
(2023) 09 CAL CK 0070
In the Calcutta High Court
Case No : WPA No. 13167 Of 2019

Phanibhushan Chakraborty	Vs	APPELLANT
Bangiya Gramin Vikash Bank & Ors.		RESPONDENT

Date of Decision : 20-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 09 CAL CK 0070

Hon'ble Judges : Partha Sarathi Chatterjee, J

Bench : Single Bench

Advocate : Indranath Mitra, Md. Mokaram Hossain, Sandipan Maity

Final Decision : Disposed Of

Judgement

Partha Sarathi Chatterjee, J

1. In invocation of the jurisdiction of the Court under Article 226 of the Constitution of India, the petitioner questions the defensibility of the charge sheet dated 13.05.2011 issued against him in contemplation of a disciplinary proceeding, the enquiry report dated 28.12.2012, the order of punishment dated 23.09.2015 and the order of the appellate authority dated 13.06.2016.

2. Sans unnecessary details, the facts as frescoed in the writ petition are that a charge sheet vide.dated 13.05.2011 was issued by the Disciplinary Authority & Chairman, Bangiya Gramin Vikash Bank (hereinafter referred to as the bank) against the petitioner while he was discharging his function as the Senior Manager (Scale-III Officer) at Malda Regional Office of the bank. No list of witnesses and list of documents were disclosed in the charge sheet.

3. The petitioner submitted his reply to the charge sheet vide.his letter dated 16.06.2011. By a letter dated 24.11.2011, the Chairman intimated the petitioner that his reply was found unsatisfactory and appointed the presenting officer. By the said letter, the officer who was not in higher scale of pay to the petitioner was appointed as the enquiry officer in derogation of the Regulation no. 41 of the

Service Regulations, 2010 and the enquiry officer initiated the enquiry proceeding. By a letter dated 5.9.2011, the petitioner raised this issue before the Disciplinary Authority. Ultimately, by a letter dated 9.12.2011, the earlier enquiry officer was changed and the Branch Manager, Jangipur Branch of the bank was appointed as the enquiry officer.

4. The names of two witnesses and a list of nine documents were disclosed to the petitioner on 31.01.2012. The enquiry proceeding was conducted on diverse dates. The presenting officer and the delinquent exchanged their respective briefs. Under a covering letter dated 28.12.2012, the findings of the enquiry officer was forwarded to the petitioner. The petitioner submitted his response to that findings. The General Manager (Vigilance) under his covering letter dated 17.08.2013 communicated the order of punishment dated 17.08.2013 passed by the Chairman & Disciplinary Authority.

5. The petitioner preferred statutory appeal but the appeal was dismissed affirming the order of punishment by passing a one-page order. Challenging the order of punishment and the order of the appellate authority, the petitioner preferred a writ petitioner vide. W.P. No. 11773 (W) of 2014 which was disposed of by a Coordinate Bench of this court on 22.04.2014 by setting aside the order of the Appellate Authority and directing the Appellant Authority to hear out the appeal afresh and pass a reasoned order within the time stipulated therein.

6. Assailing the order dated 22.03.2014, the petitioner preferred an appeal being A.S.T. no. 188 of 2014 and along with the appeal, an application for stay of operation of the order dated 22.3.2014 being ASTA 137 of 2014 was also preferred. The appeal and the connected application were disposed of by a Hon'ble Division Bench of this Court headed by the Hon'ble Justice Nishita Mhatre (as Her Ladyship then was) on 04.08.2015 by setting aside the order of punishment and the order of the Appellate Authority. The disciplinary authority was directed to pass appropriate order after considering the enquiry report, record of enquiry proceeding, materials produced at the time of enquiry and the objection raised by the delinquent and direction was given to disburse admitted retiral dues in favour of the petitioner.

7. In compliance with the order dated 4.8.2015, the Chairman & Disciplinary Authority passed the order of punishment afresh on 23.9.2015 but the same punishment was inflicted giving retrospective effect from 17.08.2013. The petitioner preferred statutory appeal against the order of punishment dated 23.09.2015 but by the appeal was dismissed and the order of punishment was upheld by an order dated 13.06.2016.

8. In such conspectus, the petitioner has been constrained to prefer this writ petitioner assailing the charge-sheet, enquiry report, the order of punishment dated 23.09.2015 and the order of appellate authority dated 13.06.2016. Despite direction, neither of the parties has filed any affidavit.

