

(2023) 05 GAU CK 0059

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6880 Of 2015

Ramesh Jaradhara

APPELLANT

Vs

Assam Gramin Vikash Bank And 2 Ors

RESPONDENT

Date of Decision : 22-05-2023

Acts Referred:

Assam Gramin Vikash Bank (Officer and Employees) Service Regulation, 2010 — Rule 50

Citation : (2023) 05 GAU CK 0059

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : A Chetia, Sidhant Duttar-1

Final Decision : Disposed Of

Judgement

1. Heard Mr. Roman Sarma, learned counsel appearing for the writ petitioner. I have also heard Mr. S. Dutta, learned Sr. counsel assisted by Ms. S. Musahary, learned counsel appearing for the respondents.

2. The writ petitioner herein was serving as an officer under the Assam Gramin Vikash Bank, i.e. the respondent No. 1. While he was posted as Branch Manager of Borboruah Branch in the district of Dibrugarh, a memorandum of charge, dated 01-03-2014, was served upon the writ petitioner containing the articles of charges. After the petitioner had submitted his written statement, departmental proceeding was held against the petitioner, where-after the Enquiry Officer had submitted Enquiry Report dated 25-02-2015 holding that all the charges brought against the petitioner had been proved. On receipt of the Enquiry Report dated 25-02-2015, the disciplinary authority, i.e. the respondent No. 3 had issued the order dated 30-09-2015 informing the petitioner that he concurs with the findings of the Enquiry Officer and accordingly, imposed the major penalty of "reduction of basic pay by 5 (five) stages with cumulative effect" upon the writ petitioner. Aggrieved by the order of penalty dated 30-03-2015 the petitioner has approached this Court by filing the instant writ petition. During the pendency of

this writ petition, the petitioner had retired from service on attaining the age of superannuation w.e.f. 30-04-2023.

3. By referring to the article of charges, the written statement of defense submitted by the petitioner as well as the findings of the Enquiry Officer, Mr. Sarma has argued that there is no allegation of corruption or misappropriation of money against the petitioner leading to loss sustained by the Bank. According to Mr. Sarma, the allegation brought against the petitioner are all in the realm of discharge of his official duties as the manager of the Bank. However, at times some steps had to be taken by the petitioner in view of the pressure mounted upon him so as to implement various schemes and also to deliver on the services in a time bound manner. Mr. Sarma has further argued that the petitioner had furnished sufficient explanation in respect of each of the charges brought against him by stating the reasons why certain recourse had to be adopted by him while discharging his duties as Branch Manager of Borboruah Branch. However, instead of appreciating the stand of the petitioner as projected in his written statement, the Enquiry Officer had taken a completely one sided view in the matter. Not only that, according to Mr. Sarma the respondent No. 3 had concurred with the findings of the Enquiry Officer even before furnishing a copy of the Enquiry Report to the petitioner, thereby displaying a predetermine mind set in the matter.

4. The learned counsel for the petitioner has further argued that since the petitioner has taken a categorical stand that he had not indulged in any irregularity amounting to misconduct, it was incumbent upon the disciplinary authority to give the petitioner an opportunity of being heard before accepting the Enquiry Report. The same not having been done, Mr. Sarma submits that the entire process stood vitiated and hence, the order of penalty was liable to be set aside by this Court.

5. The learned counsel for the petitioner has further argued that at the relevant point of time, it was the Chairman of the Board of Directors of the Bank who was the competent authority to initiate disciplinary proceeding against the petitioner under the un-amended Rules. Notwithstanding the same, the respondent No. 3 had imposed the order of penalty on the petitioner, which is wholly without jurisdiction. It is also the submission of Mr. Sarma, learned counsel for the petitioner that the penalty imposed upon the petitioner is shockingly disproportionate and even if the Enquiry Report is held to be valid, even then, the major penalty imposed upon the petitioner would not be sustainable in the eye of law on such count alone. To conclude his arguments, Mr. Sarma has submitted that his client has retired from service on 30-04-2023, but he is yet to receive his pensionary benefits including gratuity. According to the learned counsel, there is reasonable apprehension in the mind of the petitioner that taking advantage of the order of penalty, his retirement benefits might be withheld/ delayed by the Bank so as to cause further injury to the petitioner.

6. Responding to the above arguments advanced by the petitioner's counsel, Mr.

S. Dutta, learned Sr. counsel appearing for the respondents submits that the Enquiry Officer has properly discussed the evidenced adduced by the Bank/ PO before arriving at the conclusion with regard to the validity of the charges brought against the petitioner. The writ petitioner, being the delinquent officer, had never adduced any evidence in his defense and hence, it cannot now argue that the findings of the Enquiry Officer are perverse. Mr. Dutta further submits that the charged officer, i.e. the writ petitioner had acted beyond his authority and competence by acting in contravention of the Regulations of Assam Gramin Vikash Bank. Insofar as the apprehension expressed by the petitioner's counsel with regard to withholding of pension, provident fund and gratuity etc. is concerned, Mr. Dutta submits on instruction obtained from the Bank that the payment of pension, provident fund, gratuity and other amounts due to the petitioner is under process and the same would be released without any undue delay.

7. After hearing the submissions of the learned counsel for both the sides, this Court finds that the order dated 30-03-2015 imposing penalty upon the petitioner is an order which is appealable under Rule 50 of the Assam Gramin Vikash Bank (Officer and Employees) Service Regulation, 2010 (as amended) but no such appeal has been preferred by the writ petitioner. Since the grounds urged in the writ petition are almost entirely pertaining to the Rules, Regulations, Procedure and practices to be followed by an officer of the Bank in discharge of his regular duties, this Court is of the opinion that the writ petitioner should avail the alternative remedy and prefer an appeal before the appellate authority against the order of penalty.

8. In view of the above, I dispose of this writ petition by granting 02 weeks time to the writ petitioner to prefer an appeal against the impugned order of penalty dated 30-09-2015 before the appellate authority.

9. If such an appeal is preferred by the petitioner within 02 weeks from today, by enclosing a certified copy of this order, the same be heard on merit and dispose of by a reasoned order dealing with each point raised by the petitioner in the appeal including the question of jurisdiction of the disciplinary authority to initiate the departmental proceeding against the petitioner.

10. The respondents are also directed to release the pension and other retirement benefits to the petitioner, which he may be entitled to under the Rules, within a period of 60 days from the date of receipt of a certified copy of this order.

If the petitioner continues to remain aggrieved in the matter even thereafter, it will be open for him to approach this Court once again, by filing appropriate writ petition.

With the above observation, this writ petition stands disposed of.