

**(2010) 09 CAL CK 0027**

**In the Calcutta High Court**

**Case No :** A.P.O. 233 of 2010 and G.A. 1574 of 2010 in Writ Petition No. 1631 of 2008

Central Bank of India and Another

APPELLANT

Vs

Kashi Nath Chakraborty

RESPONDENT

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**Date of Decision :** 16-09-2010

**Acts Referred:**

**Citation :** (2010) 4 CALLT 17 : (2011) 1 CHN 360 : (2010) 127 FLR 623 : (2011) 11 LLJ 27

**Hon'ble Judges :** Pranab Kumar Chattopadhyay, J;Md. Abdul Ghani, J

**Bench :** Division Bench

**Advocate :** Soumen Sen, Souvik Mukherjee, S.B. Saraf, S.P. Banerjee, G.N. Jajodia and Debasish Basu, for the Appellant; Soumya Majumder, Biswaroop Bhattacharyya and Asmita Ghosh, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Pranab Kumar Chattopadhyay, J.—The respondent/writ petitioner while working as Senior Manager, Zonal Office, Kolkata under the appellant-bank was served with a show-cause notice for alleged failure to follow the required norms and guidelines relating to disbursement of loans. The show-cause notice was issued on 11th April, 2006 and the writ petitioner replied to the said show-cause notice on 16th July, 2006. However, before submission of the reply to the aforesaid show-cause notice, Deputy General Manager of the appellant-bank placed the respondent/writ petitioner under suspension by issuing the order dated 3rd May, 2006.

2. On receipt of the reply to the said show-cause notice, Disciplinary Authority issued the charge-sheet to the respondent/writ petitioner on 4th July, 2006. The respondent/writ petitioner replied to the charge-sheet denying the allegations made therein. Thereafter, Enquiry Officer conducted the enquiry and submitted report before the Disciplinary Authority.

3. The Disciplinary Authority by a letter dated 31st July, 2007 forwarded the findings of the Enquiry Officer alongwith his own observations in respect of the findings of the said Enquiry Officer in relation to the charges levelled against the respondent/writ petitioner and specifically mentioned in the charge-sheet. The Disciplinary Authority while making observations with regard to the findings of the Enquiry Officer specifically recorded his disagreement with several findings of the said Enquiry Officer.

4. The respondent/writ petitioner submitted his reply to the enquiry report and thereafter, the Disciplinary Authority passed the order of punishment dismissing the said respondent/writ petitioner from the service of the appellant-bank.

5. Challenging the said order of the Disciplinary Authority, an appeal was preferred before the appellate authority by the respondent/writ petitioner. The appellate authority, however, rejected the said appeal.

6. In the aforesaid circumstances, respondent/writ petitioner filed a writ petition before this Court challenging the entire disciplinary proceedings initiated by the appellant-bank against the said respondent/writ petitioner mainly on the ground that the said disciplinary proceedings were conducted in gross violation of the principles of natural justice, equity and fair play.

7. The learned Single Judge allowed the writ petition and quashed the charge-sheet issued to the writ petitioner, the enquiry report submitted by the Enquiry Officer, order of punishment passed by the Disciplinary Authority as well as the order passed by the appellate authority affirming the decision of the Disciplinary Authority.

8. Assailing the aforesaid judgment and order passed by the learned Single Judge, instant appeal has been preferred by the appellant-bank.

9. It has been urged on behalf of the respondent/writ petitioner that the decision to hold departmental enquiry by appointing Enquiry Officer at the stage of issuance of the charge-sheet clearly reflects the closed and biased mind of the Disciplinary Authority.

10. The learned Counsel of the respondent/writ petitioner submitted that the Disciplinary Authority should have allowed the writ petitioner to submit his reply to the charge-sheet and only after considering the said reply, decision should have been taken by the said Disciplinary Authority for holding departmental enquiry against the respondent/writ petitioner.

11. The learned Counsel representing the appellant-Bank, however, submitted that by the aforesaid direction of the Disciplinary Authority for holding departmental enquiry even at the stage of issuance of the charge-sheet did not prejudice the employee concerned in any manner whatsoever.

12. Even assuming that the employee concerned namely, the respondent/writ petitioner herein did not suffer any prejudice in view of the decision of the

Disciplinary Authority to hold departmental enquiry at the stage of issuance of the charge-sheet, the same cannot be regarded as the appropriate decision on the part of the Disciplinary Authority. The Disciplinary Authority in the instant case decided to hold departmental enquiry even before submission of the reply to the charge-sheet by the employee concerned and thus, invited serious criticism.

13. In the aforesaid circumstances, the observations of the learned Single Judge in this regard cannot be held to be unjust and improper.

14. However the principal ground for allowing the writ petition by the learned Single Judge is the failure to supply the enquiry report to the respondent/writ petitioner with the grounds of disagreement.

