

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Madhuresh Prasad

AND

The Hon'ble Justice Prasenjit Biswas

**F.M.A. 535 of 2024
With
CAN 1 of 2024**

**West Bengal Gramin Bank & Ors.
Vs.
Phanibhushan Chakraborty**

For the Appellants	:	Mr. <i>Baidurya Ghosal,</i> Mr. <i>Saikat Mukherjee</i>
For the Writ Petitioner/Respondent	:	Mr. <i>Debabrata Saha Ray, Sr. Adv.,</i> Mr. <i>Indranath Mitra,</i> Mr. <i>Neil Bau,</i> Mr. <i>Sankha Biswas,</i> Ms. <i>Oindrilla Sarkar,</i> Mr. <i>Avidipta Paul</i>
Heard on	:	23.03.2026
Judgment on	:	23.03.2026

MADHURESH PRASAD, J.:

1. Herd the learned advocate for the appellants and the learned advocate representing the respondent.

2. The appellant was the respondent before the Writ Court. The writ petition was allowed by the Hon'ble Single Judge by a judgment dated 20.09.2023. The Hon'ble Single Judge was pleased to quash the enquiry report, order of the punishment and allow the writ petition.
3. The appellant has assailed the judgment dated 20.09.2023 by way of the present Intra Court Appeal.
4. The petitioner while working in a managerial capacity in the Bank was proceeded against by a charge memo dated 13.05.2011. The charge memo allege that the petitioner had violated Regulation 18 and 20 of the Bangiya Gramin Vikash Bank (Officers and Employees) Service Regulations, 2010 [hereinafter referred to as Regulations]. Five charges were drawn up against the petitioner which read as follows:

*“i) Committing acts detrimental to the interest of the Bank;
ii) Sanction and disbursement of loans violating Rules, Norms and Lending Policy of the Bank;
iii) Exposing the Bank to financial loss;
iv) Doing acts in negligent and suppressive manner &
v) Committing breach of trust.”*
5. The enquiry commenced on 09.08.2011 and concluded on 14.07.2012. The Bank was relying upon eleven documents as evidence in support of the charges, which were to be brought home, based on oral testimony of two proposed witnesses.
6. The enquiry concluded by an order of the Disciplinary Authority dated 17.08.2013 holding the petitioner guilty of the charges. The petitioner was awarded the punishment of reduction to the lowest scale of pay. The

petitioner preferred an appeal against an order of the Disciplinary Authority, which was rejected by the Appellate Authority on 10.05.2014.

7. In the above background the petitioner filed the first writ petition bearing AST No. 188 of 2014. Upon going through the enquiry proceedings the Hon'ble Single Judge found that the order of the Appellate Authority, as well as the Disciplinary Authority was without assigning any reasons, passed mechanically and manifests non-consideration of the charges vis-à-vis the material. The Hon'ble Single Judge quashed the order of the Disciplinary Authority dated 17.08.2013 as well as the order of the Appellate Authority dated 10.05.2014 and remanded the matter to the Disciplinary Authority to consider the enquiry report, enquiry proceedings and other materials produced at the enquiry, including the objections raised by the writ petitioner.
8. Under the circumstances the Disciplinary Authority proceeded to consider the matter afresh and passed an order on 23.09.2015, again holding the charges to be proved. The Disciplinary Authority found the petitioner liable to a punishment of *"Reversion from Officer Scale-III to Officer Scale-II, in the initial stage of time scale of pay (Officer Scale-II) with retention of FPP and Stagnation increment, if any, w.e.f. 17.08.2013 with cumulative effect."*
9. The petitioner again availed the remedy of departmental appeal. This time, the Appellate Authority rejected the petitioner's appeal, thereby affirming the order passed by the Disciplinary Authority. The appeal was rejected by the Chairman, Board of Directors of the Bank by an order dated 11.05.2016. The order of the Disciplinary Authority and the Appellate Authority was thus

assailed by the writ petitioner in the second writ petition bearing W.P.A. No. 13167 of 2019, order of which is subject matter of the present Intra Court Appeal.

10. After a meticulous consideration of the material on record, the Hon'ble Single Judge by the judgment under appeal dated 20.09.2023, found that the order of the Disciplinary Authority was unsustainable. The judgment of the Hon'ble Single Judge has taken into consideration various infirmities including non-examination of any witness in support of the charges. The Hon'ble Single Judge has considered the enquiry report dated 28.12.2012 submitted by the Enquiry Officer and found that the same is cryptic, and there are no reasons in support of the conclusion recorded by the Enquiry Officer. The conclusions were found to be without reference to any material in the enquiry.
11. The Hon'ble Single Judge found that after recording the few dates prior to passing of the final order, the Enquiry Officer proceeded to hold the charges proved. The Enquiry Officer did not even record a finding as to which norm or procedure was allegedly violated by the charge sheeted officer while sanctioning the loans. The Enquiry Officer proceeded to record finding prejudicial to the charge sheeted officer by shifting the onus of proof on the charge sheeted officer. The Hon'ble Single Judge also found that the P.O's submission was recorded by the Enquiry Officer verbatim, purporting to be his own conclusions. Therefore, it is obvious that Enquiry Officer's order was mechanical and suffered from the vice of non application of mind. The enquiry report was found to be unsustainable.

