IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

MAT 752 of 2022
with
WPA 4646 of 2011

Rabi Pada Murmu
versus
Canara Bank, Regional Office & Ors.

For the Appellant : *Mr. Samarendra Nath Biswas.*

For the Canara Bank : *Mr. Anjan Kumar Paul.*

Hearing is concluded on : *16th November, 2023.*

Judgment On : **21st December, 2023.**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred challenging an order dated 18th of April 2022 passed in the writ petition, being WPA 4646 of 2011. By the said order writ petition was dismissed observing *inter alia* that the '*Court, on perusal of the records, is unable to find out the enquiry report and the minutes of the proceedings of the enquiry in order to find out whether*

enquiry has been conducted by the enquiry officer following the principles of natural justice or not'.

2. Records reveal that the stay application filed in connection with the appeal was disposed of by a co-ordinate Bench of this Court on 26th September, 2022 directing the appellant to file paper books including the writ petition all its annexures and the affidavits exchanged between the parties. Pursuant such order the paper books have been filed including the charge sheet and the inquiry report.

3. Shorn of unnecessary details the facts are that while the appellant was working as Manager of Syndicate Bank (hereinafter referred to as the said bank), Ranigaunj Branch, he was issued a charge sheet dated 12th of June, 2007. The appellant replied to the same on 20th July, 2007. Thereafter the Inquiring Authority (hereinafter referred to as IA) conducted a preliminary inquiry in which the appellant did not plead guilty of the charges. Accordingly, the IA in his order dated 11th September, 2007 observed there is a need for a regular proceeding. Thereafter a regular inquiry proceeding was initiated on 21st January, 2008 and was concluded on 18th April, 2008 and an inquiry report was submitted on 19th May, 2008 to which the appellant replied on 28th July, 2008. The order of punishment was thereafter passed by the Disciplinary Authority (hereinafter referred to as DA) on 19th August, 2008. The appellant thereafter preferred a statutory appeal on 17th October 2008 and a final order was passed by the Appellate Authority (hereinafter referred to as AA) on 30th December, 2008. Thereafter, the respondent No. 2 issued a show cause notice dated 2nd July, 2009 to the

appellant under Rule 19(a) of the Provident Fund Rules as to why the management contribution provident fund should not be forfeited in terms of Rule 19(a). The appellant replied to the said show cause notice on 24th July, 2009 but no final order was passed by the competent authority. The appellant thereafter filed a representation on 8th October, 2010 with a prayer for reconsideration of the matter and for restoration of his service. As there was no response from the authorities, the appellant was constrained to prefer the writ petition which was dismissed by an order dated 18th April, 2022. In the midst thereof, the said bank stood merged with Canara Bank and the appellant attained the age of superannuation on 31st December, 2018.

4. Mr. Biswas, learned advocate appearing for the appellant argues that no definite charges were framed against the appellant. All the alleged charges were clubbed together in the charge sheet bereft of specific imputations to the respective charges and as such it was an impossibility on the part of the appellant to furnish specific reply and to appropriately contest the proceedings. A mass of allegations mingled together without any order or plan rendered the charge sheet to be vague and confusing.

5. He contends that an authority cannot base its decision on any irrelevant matter not germane for the purpose of arriving at a fair decision and must confine its decision on the relevant facts. The findings of the IA and the DA are based on no evidence. The impugned charge sheet would reveal that the dairy loans as referred to were sanctioned at a Loan Mela conducted the presence of the AGM of Syndicate Bank on 22nd February,

2006 and in view thereof, the disbursement of the said dairy loans ought not to have been construed to be a misconduct on the part of the appellant.

6. Drawing our attention to the memoranda 20th October, 2005, 7th March, 2006 and 18th March, 2006, Mr. Biswas submits that the contents of the same do not establish the impugned charge that he *'sanctioned credit facilities to the tune of Rs. 101.86 even after withdrawal of your sanctioning powers by Regional Office Kolkata'*. All the loans referred to in the charge sheet were disbursed during the period from the month of July, 2005 till 3rd March, 2006 and it is only subsequent thereto, the loan sanctioning power was withdrawn from the appellant on 18th March, 2006. The DA as well as the AA glossed over the said issue, as urged by the appellant in course of the inquiry proceedings and the said authorities did not return any finding on the same.

