI, must have noticed the same. The acquittal of the petitioner from the criminal case itself exonerate him from all charges and it is proved that the finding and the order of the disciplinary authority as well as the appellate authority of the State Bank of India is illegal and not binding. In support of his contention, learned counsel for the petitioner has cited some decisions :

1) ***G. M. Tank vs. State of Gujarat and Ors*** reported in ***AIR 2006 SC 2129***,

2) ***Tara Singh vs. Union of India and Ors.*** reported in ***2015 (3) CLJ (CAL) 144***

In *Tara Singh (supra),* Division Bench of this Court has held that

> *"15. We are armed with the decision reported in MANU/SC/0082/2010 : (2010) 2 Supreme Court Cases 772 wherein the Hon'ble Apex Court held that at an enquiry officer is a quasi-judicial authority and he is in the position of an independent adjudicator. He is not supposed to be representative of the department/disciplinary authority/Government, even in the absence of the delinquent official, he is to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. Therefore, we have no option left with except to set aside the impugned order. In the result, the instant appeal is allowed. Judgment passed by the Learned Single Judge as well as the*

order of the disciplinary authority of C.I.S.F. are hereby set aside. The appellant be restored in his original position in service, if he has not attained the age of superannuation by this time and if he had already attained the age of retirement, then in that case, all financial benefits should be given to him, as if he was never terminated, within three months from the date of communication of this order.”

In G. M. Tank (supra) the Hon’ble Supreme Court has framed two questions for determination which are set out hereinbelow :-

“1. Whether in the case of no evidence, the employee can be dismissed from service?

2. Whether acquittal, absolutely on merits amounting to clear exoneration of the appellant by the Special Court under the P.C. Act does ipso facto absolve the appellant from the liability under the disciplinary jurisdiction when the charges leveled against the appellant in the departmental proceedings and the criminal proceedings are grounded on the same set of facts, charges, circumstances and evidence.”

In deciding those questions, the Hon’ble Supreme Court has held that:

“16. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succced. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision

> *in **Paul Anthony's case (supra)** will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.*
>
> *17. In the instant case, the appellant joined the respondent in the year 1953. He was suspended form service on 8.2.1979 and got subsistence allowance of Rs.700/- p.m. i.e. 50% of the salary. On 15.10.1982 dismissal order was passed. The appellant has put in 26 years of service with the respondent i.e. from 1953-1979. The appellant would now superannuate in February, 1986. On the basis of the same charges and the evidence, the Department passed an order of dismissal on 21.10.1982 whereas the Criminal Court acquitted him on 30.1.2002. However, as the Criminal Court acquitted the appellant on 30.1.2002 and until such acquittal, there was no reason or ground to hold the dismissal to be erroneous, any relief monetarily can be only w.e.f. 30.1.2002. But by then, the appellant had retired, therefore, we deem it proper to set aside the order of dismissal without back wages. The appellant would be entitled to pension."*

Learned counsel for the petitioner on the basis of the observation of the Hon'ble Supreme Court in *G.M. Tank* has submitted that normally where the accused is acquitted honourably and completely exonerated of the charges, it would not be expedient to continue a departmental inquiry on the basis of very same charges/grounds/evidences. He submits that the departmental inquiry of the present petitioner though had been completed much prior to the disposal of the Special Case, but the effect of disposal (acquittal) has always an impact upon the order of the disciplinary authority.

On the above argument, learned counsel for the petitioner submits that the order of the disciplinary authority, affirmed by the appellate authority of the State Bank of India, is devoid of merit and the same is required to be set aside. The petitioner also prayed for retiral benefits as per the provisions of law.