12. In view of such infirmities in the consideration of the Enquiry Officer, the Hon'ble Single Judge found that the conclusions of the Enquiry Officer, and consequential order of the Disciplinary Authority were not sustainable. The order of the Disciplinary Authority and its affirmation by the Appellate Authority were also found to be unsustainable.
13. The conclusions of the Hon'ble Single Judge in our considered opinion is based on perusal of the record and on going through the enquiry report, order of the Disciplinary Authority as well as the Appellate Authority. We find that the above noted conclusions of the Hon'ble Single Judge are borne from the record and based on a thorough consideration of the same, which does not require any interference.
14. The learned advocate for the appellants submitted that since the Hon'ble Single Judge did not set aside the charge memo. The Hon'ble Single Judge should have allowed an opportunity to the authorities to proceed against the writ petitioner from the stage after submission of the charge memo.
15. He has drawn the Court's attention to Regulation 45 of the Bangiya Gramin Vikash Bank (Officers and Employees) Service Regulations, 2010 to submits that the same permits the continuance/conduct of proceeding against retired employee even after retirement. The petitioner's retirement dated 31.05.2014, therefore, did not justify quashing of the entire disciplinary proceeding against the writ petitioner, without affording an opportunity to the employer to proceed in accordance with law to establish the charges made out in the charge memo dated 31.05.2011.

16. The learned advocate representing the appellants relied upon decision of the Hon'ble Apex Court in the case of ***The State of Uttar Pradesh and Others –Vs.- Rajit Singh*** reported in ***2022 AIR (SC) 1551*** and a judgment of a coordinate Bench of this Court in ***Bangiya Gramin Vikash Bank & Ors. –Vs.- Debajyoti Roy (MAT 2272 of 2023)***, copies of which have been passed on to the Court after serving a copy on the respondent's counsel.
17. The learned advocate representing the respondent on the other hand submitted that the petitioner attained the age of superannuation on 31.05.2014, more than a decade back. The charge memo is dated 31.05.2011 in respect of allegations even prior thereto. At this stage when the authorities despite an opportunity given pursuant to the earlier order passed in AST No. 188 of 2014, failed to proceed in accordance with law. Therefore, now they cannot claim a further opportunity to proceed in respect of the charge memo issued in 2011.
18. The Hon'ble Single Judge after a threadbare consideration on the merits of the allegations and the materials on record has found the enquiry report, the conclusions of the Disciplinary Authority and the Appellate Authority orders to be unsustainable and illegal. Under the circumstances having regard to the detailed consideration and taking into account the various other factors such as the inordinate delay, the period of more than a decade since the petitioner's retirement, the authority should not be allowed to now proceed with the matter.

19. In support of his submissions he relied upon decision of the Hon'ble Apex Court in the case of **Anant R. Kulkarni –Vs.- Y.P. Education Society and Others** reported in **(2013) 6 SCC 515**. He has also relied upon decision of the Hon'ble Apex Court in the case of **G. Vallikumari –Vs.- Andhra Education Society and Others** reported in **(2010) 2 SCC 497**.
20. The learned advocate also relied upon the decision of the Hon'ble Apex Court in the case of **Roop Singh Negi –Vs.- Punjab National Bank and Others** reported in **(2009) 2 SCC 570** to support the conclusions in the Hon'ble Single Judge's order.
21. We have considered the rival submissions insofar as the submission of the learned advocate for the appellants regarding an opportunity not being given by the Hon'ble Single Judge to proceed with the matter afresh based on these decisions. The decision passed in the case of **Rajit Singh (supra)** relied upon, is required to be considered in correlation to the factual foundations for passing the judgment. The Hon'ble Apex Court in the case of **Rajit Singh (supra)** was considering an order passed by the Tribunal wherein the Tribunal quashed the punishment awarded to the charge sheeted officer based on a submission claiming parity with other charge sheeted employee, allegedly similarly situated as the petitioner therein, who had been exonerated.
22. The Hon'ble Apex Court took into consideration the settled principle of law that normally parity cannot be claimed in this regard as individual roles, duties and evidence/material may differ. The judgment also took into

consideration non-supply of documents to the delinquent therein. The Hon'ble Apex Court, therefore, was of the view that the punishment order was interfered with on the ground of procedural lapse. Therefore, it arrived at a conclusion that it was only proper to allow the authorities an opportunity to proceed with the matter in accordance with law.