7. According to Mr. Biswas there was no quantification of the alleged financial loss caused to the bank and there is also no specific imputation to the effect that such financial loss was caused by any misconduct, fraud, gross negligence or other conduct of like nature and as such the ingredients of Regulations 3(1) read with regulation 24 of the Syndicate Bank Officer Employees' (Conduct) Regulations, 1976 (hereinafter referred to as the Conduct Regulations) are not attracted. In view thereof, the entire proceeding ought to have been set aside by the learned Single Judge. The order impugned in the present appeal does not reveal that the infirmities as pointed out by the appellant were taken into consideration.

8. He contends that the learned Judge erred in law in rejecting the writ petition primarily on the ground that as the appellant did not annex the inquiry report and the minutes of the proceedings of the inquiry, the Court was unable to test the veracity of the allegations levelled against him or to ascertain as to whether there had been any violation of the principles of natural justice. The bank was the custodian of records and as such directions could have been issued upon the bank to produce the relevant records for effective and complete adjudication of the *lis*.

9. Drawing our attention to the contents of the show cause notice dated 2nd July, 2009, he submits that in the first paragraph of the said notice it has been observed that the appellant had exposed the *'Bank's huge funds to the tune of Rs. 102.00 lacs to the risk of loss'* whereas a conclusion was drawn to the effect that the *'Bank has sustained financial loss of Rs. 102.00 lacs'*. In paragraph 27 of the affidavit-in-opposition the Bank's stand was that *'overdue and unrecovered amounts are clear loss so long as the Bank does not get its money back'*. Such stand cannot be stretched to impute any blame upon the appellant that he had caused financial loss to the Bank. The appellant's endeavour to prevent the accounts from becoming NPA cannot be construed to be a misconduct on the part of the appellant.

10. Mr. Biswas further argues that as the primary charge to the effect that the bank had suffered financial loss to the tune of Rs. 101.86 lakh could not be established, the imposition of the punishment of dismissal from service is shockingly disproportionate. In support of the arguments advanced reliance has been placed upon the unreported judgment delivered

in the case of *State Bank of India and Others. Vs. T.J Paul* and the judgments delivered in the cases of *Colour-Chem Ltd Vs. A.L. Alaspurkar and Others.*, reported in *1998 (3) SCC 192* and *Dipankar Senguta and anr. Vs. Union of India and Others*, reported in *1998 (79) FLR 187*.

11. Mr. Paul, learned advocate appearing for the respondents denies and disputes the contention of the appellant and submits that there is no specific challenge to the charge sheet, the inquiry report, the order of the DA and the order of the AA in the writ petition. The perusal of the writ petition would reveal that the appellant only sought for consideration of representation submitted praying for reconsideration of the entire matter. In view thereof, the Court rightly rejected the writ petition moreso when the relevant records were not even brought on record.

12. He argues that it is not a case that the appellant had been found guilty on the basis of mere surmises. The guilt of the appellant stands established through the specific findings in the report of the IA as well as in the orders of the DA and the AA. It is also not a case that the appellant was not granted adequate opportunities to defend himself. He was furnished all the documents upon which reliance was placed by the Presenting Officer (hereinafter referred to as the PO). He was allowed Defence Assistant and was also allowed to cross-examine the prosecution witnesses and in the said conspectus the argument of violation of natural justice is not sustainable.

13. He argues that in a proceeding under article 226 of the Constitution, the High Court does not sit as an appellate authority over the findings of the disciplinary authority. In exercise of the power of judicial

review, Court cannot reappreciate the evidence and come to any different or independent finding on the evidence already on record.

14. Mr. Paul further submits that a perusal of the contents of the memo dated 20th October, 2005 would reveal that appellant was specifically instructed not to sanction/release further loans. By the next memo dated 7th March, 2006 it was directed that the appellant's sanctioning powers to grant loans will remain suspended with immediate effect. Subsequent thereto, by a memo dated 18th March, 2006, the appellant's loan sanctioning power was withdrawn. A composite perusal of the said memoranda clearly reveals that the dairy loans and the SDOH/jewellery loans referred to in the charge sheet were disbursed by the appellant disobeying the specific instruction of the competent authority and such act clearly constitutes a misconduct under the said Regulations.