9. Mr. Mitra, learned advocate for the petitioner vociferously contends that a

disciplinary proceeding was contemplated against the petitioner on some stereotyped allegations with a pre-determined mind. He strenuously contends that it has become a regular phenomenon of the bank to initiate such sort of disciplinary proceeding and by hook and crook to hold that the allegations stand proved. He further contends that in the given case, after conclusion of disciplinary proceeding, the punishment of 'reversion of petitioner from the post of Scale-III officer to Scale-II officer with retention of PFP and stagnation of increment with cumulative effect?', was awarded. The petitioner preferred statutory appeal but the appeal failed. The Hon'ble Division Bench was pleased to set aside the order of punishment and order of the Appellate Authority and direct the Disciplinary authority to pass appropriate order after considering the Enquiry Report, the materials produced at the time of enquiry and objections raised by the petitioner during the enquiry. He submits that in the guise of compliance with the order of the Hon'ble Division Bench by jugglery of words, the same order of punishment has been passed on 23.09.2015 but with retrospective effect from 17.8.2013 without considering the materials, as directed. According to Mr. Mitra, an order of punishment cannot be passed with retrospective effect and in support of his such contention, he cites a decision rendered by a Hon'ble Single Bench of the Hon'ble High Court at Patna in case of Raj Kishore Sinha -vs- The State of Bihar & Ors. , reported in 2018 SCC OnLine Pat 825.

10. Mr. Mitra further argues that the petitioner has been allowed to retire from service but the petitioner was not placed under suspension and hence, such disciplinary proceeding cannot be continued after retirement of the delinquent. He arduously contends that order of punishment of reversion and/or reduction in post, grade or stage can only be passed while the delinquent is in service. To invigorate his submissions, he places reliance upon a judgments delivered in case of D.K. Agrawal -vs- Council of the Institute of Chartered Accountants of India, reported in 2021 SCC OnLine SC 903.

11. Mr. Hossain, learned advocate for the bank submits that as per Regulation no. 45(3) of the Service Regulations, 2010, a disciplinary proceeding can be continued and concluded against one employee of the bank even after his retirement from service. He contends that principles of natural justices and mandates of the Service Regulations were followed in conducting the disciplinary and the order of punishment has been passed as per the direction of the Hon'ble Division Bench and the Appellate Authority has also passed a reasoned order and hence, both the orders for not having any infirmity do not warrant interference. To embolden his submission, he places reliance upon the judgments delivered in cases of J. D. Jain -vs- Management of State Bank of India & Anr., reported in (1982)1 SCC 143, High Court of Judicature at Bombay -vs- Shashikant S. Patil, reported in 1999 Supp1BomCR 918 & Govt. of A.P. & Ors. -vs- Mohd. Nasrullah Khan, reported in (2006) 2 SCC 373.

12. While disposing of the appeal along with its connected application being A.S.T. 188 of 2014 and A.S.T.A. no. 137 of 2014 respectively on 04.08.2015, the

Hon'ble Division Bench was pleased to set aside the order of the punishment dated 17.8.2013 and the order of the Appellate Authority dated 10.05.2014 and pass following order :

"...The Disciplinary Authority will consider the Enquiry Report, Enquiry Proceedings, other material produced at the enquiry and the objections raised by the appellant in his letter to the Disciplinary Authority dated 16th January, 2014. The Disciplinary will pass appropriate orders after considering all the aforesaid material within four weeks from today. The order shall be communicated immediately to the appellant.

We have been informed that the appellant has retired from service. All the admitted retiral dues must be paid in accordance with law to him at the earliest..."

13. Hence, the pivotal question falls for consideration before this court is whether or not the Disciplinary Authority had passed an appropriate order after considering the Enquiry Proceedings, the Enquiry Report, other materials produced at the enquiry and the objections raised by the appellant in his letter to the Disciplinary Authority dated 16th January, 2014.

14. Before giving judicial answer to the query, let me look into the materials referred in the order of the Hon'ble Division Bench and the order of punishment dated 23.09.2015.

15. In the charge sheet, it was alleged that the petitioner had acted in contravention of Regulations 18 and 20 of the Bangiya Gramin Vikash Bank (Officers and Employees) Service Regulations, 2010 (in short, the Service Regulations, 2010). In the concluding part of the charge sheet, five charges were brought against the petitioner, namely, '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?.