Learned counsel appearing on behalf of the State Bank of India initially at the starting of argument raised a question of limitation. It is the argument of the SBI that the order of the disciplinary authority was passed in the year 2001 and the appellate authority has affirmed the order in the year 2002. Since the order had been passed, the petitioner never approached this Court challenging the legality and propriety of those order. Suddenly, after disposal of the Special Case initiated by the CBI, the petitioner has approached this Court. Learned Counsel for the SBI submits that there is no explanation in the petition itself regarding the inordinate delay in approaching this Court. In support of his contention, learned counsel for the SBI has cited some decisions which are as follows:

1. ***Chennai Metropolitan Water Supply and Sewerage Board and Others vs. T. T. Murali Babu reported in (2014) 4 SCC 108.***
2. ***Chairman, State Bank of India & Anr. vs. M.J. James reported in AIR 2022 SC 582.***
3. ***P.S. Sadasivaswamy vs. The State of Tamil Nadu reported in AIR 1974 SC 2271.***

Learned counsel for the SBI further argued that the petitioner never raised before this Court any question recording the biasness and competency of the disciplinary authority as well as the appellate authority.

On all stages of the proceedings, the petitioner was given reasonable opportunities of being heard. He further argued that it would reveal from the proceedings that he was regularly represented before the disciplinary authority at the time of hearing. Principles of natural justice had never been violated in conducting the disciplinary proceeding by the State Bank of India. The authorities allowed the petitioner to disclose his case as well as he was allowed to depose and produce his witnesses.

It is the positive submission of the learned Counsel for the SBI that on perusing the entire proceeding it would reveal that the State Bank of India has properly conducted the proceeding according to the procedure established by the Rule of State Bank of India. He submits that findings of the disciplinary authority generally should not be interfered by the High Court in every proceeding. He argued that the Hon'ble Supreme Court in ***Union of India and Others v. P. Gunasekaran*** reported in ***AIR 2015 Supreme Court 545*** had set out the Rule whereby a disciplinary proceeding can be questioned before the High Court:

> *"13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No.1 was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court 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 of 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.

Under Article 226/227 of the Constitution of India, 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."

Learned Counsel for the State Bank of India also distinguishes the judgment of *G. M. Tank (Supra)* by placing the reliance upon the judgment of Hon'ble Supreme Court passed in ***State of West Bengal and Others. v. Sankar Ghosh*** reported in ***(2014) 3 SCC 610:***

> *"10. Mr. Nikhil Goel, learned counsel appearing for the respondent, submitted that the Tribunal and the High Court have correctly applied the ratio laid down by this Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., Sulekh Chand v. Commr. of Police and G.M. Tank v. State of Gujarat and ordered reinstatement of the respondent. The learned counsel also submitted that since the accused persons could not be identified in the TI parade, their complicity could not be established. Consequently, the acquittal of the respondent was an honourable acquittal. Going by the various judicial precedents laid down by this Court, the learned counsel submitted that the respondent was rightly reinstated in service and the order passed by the Tribunal as well as the High Court calls for no interference."*

Having heard learned Counsel for the parties and also considering the materials and the observations of the Hon'ble Supreme Court, it appears to me that there are two questions basically raised in the writ petition.

<u>First</u> one is - whether the petitioner was deprived to participate in the proceeding when the disciplinary authority was deciding the matter of irregularities.

In considering the entire pleadings of the parties as well as the affidavit-in-oppositions, it appears to me that all 10 (ten) charges were framed and served upon the petitioner before initiation of proceeding. The documents were properly supplied upon the petitioner, though it has been alleged before this

Court that the documents were not properly supplied, but it appears from the recording of proceeding that all the documents were handed over to the petitioner during the enquiry and the petitioner has never raised the question of want of documents before the disciplinary authority. Finding all other pleadings and records and the documents it appears to me that the petitioner was given sufficient opportunity of being heard and to defend himself before the disciplinary authority. The disciplinary authority has come to the conclusion that due to the act of the present petitioner in reckless manner the financial loss of the bank is more than Rs. 2.5 crores. The reason for financial loss though unjustified in the order of the disciplinary authority but the finding therein regarding the proving of charges, it appears to me that the order of the disciplinary authority is reasonable and acceptable to the facts and circumstances of this case.

On the above score, this Court being a writ Court which is not required to interfere with the merit of the findings, is of view that the order passed by the disciplinary authority and the appellate authority is not violative to the principles of natural justice.

