

(2008) 01 CAL CK 0067
In the Calcutta High Court

Case No : Writ Petition No. 23418 (W) of 2006 and W.P. No. 1835 (W) of 2007

Sri Probal Gupta

APPELLANT

Vs

The Burdwan Central Co-operative Bank Limited and Others

RESPONDENT

Date of Decision : 09-01-2008

Acts Referred:

Citation : (2008) 2 CALLT 173 : (2008) 118 FLR 1037 : (2008) 2 LLJ 757

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Kishore Dutta and Swapan Banerjee, for the Appellant; P.C. Bhattacharya and R.C. Gayen, for the Respondent

Judgement

Jayanta Kumar Biswas, J.—By issuing a charge-sheet dated February 10, 2006 the first respondent initiated disciplinary proceedings against the petitioner who was working in the co-operative bank as an officer. He had been suspended by an order dated August 10, 2005. It was alleged that he had misappropriated funds of the bank. An inquiry officer was appointed. In the course of inquiry the petitioner prayed for permission to engage lawyer. The request was turned down, and feeling aggrieved he took out W.P. No. 23418 (W) of 2006. While that writ petition was awaiting admission hearing, the inquiry officer proceeded with the inquiry. The petitioner was participating in the inquiry. On November 4, 2006 he decided to withdraw himself from the proceedings.

Under the circumstances the inquiry officer made an order that the inquiry fixed for November 11, 2006 would be held ex parte. Such proceedings dated November 4, 2006 were signed, with others, by the petitioner. Thereupon the inquiry was concluded and the inquiry officer submitted his report recording findings that the charges levelled against the petitioner had been established. With the second show cause notice dated January 10, 2007 the chief executive officer of the bank supplied a copy of the inquiry report to the petitioner, who was given an opportunity to make representation why he should not be dismissed from service. Questioning that second show cause notice he has taken

out W.P. No. 1835 (W) of 2007. This being the position, both the writ petitions were directed to be heard together, and I have heard them together. They are being disposed of by this common judgment.

2. The admitted position is that the disciplinary authority did not give the petitioner an opportunity to make representation against the findings of the inquiry officer. I agree with counsel for the petitioner that in view of the apex Court decision in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , before proposing punishment and giving the petitioner opportunity to make representation against that, the disciplinary authority was required to supply a copy of the inquiry report to the petitioner and give him an opportunity to make representation against the findings of the inquiry officer. It is only after considering the inquiry report and the petitioner's representation, if any, to the findings recorded therein that the disciplinary authority was to decide whether the report was fit for acceptance.

3. After taking decision at such stage, the disciplinary authority could issue the show cause notice proposing punishment, if he was of the view that the report of the inquiry officer should be accepted, and that there was no reason to discard it or to direct a fresh inquiry. This being the position, I agree with counsel petitioner that the impugned second show cause notice cannot be sustained in law. A very valuable right of the petitioner to make to representation against the findings of the inquiry officer, with a view to persuading the disciplinary authority into not accepting the Report of the inquiry officer, was infringed, an opportunity to exercise that right.

4. For these reasons, I dispose of both the writ petitions ordering as follows. The second show cause notice is hereby set aside. Representation, if any, against the findings of the inquiry officer shall be submitted by the petitioner within four weeks. He will be at liberty to take the points taken in these cases. Then the disciplinary authority shall take appropriate decision regarding the question of accepting the report and findings of the inquiry officer. He shall give a reasoned decision dealing with the contentions the petitioner may raise in his representation. After taking the decision, which shall be communicated to the petitioner, the disciplinary authority will proceed further with the matter in accordance with law. There shall be no order for costs. Urgent certified xerox copy of this order and also copy authenticated by A.R.(C) or A.CO. shall be supplied to the parties, if applied for.