15. The enquiry report was not supplied to the respondent/writ petitioner before consideration of the same by the Disciplinary Authority. The Disciplinary Authority did not forward the enquiry report to the respondent/writ petitioner inviting comments on the findings of the Inquiring Authority. The Disciplinary Authority, most surprisingly, formed an opinion on the basis of the enquiry report without granting an opportunity to the employee concerned to make a representation on the findings of the Enquiry Officer and thus, the said Disciplinary Authority acted in gross violation of the principles of natural justice.

16. Furthermore, the Disciplinary Authority recorded his disagreement with some of the findings of the Enquiry Officer but kept the employee concerned in dark with regard to the reasons for disagreement till the issuance of the order of punishment. The Disciplinary Authority disagreed with some of the findings of the Enquiry Officer and called upon the employee concerned namely, the respondent/writ petitioner to submit his representation without disclosing the reasons for disagreement with the findings of the Enquiry Officer.

17. It is well settled that in case of disagreement with the findings of the Enquiry Officer, the Disciplinary Authority must record the reasons for such disagreement and communicate the same to the charged employee so that the said employee can submit appropriate representation to persuade the Disciplinary Authority to agree with the conclusions reached by the Enquiry Officer. Unless the reasons for disagreement are communicated to the charged employee, it will not be possible for the said employee to submit appropriate representation furnishing proper grounds and reasons in order to persuade the Disciplinary Authority to accept the findings of the Enquiry Officer.

18. In the case of Ram Kishan Vs. Union of India and others, , Hon"ble Supreme Court held:

10. The next question is whether the show-cause notice is valid in law. It is true, as rightly contended by the counsel for the appellant, that the show-cause notice does not indicate the reasons on the basis of which the disciplinary authority proposed to disagree with the conclusions reached by the inquiry officer. The

purpose of the show-cause notice, in case of disagreement with the findings of the inquiry officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the inquiry officer for the reasons given in the inquiry report or he may offer additional reasons in support of the finding by the inquiry officer. In that situation, unless the disciplinary authority gives specific reasons in the show cause on the basis of which the findings of the inquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the inquiry officer. In the absence of any ground or reason in the show-cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect. But, on the facts in this case, the only charge which was found to have been accepted is that the appellant had used abusive language on the superior authority. Since the disciplinary authority has said that it has agreed partly to that charge, the provisional conclusion reached by the disciplinary authority in that behalf even in the show-cause notice, cannot be said to be vague. Therefore, we do not find any justification to hold that the show-cause notice is vitiated by an error of law, on the facts in this case.

19. In the case of Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , a Bench of learned Three Judges of the Supreme Court observed:

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the inquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

20. The delinquent employee also preferred an appeal before the appellate authority assailing the findings of the Enquiry Officer and the Disciplinary Authority. Unfortunately, the said appellate authority merely quoted the charges and the findings of the Disciplinary Authority without furnishing any independent reason for rejecting the appeal.

21. For the aforementioned reasons, the learned Single Judge has rightly quashed the impugned order of punishment issued by the Disciplinary Authority

and subsequently, affirmed by the appellate authority.

22. The delinquent employee namely, the respondent/writ petitioner has already attained the age of super-annuation and, therefore, cannot be reinstated in service.

23. The learned Single Judge has, therefore, directed the appellant-bank to make payment of the consequential benefits to the employee concerned.

24. It may not be out of place to mention that in the present case, Disciplinary Authority cannot be allowed to proceed with the disciplinary proceedings de-novo even from the stage of submission of the enquiry report by the Enquiry Officer as the said employee namely, the respondent/writ petitioner has already attained the age of super-annuation.

25. Retirement of an employee snaps the employer-employee relationship. Therefore, disciplinary proceedings lapse on superannuation and cannot continue after super-annuation in absence of any specific rules and regulations.

26. In the case of State of Punjab Vs. Khemi Ram, , Hon"ble Supreme Court held:

11. There can be no doubt that if disciplinary action is sought to be taken against a Government servant it must be done before he retires as provided by the said Rule....

27. In the case of Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, , Hon"ble Supreme Court held:

6. ...There is also no 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 30-6-95", 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 authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

28. Therefore, in the instant case, no direction can be issued for continuance of the disciplinary proceedings even from the stage of submission of the enquiry report.

29. For the reasons discussed hereinabove, we do not find any infirmity and/or error in the impugned decision of the learned Single Judge and therefore, we find no scope to interfere with the impugned judgment and order under appeal passed by the learned Single Judge.

30. Accordingly, this appeal stands dismissed as we do not find any merit in the same.

31. In the facts and circumstances of the present case, there will be, however, no order as to costs.

32. Xerox signed copy of this order duly countersigned by the Assistant Registrar be supplied to the parties on the usual undertaking.

Md. Abdul Ghani, J.

33. I agree.