15. He further argues that the appellant himself in his reply to the charge sheet dated 20th July, 2007 admitted that *'there may be some errors and omissions due to ignorance which may kindly be condoned, for which I will remain ever grateful to your kindness'*. It is not a case that the authorities have acted *mala fide* or in an arbitrary or unreasonable manner and as such question of interference in appeal does not occasion.

16. Replying to the contention of Mr. Biswas to the effect that the penalty imposed is disproportionate, Mr. Paul submits that the charges proved against the appellant are very serious and such activity of the appellant is most unbecoming of a senior bank officer. A bank officer is required to exercise very high standard of honesty and integrity. Even

likelihood of serious loss coupled with negligence is sufficient to bring the case within gross misconduct and that the punishment imposed upon the appellant is not shockingly disproportionate. In support of the arguments advanced reliance has been placed upon the unreported judgments delivered in the cases of *State Bank of India Vs. Ram Lal Bhaskar and Anr.* and *Director General of Police, Railway Protection Force and Ors. Vs. Rajendra Kumar Dubey*.

17. Heard the learned advocates appearing for the respective parties and considered the materials on record.

18. In our opinion the writ Court had every right to call for the records from the bank in exercise of the power to issue the writ of certiorari and to decide the matter on merits instead of dismissing the same for the failure on the part appellant to bring on record the inquiry proceedings. This Court is conscious of the proposition that in the ordinary course the matter is required to be remitted back to the learned Single Judge for fresh consideration. However, in the instant case as the appellant has already retired on 31st December, 2018, he cannot be subjected to the agonies of any further protracted process. In view thereof, we have heard the matter on merits.

19. If a person is not told clearly and definitely what the allegations on which the charges are founded, he could not possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him. A charge sheet should clearly state each and every individual charge and the

statement of imputations pertaining to each charge and such requirement seeks to fulfil one of the basic postulates of the rules of natural justice that a fair, adequate and reasonable opportunity of being heard should be given to the person arraigned which would not be possible unless he is specifically told of the accusations levelled against him.

20. In the present case all the alleged charges have been clubbed together in the charge sheet. However, in paragraph 12 (b) of the affidavit-in-opposition filed by the Bank, the charges have been numbered as (i) to (v) and the extract of the same is as follows:

(i) extended credit facilities to non-existing units in connivance with middlemen;

(ii) placed on record false post sanction inspection reports;

(iii) sanctioned a loan of Rs. 1.10 lakh in the name of a party without his knowledge for misusing the proceeds for himself;

(iv) made several unauthorised adjustments from one account to other account, including that of himself;

(v) sanctioned credit facilities to the tune of Rs. 101.86 even after withdrawal of the sanctioning powers by Regional Office, Kolkata.

21. So far as charges (i) and (ii) are concerned, it appears that the DA has failed to disclose the name of the *'middleman'* or the names of the non-existing units. Balai Ghosh was an existing borrower having previously obtained a loan of Rs. 2,00,000/-. The said loan was closed and thereafter

he was sanctioned a loan of Rs.3,00,000/- and the concerned unit was very much in existence and no evidence has been tendered to establish that the appellant had syphoned off sale proceeds. Putul Ghosh named in the charge sheet was also an existing borrower and her unit was existing.

22. So far as charge (iii) is concerned the borrower Asfarul Sk. duly made an application on 20th September, 2005 praying for loan of Rs. 1,10,000/- and in the said application he already mentioned the loan amount utilized for his Biri leaf and tobacco business and in respect of the said loan the stock hypothecated as direct security and fixed deposit of Rs. 20,000/- being VCC Account No. 3837 was a collateral security and in the said application form Asfarul mentioned the name of guarantor of the said loan as Sri Haval Chandra Das. After due enquiry and scrutiny of the application form the appellant sanctioned the said loan amount of Rs. 1,10,000/- and *vide* DPM Voucher being DPN OG028A&B Asfarul requested the Bank to transfer the entire loan amount to his S.B Account No. 4429 and such amount was credited in the said account. Asfarul thereafter had withdrawn the loan amount of Rs. 1,10,000/- by using withdrawal slip being No. 277800 from his S.B Account No. 4429 and collected cash by presenting himself physically over the cash counter of Syndicate Bank, Bhabanibati Branch. In the said conspectus, it could not have been alleged that the appellant had mis-utilised the proceeds for himself.