Following the observation of Hon'ble Supreme Court in ***P. Gunasekaran (supra)***, it appears to me that the enquiry was held by the competent authority and according to the procedure of law there is no violation of principles of natural justice. The authority has allowed the petitioner to defend himself. The evidences were admitted and no material evidences were denied. On that score, I find no justification to interfere with the finding of the disciplinary authority as well as the appellate authority. Accordingly, the first point is decided against the petitioner.

In considering the second point, as to whether the order passed by Special Court constituted under Central Bureau of Investigation(CBI) and order therein can affect the finding of disciplinary proceeding. In ***G. M. Tank (Supra)*** the Hon'ble Supreme Court has held that evidences, witnesses and the materials before the disciplinary proceeding are similar to that of the evidences, materials supplied before the Judicial Authority (Court). It is the view of the Hon'ble Supreme Court in the ***G. M. Tank (Supra)*** that order of acquittal by the competent Court itself exonerates the appellant from all charges framed in the departmental proceeding. The Hon'ble Supreme Court in ***Sankar Ghosh (supra)*** had specifically held that if the charges are not identical to that of the departmental proceeding as well as the criminal proceeding, the High Court is not justified by holding that since the respondent was acquitted by the criminal Court of the same charges, reinstatement was automatic.

On perusing the observation of Hon'ble Supreme Court in ***G. M. Tank (supra)*** *vis-a-vis* ***Sankar Ghosh (supra)*** it appears to me that whether same charges, finding or evidences were placed before the Court of law or before the departmental proceeding, is the deciding factor of this issue. It appears to me that before initiation of the departmental proceeding, 10 (ten) charges were framed, those charges were levelled regarding the irregularities conducted by the present petitioner during his tenure as a Manager of the said bank under Shakespeare Sarani Branch.

RC No.12 of 1997 is an FIR by the Central Bureau of Investigation (CBI) against the present petitioner and others regarding charge of offences punishable under Section 120B read with Section 420, 468, 471, 201 of IPC and 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988.

It is the observation of the learned Special Court (CBI) that the evidences of prosecution are not convincing to substantiate the charge against the present petitioner. The alleged offences under Section 120B/420/471 of IPC have its separate ingredients to be proved. The said ingredients are not similar to that of the charges framed and served by the State Bank of India upon the petitioner.

In case of criminal charges, specific evidence which has to be proved by the prosecution beyond reasonable doubt. The charges of the disciplinary authority have to be proved under the principles of preponderance of probabilities.

Considering the differences of proof of charges, I am of the view that the charges as framed by the disciplinary authority against the present petitioner are dissimilar to that of the charges framed by the CBI against the present petitioner in RC No.12 of 1997. On that score, I make it clear that though the evidence may be similar, but the effect to be proved before the two forums are different.

Under the above observation, it appears to me that the observations of the Hon'ble Supreme Court in ***G.M. Tank(supra)*** is not at all applicable in this case. Thus, the point no.2 is also decided against the present petitioner.

Under the above observation, I find no justification to entertain the present petitioner.

Accordingly, the instant writ petition being WPO No.38 of 2019 is dismissed and disposed of.

During argument of learned Counsel for the petitioner has argued that the retiral benefit of service of the petitioner was not paid by the State Bank of India. It has been demonstrated before this Court that the petitioner is not entitled to get the contribution to State Bank of India towards the provident fund. It has also been argued by the respondent bank that the petitioner is not entitled to get the pension. It has been specifically argued that the petitioner may entitle to the gratuity subject to his application being made before the authority.

The petitioner may apply for his terminal benefit before the State Bank of India by making a specific application thereon. On such application, the State Bank of India shall dispose of the application of the petitioner, according to law, within six weeks from the date of the application.

I make it clear that this Court has not entered into the merit of the entitlement of terminal benefit of the petitioner. The State Bank of India and the Appellate Authority is at liberty to decide the matter, according to the law, without being influenced by any order of this Court.

(SUBHENDU SAMANTA, J.)

Kc/mg/S. Pal.