23. The other decision of the coordinate Bench in ***Bangiya Gramin Vikash Bank & Ors.*** (*supra*) relied upon by the appellants also rests on similar consideration, which is a binding precedent for this Court. However, such proposition can apply only in correlation to the facts in which they are rendered which we find in the present case to be distinguishable.

24. In the present case as taken note of above, there is a thread bare consideration by the Hon'ble Single Judge of the entire issue right from the enquiry report, Disciplinary Authority's orders as well as the Appellate Authority's order. On the various grounds which we have already considered above and need not be restated to avoid repetition, the Hon'ble Single Judge rightly arrived at a conclusion regarding unsustainability of the enquiry report, Disciplinary Authority's order as well as the Appellate Authority's order.

25. Insofar as an opportunity to rectify the mistake claimed by the learned counsel for the appellants, is concerned, we find that the same was granted to the authorities by this Court when the order was passed in AST No. 188 of 2014. The order in AST No. 188 of 2014 was passed on 04.08.2015 much after the writ petitioner had retired (31.05.2014). An opportunity was,

therefore, granted to the authorities irrespective of the fact that the petitioner had already retired.

26. Upon consideration of the entire material the Writ Court rightly found that the authorities miserably failed in utilizing such opportunity and have occasioned a gross miscarriage of justice and violation of the principles of natural justice in the consideration as manifest from the enquiry report, Disciplinary Authority and Appellate Authority's order.
27. The order of the Hon'ble Single Judge is limited to consideration within the scope and limit of judicial review under Article 226 of the Constitution of India. The law in this regard is by now settled by catena of judgments of the Hon'ble Supreme Court of India. The issues and circumstances which may be looked into were enumerated by the Hon'ble Apex Court in the case of ***Union of India and Others –Vs.- P. Gunasekaran*** reported in ***(2015) 2 SCC 610***. The Hon'ble Apex Court held that in exercise of judicial review findings in a departmental proceeding may be interfered with when the finding is based on no evidence, where there is violation of principles of natural justice and when the authority has allowed itself to be influenced by irrelevant or extraneous considerations. The Hon'ble Apex Court also held that an interference may be warranted in exercise of judicial review if the conclusions on the face of it is arbitrary, capricious and when no reasonable person could have arrived at such conclusion.
28. The findings of the Hon'ble Single Judge in the present case is in respect of such circumstances apparent from the enquiry report wherein no witness appeared to support the case of the department. The enquiry officer

mechanically recorded the submissions of the Presenting Officer, as his own conclusions, verbatim. Therefore, in the instant case it is glaring that the Enquiry Officer's conclusion is based on no evidence, influenced by extraneous and irrelevant consideration and the findings are arbitrary and capricious. The procedure adopted by the enquiry officer has also been found to be violated of natural justice. We, therefore, find that consideration and conclusions are within the scope of judicial review as stated by the Hon'ble Apex Court in **P. Gunasekaran** (*supra*), leaving no reason to interfere with the decision of the Hon'ble Single Judge.

29. Insofar as a second opportunity post retirement is concerned, we find no reason to interfere with the reason assigned by the Hon'ble Single Judge relying upon the inordinate delay which occurred in the meantime. The judgment of the Hon'ble Apex Court in the case of **Anant R. Kulkarni** (*supra*) and **G. Vallikumari** (*supra*) relied upon by the learned advocate for the respondent in this regard. Relevant extract of the judgment, being relied upon reads:

“36. In the facts and circumstances of the case, as the Tribunal as well as the learned Single Judge have examined all the charges on merit and also found that the enquiry has not been conducted as per the 1981 Rules, it was not the cause of the Management Committee which had been prejudiced, rather it had been the other way around. In such a fact situation, it was not necessary for the Division Bench to permit the respondents to hold a fresh enquiry on the said charges and that too, after more than a decade of the retirement of the appellant.”

Considering the long delay in the instant case, the charges being of the order 2011, the repeated failure of the authority to proceed in accordance with law, despite an opportunity granted earlier being disposal of the first writ

petition, we are of the view, which is fortified by decision of the Hon'ble Apex Court in the case of **Anant R. Kulkarni** (*supra*) and **G. Gallikumari** (*supra*) that the authorities have rightly allowed any further opportunity to reconsider the issue based on the charge memo of 2011.

30. In view of our above consideration, we find no reason to interfere with the judgment dated 20.09.2023 passed by the Hon'ble Single Judge passed in W.P.A. 13167 of 2019.

31. The appeal and the application are dismissed.

32. Urgent Photostat Certified copy of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(MADHURESH PRASAD, J.)

(PRASENJIT BISWAS, J.)