23. So far as charge (iv) is concerned the appellant debited some amount from the account of the borrower on the basis of telephonic consent and thereafter said amount deposited in the account of ODC Account for the

interest of preventing some account from becoming NPA and not with any intent to mis-utilise the same.

24. As regards charge (v) it needs to stated that in the letter dated 7th March, 2006 it was stated that *'Please note that the matter has been viewed seriously by the competent authority and has advised us to inform you that your sanctioning power to grant loan shall remained suspended with immediate effect until further order'*. Therefore, the sanctioning power of the appellant was suspended on and from 7th March, 2006 and thereafter the appellant did not extend a single loan in favour of any borrower. The letter dated 20th October, 2005 contained only an instruction and as such the above referred charge is not sustainable, moreso when the steps taken by the appellant has been eulogised by a letter dated 4th October, 2005 issued by the Deputy General Manager of the Bank.

25. MW-1, namely, Sri. Anilesh Roy in course of his examination-in-chief stated that he conducted an investigation along with one Sri. Aniruddha Mitra whereas the MW-2, namely, Swarupananda Pramanik in course of his cross-examination stated that Sri. Anilesh Roy and Sri. Aniruddha Mitra visited the branch from *'31-07-06 to 04-08-06'* but the business places of different borrowers were visited by him along with Sri. Aniruddha Mitra. There is thus a clear doubt as regards the enquiry allegedly conducted and that too allegedly prior to or in close proximity with such disbursement of loan. Sri. Anilesh Roy in course of cross-examination stated that the appellant had the discretionary authority to sanction loan but he had granted loan even after withdrawal of such authority though it

would be explicit from the records that the appellant had not sanctioned any loan after 7th March, 2006. Sri. Anilesh Roy had also admitted that in respect of the diary loans recommendation of the Block Livestock Development Officer, Samshergunj was on record and that in the reporting register it stands endorsed that the loans under serial nos. 8 to 12 and 14 to 16 have been taken note of by the RO, Kolkata.

26. The MW-2, namely, Swarupananda Pramanik in course of his cross-examination in answer to the question as regards the present status/recovery position of the borrowal units he visited along with Mr. Mitra, Vigilance Officer, he answered that *'most of these loan accounts are NPAs. No recovery/minimal recovery in most of the accounts is there inspite of our continuous recovery process'*. He also admitted that Brindaban Ghosh was an existing borrower and deposed that *'yes, he is an influential man. He has threatened me and snatched documents from our custody and returned on that day after long pursuation. For this incident, FIR was lodged by BDO, Shamshergunj'.* In view thereof, the respondents could not have arrived at any finding that the appellant had connived.

27. It appears that many loan amounts were disbursed among the borrowers in different loan scheme of the Bank as direct agricultural loan, loan towards agriculture allied activities like–poultry, dairy, live-stock development project, small business retail trades, whole sale trades, stock supply business, professional and self-employment scheme which were associated with government representatives including the Block Live-stock Development officer as well as the Bank authorities. Loan mela was also

organised by the higher authorities of the Bank as per Central Government Guidelines on 22nd February, 2006. Such fact has not been specifically disputed while dealing with averments to that effect made in paragraphs 23 and 24 of the writ petition, in paragraphs 27 and 28 of the affidavit-in-opposition.

28. A perusal of the records would reveal that neither the proven allegations, nor the charges inferable therefrom, imputed any dishonest motive or ill motive to the appellant in the various acts or omissions attributed to him. The proven allegations also do not disclose that by his aforesaid acts, the appellant had himself gained, in any manner. The lapses on the part of the appellant might reflect on his poor supervising capability. However, here again, there is no allegation that by his action, the appellant intentionally benefitted any person or dishonestly made any gain for himself or was in collusion with other Bank officials.

29. An account may turn NPA for various reasons like down turn in the economy, etc., which may not be attributable to any misconduct on the part of loan sanction authorities. In any case, this allegation is not to the effect that fictitious borrowers were given credit or fictitious assets were taken as security, with any ulterior motive. We are, therefore, of the view that this allegation *per se* may not be able to sustain penalty of termination of service.