16. In the statements of allegations, 12 nos. of allegations were levelled against the petitioner. The sum and substance of such allegations is as follows:

'that the petitioner sanctioned and disbursed 8 nos. of loans of Rs. 59.45 lakhs under Govt. Sponsored Programme without observing lending policy, without obtaining proper documents including deed of Hypothecation from the borrowers. The petitioner sanctioned and disbursed loan of Rs.3.5 lakhs to one Anuradha Naskar in violation of the guidelines, adjusted margin money of Rs. 3 lakhs without observing the prescribed time limit and account was closed when the borrower credited Rs. 51510/- and loan documents were concealed. The petitioner allowed diversion of working capital fund without ensuring the end use of bank's fund. He sanctioned and disbursed multiple credit facilities to a particular family violating Group Exposures Norms and circular dated 10.4.2007. The petitioner sanctioned three credit facilities to one Rafiqul Islam and Anowara

Bibi of Rs. 29.16 lakhs without mentioning the fact of earlier credit facility. The petitioner sanctioned 6 nos. of loans under the head, Sagar Trade Credit without proper documentation as per circular no. 23.08.2004. The petitioner granted loan of Rs. 10 lakhs to one Saktipada Mondal without involving the loan official and he did not report about aforesaid 22 loans to his next higher authority and except one loan all the loans sanctioned by the petitioner during his tenure as Branch Manager of Fatepur Branch had slipped to NPA and hence, bank suffered loss of Rs. 150.73 lacks.'

17. The enquiry proceeding, which was commenced on 9.8.2011, was concluded on 14.7.2012. Though two persons were named as management witnesses but none was produced to adduce oral accounts. The copies of 11(eleven) numbers of documents namely, the special investigation report submitted by the official of head office, snap inspection report of the official of the head office, statement dated 16.02.2011 made by the BM of Fatepur Branch, five circulars dated 23.08.2004, 10.01.2007, 20.02.2009, 09.07.2009 & 18.01.2009, all loan documents & Ledger Sheets except the loan documents of A/c, no. SSI/K/166/07, some vouchers and despatch register and peon book, were admitted in evidence.

18. During enquiry proceeding, placing their reliance upon peon book and despatch register, the CSO and his DR claimed that DP statements were despatched in due times. One copy styled as 'Summary Observation' was handed over to the CSO. In relation to such copy of the document, the CSO claimed that from such document it was proved that DP statement were sent and CSO dealt with all the allegations brought against him. He denied and disputes all the allegations levelled against him.

19. In the written argument, it was, inter alia, contended by the Presenting Officer (in short, the PO) that neither the CSO nor his DR could refute or ever disagree with the documents produced by the management on the strength of any reasonable document, logical evidence or argumentative presentation for the sake of their defence. 'Although, in a few occasions during the enquiry proceedings, both of them verbally contradicted with some of the arguments placed from management side, but those did not seem to be rationally supportive of any significance. All the allegations & charges were established by dint of proper of proper evidences, reasons and argument'. The PO argued that 'the CSO of his DR verified all the documents but they could not disown the alleged lapses when the documentary evidences were shown. The CSO/DR could hardly produce any pertinent record/document to defend/contradict the allegations and charges. Bank's circulars, norms and lending policy were not adhered to and hence, the accounts turned to NPA that led the bank to suffer huge financial loss in practical view?.'

20. The delinquent, in his written argument, took the stand that in the process of sanction and disbursement of loans, all the officers involved in the process were responsible but the discipline proceeding has been initiated only against the

petitioner with ulterior motive and a pre-conceived mind. He stated that the EDP training were given to the borrowers. All the units were registered under KVIC norms. Margin money had been released by the competent authority upon completion of requisite formalities. Non-filing/part-filing/incomplete filing of loan documents is a general phenomenon of almost all branches and such things occur due to shortage of manpower and these are rectified subsequently. Regarding disbursement of cash credit loan before the Term Loan, he submitted that he disbursed such loan as per norms. He categorically stated that the mortgages which were taken by another branch were not defective but in the letter of communication of the mortgagee branch, there were defects for which he cannot be held responsible. Regarding adjustment of margin money before lock-in-period, he stated that since 'Win-Banker Software' did not support, the margin money were carrying interest. The borrowers raised objections and hence, to solve the problem, reversible accounting procedure was adopted and neither the bank nor the borrowers had suffered any loss. Regarding the allegation of disbursement of term loan in cash without taking no vouchers, he stated that since vouchers were not available in the branch, loans were disbursed on production of money receipts issued against purchase of fixed assets. He specifically contended that post-disbursement inspection was done by him jointly with field officer. He refuted the allegations that truck of Rafikul Islam was not registered by producing the copies of the document relating to the vehicle. By giving details of the accounts, he refuted the claims that the loan accounts were slipped to NPA.