30. A perusal of the order passed by the DA on 19th August, 2008 would reveal that the said authority had proceeded on the basis that the appellant had abused his official position but no such charge was framed

against the appellant. In spite of no evidence on record, the DA arrived at a purported finding that the appellant mis-utilised the loan proceeds himself. There is no specific finding in the order dated 19th August, 2008 that the appellant had caused any financial loss to the bank. Existence of a risk of loss cannot be equated to be actual loss or misappropriation.

31. The AA in his order dated 30th December, 2008 did not return any finding on the specific grounds urged in the appeal. A perusal of the said order also does not reveal that the appellant had caused any financial loss to the bank. Further, the AA in his order has only noted that *'grave charges of misuse of powers and blatant violation of the laid down norms and procedures have been proved'* against the appellant and refused to interfere with the punishment which was visibly disproportionate.

32. Having considered the entire material on record, we find that the following allegations, proven or not proven, against the appellant are conspicuous by their absence:

(i) a dishonest motive on the part of the appellant either to cause unlawful gain to oneself; and

(ii) lack of jurisdiction in making advances.

In such circumstances, the imposition of penalty of dismissal from service was unduly harsh and grossly disproportionate to the proven misconduct.

33. In the present case the respondents have failed to establish that the appellant had caused financial loss to the Bank by misconduct, fraud, gross negligence or other conduct of like nature. In view thereof, Rules 18

and 19(a) of the Provident Fund Rules are not applicable to the facts of the present case and the respondents cannot forfeit the management contribution of Provident Fund.

34. It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. Plentitude of pronouncements leaves cleavage in the opinions formed in the respective cases. There is no dispute as regards the proposition of law as laid down in the judgments upon which reliance has been placed by Mr. Paul, however, the same are distinguishable on facts.

35. Being a bank employee, there is no doubt that the appellant was required to perform his functions as a manager with utmost caution, care and responsibility. The appellant had worked for 29 years in different capacities and got promotions and he had no antecedent. Measure, magnitude and degree of misconduct needs to be taken into consideration for weighing the proportion. Regard being had to the facts involved and the nature of post held by the appellant, we are of the opinion that the doctrine of proportionality is invokable.

36. In such circumstances, we find that the ends of justice would be served if the position of the appellant was reduced instead of terminating his service. In such a situation we are of the view that the punishment of reduction to a grade lower than what the appellant was holding at the time

he was punished, be imposed on him since in a case where the original punishment is set aside, only to be substituted by a new punishment, pursuant to an order of judicial review, then ordinarily such substituted punishment would relate back to the date of original punishment.

37. In view of the discussion made above, we find that the punishment of dismissal imposed on the appellant was far too harsh in the facts and circumstances of the case and for the reasons already detailed above, we substitute the punishment of dismissal by imposing on the appellant the punishment of reduction to a grade lower than what the appellant was holding at the time when he was punished on 9th August, 2008. The appellant attained the age of superannuation on 31st December, 2018.

38. In the present case the respondents have failed to establish that the appellant had caused financial loss to the Bank by misconduct, fraud, gross negligence or other conduct of like nature. In view thereof, Rules 18 and 19(a) of the Provident Fund Rules are not applicable to the facts of the present case and the respondents cannot forfeit the management contribution of Provident Fund and accordingly the show cause notice dated 2nd July, 2009 issued by the General Manager of the Bank is set aside.

39. However, it would not be proper for us to grant back-wages to the appellant for the period which he has not worked. But, as the appellant was deprived of the employer's contribution towards the Provident Fund, the payment of gratuity, pension and the leave encashment because his services were terminated, therefore, to serve the ends of justice we direct that the

appellant be provided notionally the benefit of continuity of service not for the payment of back-wages for the period that he did not serve the organization, but for the purpose of retirement benefits like employer's contribution towards provident fund, payment of gratuity, pension and leave encashment.

40. For the aforesaid purpose the appellant would be treated to be in service on a grade lower than what he held, with effect from the date he was dismissed till he attained the age of superannuation. The entire exercise of payment of retiral dues, as indicated above will be carried out by the respondents within a period of two months from the date of communication of this order. The order dated 18th of April 2022 passed in the writ petition, being WPA 4646 of 2011 is, accordingly, set aside and the appeal stands allowed to the extent indicated above.

41. With the above observations and directions, the appeal and the connected applications, if any, are disposed of.

42. There shall, however, be no order as to costs.

43. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.) **(Tapabrata Chakraborty, J.)**