21. The enquiry officer in his report observed that the documents, which were admitted in evidence, were handed over to the delinquent. The enquiry officer detailed the incidents of all dates of hearing. He reported that on 14.7.2012, the charge-sheeted officer (in short, CSO) sought for some documents but those documents, in his view, were irrelevant. The EO enumerated the argument of the delinquent and then observed that "after verifying the contents of the documents and after considering the facts that CSO and his DR could not logically oppose/object the alleged irregularities?". The enquiry officer observed that 'CSO could not lawfully disown his alleged lapses after the documentary evidences were shown to him. The CSO verified the documents but the CSO/DR failed to defend himself. The CSO or his DR could hardly produce any pertinent record/document either to defend or contradict the allegations and the charges contained in the charge sheet?.

22. The enquiry officer just reiterated the statements made by the PO in his written argument even using the same words. The enquiry report clearly demonstrates that the enquiry officer imposed a reverse onus upon the delinquent. There is no scope to deny that the burden lies upon the management to prove the allegations levelled against the delinquent. It goes without saying that the enquiry officer is a quasi-judicial authority and he discharges quasi-judicial function. Hence, an enquiry has to be conducted fairly, objectively and not subjectively and a finding of the Enquiry Officer should not perverse or

unreasonable nor should the same be based on conjectures and surmises. The Enquiry Officer must record reasons for arriving at the finding of fact in the context of statute defining the misconduct. The report of the enquiry officer must be informed with reason having indication how the allegations levelled against the delinquent stood proved.

23. In the letter dated 16.01.2014, the delinquent categorically stated that the enquiry officer did not deal with 12 no. of allegations and the averments made by him in his summary argument. By producing documents, he proved that the allegation nos. 1,2, 4 & 6 were vague. No reason was assigned as to why the enquiry officer did not accept statements of the delinquent. Regarding allegation no. 3, he stated that the loan officer signed the loan documents but despite being named as management witnesses, the loan officer did not depose. Regarding allegation nos. 5 to 11, the delinquent claimed that by producing documents he proved that the allegations were vague and regarding allegation nos. 12, he stated that most of loans became standard i.e. operative as on 31.03.2012.

24. Now, let me scrutinize the order of punishment dated 23.09.2015 paragraph-wise. On studied scrutiny of that order, it transpires that the contents of the charge sheet and the letter of the delinquent 16.01.2013 were reproduced in verbatim. The Disciplinary Authority negated the claim of the delinquent to the effect that before initiation of disciplinary proceeding against an officer or an employee of bank, the procedures prescribed in the circular of NABARD dated 20.6.1987 were required to be followed mandatorily and opined that NABARD guidelines were issued only for guidance of the bank. The Disciplinary Authority opined that the preliminary inquiry report did not form part of the evidence and the enquiry officer did not rely upon the same to return his findings and hence, the bank was not obligated to disclose the same to the delinquent. The Disciplinary authority observed that barring the privileged and irrelevant documents, the relevant documents were provided to the delinquent. The delinquent verified the documents with the originals and since the delinquent did not question the genuineness of the documents, the authors of the documents had not been examined.

25. The Disciplinary Authority observed that the enquiry officer elaborately considered and/or dealt with the charges levelled against the charged officer, the PO had established all the allegations/charges independently through documents which the EO concurred after application of his mind and hence, the Disciplinary Authority expressed his agreement with the reasons and conclusion assigned and arrived at by the EO and he opined that the delinquent had acted beyond his authority in breach of Bank's Regulation, while sanctioning and dealing with the impugned loan cases and in some cases, the delinquent had abused his official position and extended undue favour to various borrowers.

26. The circular of NABARD has not been produced by either of the parties. Admittedly, no notice had ever been issued asking the delinquent to show cause

as to why the disciplinary proceeding would not be initiated against him on allegations of certain misconduct. The enquiry report reveals that preliminary inquiry was conducted and the management based on such report. No list of witnesses and list of documents had been disclosed in the charge sheet. The officer who was not in higher scale of pay than the petitioner was appointed enquiry officer and he commenced the enquiry proceeding. Duly filled in questionnaire of the Branch Manager (BM) of Fotepur Branch was relied upon but no opportunity was afforded to the delinquent to cross-examine the BM.

27. The enquiry officer, as observed earlier, has just echoed the view of the PO to the effect that after verifying the documents, the delinquent could not logically oppose/object the alleged irregularities and lawfully disown his alleged lapses and the delinquent failed to produce any documents to defend himself. So, the enquiry officer has imposed reverse onus upon the delinquent.

28. The enquiry officer in the same tune of the PO stated that all circulars and documents were supplied to the CSO and opportunities were afforded to him to inspect the document but after verifying the documents, the CSO could not logically disown the allegations. The disciplinary authority in a mechanical manner claimed that the PO had established the charge and the enquiry officer elaborately considered and/or dealt with the charges levelled against the charged officer and hence, he concurred with the findings of the enquiry officer.

29. The specific grievances ventilated by the delinquent that the enquiry officer did not make discussion allegation-wise and did not assign any reason as to why he had accepted the submission of the PO and rejected the argument of the delinquent.

30. Nowhere either in the enquiry report or in the order of the punishment the particulars of the circular, norms and lending policy were detailed and/or disclosed which the managements claimed to have been violated by the delinquent. No reason has been assigned to show how the allegation regarding adjustment of margin money, diversion of working capital fund, disbursement of multiple credit facilities to a particular family (particular of that family not disclose), disbursement of loan to Shaktipada Mondal without involving the loan official, omission to report to next higher authority about 22 loans and responsibility of the delinquent regarding NPA stood proved and why the contention canvassed by the delinquent on these allegations were not accepted. In the order of the punishment dated 23.0.2015, there is no reflection that the materials referred in the order of the Hon'ble Division Bench were considered by the Disciplinary authority.

31. Hence, there must be an irresistible conclusion that the Disciplinary Authority has mechanically observed and ordered that the enquiry officer elaborately considered and/or dealt with the charges and PO had established the charges and hence, he concurred with the findings of the enquiry officer.

32. The disciplinary proceeding is quasi-criminal in nature and the enquiry officer

and the disciplinary authority are quasi-judicial authorities. Admittedly, standard of proof in disciplinary proceeding is preponderance of probability but after analysing the evidence, the enquiry officer is to return his findings how the charges levelled against the delinquent have been proved to be probable.

33. In every order passed by any authority, there must be some reasons which will indicate the application of mind of such authority to the matters in issue, materials on record, submission of affected persons etc. An order of punishment not only affect the employee only but also his entire family. An employee or an accused should not be left with a feeling that he has not got justice and his grievances have been left untouched.

34. Suffice it to observe that in the given case, the enquiry officer has not make any discussion allegation-wise and the disciplinary authority has tactfully avoided such aspects. Hence, it is quite vivid and luminescent that the disciplinary authority did not pass appropriate order after considering the materials referred in the order of the Hon'ble Division Bench. The order of the punishment dated 23.09.2015 is nothing but an old wine in new bottle with slight modification regarding the date of effect thereto.

35. There is no scintilla of doubt regarding binding effect of the principles laid down in the judgments relied upon by Mr. Hossain but those are distinguishable on facts.

36. In view thereof, the enquiry report and the order of the punishment dated 23.09.2015 are set aside. Since the order of punishment has been set aside, the order of appellate authority being the consequential order cannot stand and hence, the order of appellant authority is also set aside. The disciplinary proceeding was initiated in 2011 and the petitioner has retired from service almost 8 years back and hence, at such distance of time it would not be apposite to ask the enquiry officer and the disciplinary authority to submit fresh report and pass the order of punishment afresh respectively. In consequence, the disciplinary proceeding contemplated against the petitioner stands quashed.

37. With these observation and order the writ petition being WPA 13167 of 2019 stands disposed of, however, without any order as to the costs.

38. Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

39. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.