

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)**

APPELLATE SIDE

Present:

The Hon'ble Justice ParthaSarathiChatterjee

WPA 17532 of 2022

Shanta Pramanik

-Vs.-

BangiyaGraminVikash Bank &Ors.

For the Petitioner : Mr. Sanjay Saha.

For the State : Mr. Jayanta Samanta, Ld. Jr. Govt. Adv.,
Mr. Parikshit Goswami.

For the Respondent Bank : Md. Mokaram Hossain,
Md. Naimul Islam,
Mr. Salauddin Ahamed.

Heard on : 04.04.2025

Judgment on : 22.04.2025

ParthaSarathiChatterjee, J.:-

1. The legality and propriety of the enquiry proceedings, the final order of punishment passed by the Disciplinary Authority (hereinafter referred to as 'DA'), and the order passed by the Appellate Authority

(hereinafter referred to as 'AA'), purportedly in violation of the directions and/or observations contained in the order dated 16th April, 2021, passed in MAT No. 2080 of 2017, have been called into question in the present writ petition. Additionally, the petitioner prays for issuance of a writ of mandamus directing the respondents to reinstate him with all consequential benefits.

2. Sans unnecessary details, the facts essential for the effective adjudication of the present writ petition are set out as follows:

(a) The petitioner joined GourGramin Bank as a Clerk-cum-Cashier on 25th May, 1992. In the year 2007, five Regional Rural Banks, including Gour Gramin Bank, were amalgamated and began operating under the name of BangiyaGraminVikas Bank (hereinafter referred to as 'the Bank').

(b) While working in Hematabad Branch, the petitioner was placed under suspension vide an order dated 9th July, 2011 in contemplation of a disciplinary proceeding against the petitioner in terms of BangiyaGraminVikas Bank (officers and employees service Regulations, 2010 (in short 2010 Regulations) following a shortage of cash Rs. 2,05,000/- (Rupees two lakhs five thousand only) in the safe of the bank. Subsequently, the Disciplinary proceeding was concluded holding the petitioner guilty of the charges leveled against him and he was removed from service. Petitioner preferred a statutory appeal but the same was dismissed.

- (c) The specific defense taken by the petitioner was that, immediately upon detection of the cash shortage, suspicion was directed towards him. He alleged that he was coerced into admitting guilt by the then Branch Manager as well as certain office bearers of the Employees' Union. These facts were brought to the notice of both the Disciplinary Authority and the Appellate Authority. However, both authorities glossed over the same.
- (d) These events prompted the petitioner to approach this court with a writ petition being WP No. 25950 (W) of 2013, which was dismissed by an order dated 6th March, 2017.
- (e) Challenging the order dated 6th March, 2017, an intra-court appeal, being MAT 2080 of 2017, was preferred. Before deciding the appeal on merits, the Hon'ble Division Bench of this Court directed the Bank to file an affidavit in response to the application filed in connection with the said appeal. Upon consideration of the facts emerging from the pleadings and the documents relied upon by the parties—particularly the fact that the amount in question was ultimately deposited by certain other employees of the Bank, the Hon'ble Division Bench concluded that the Bank had not suffered any pecuniary loss. Additionally, the Hon'ble Division Bench directed the Bank to conduct a fresh enquiry from the stage of issuance of the charge-sheet, strictly in accordance with the observations and

directions contained in the judgment. Needless to mention, while disposing of the appeal, the Hon'ble Division Bench set aside the final order of punishment, as well as the order passed by the Appellate Authority, and revived the earlier order of suspension issued against the petitioner.

(f) Pursuant to the order dated 16.04.2021 passed in MAT 2080 of 2017, the Bank initiated the disciplinary proceeding afresh. The petitioner participated in the enquiry and once again submitted his reply to the charge-sheet.

(g) In his reply, the petitioner categorically stated that one employee of the Bank, Mr. Ashis Chakraborty, had approached the Branch Manager on 27.06.2011, requesting a sum of Rs. 2,05,000/- due to urgent personal need. After working hours, the then Branch Manager, Mr. Bijoy Sarkar, instructed the petitioner to hand over the said amount to Mr. Chakraborty. Although the petitioner initially objected to such a transaction, he ultimately complied, as he was a subordinate employee and felt compelled to follow the instructions of the Branch Manager.

(h) On the following day, i.e., June 28, 2011, before the transaction could be entered into the account of Mr. Chakraborty, an investigating team arrived at the branch and detected a cash shortage of Rs. 2,05,000/- (Rupees Two Lakhs Five Thousand only) in the bank's safe. The matter was immediately reported by the Regional Manager to the General

Manager (Vigilance) of the Bank. However, shortly thereafter, Mr. Chakraborty, with the assistance of the Branch Manager and two other employees of the Bank, deposited the entire amount back into the Bank's safe. This fact was also acknowledged by the Regional Manager in an affidavit submitted to the authorities.

(i) Upon completion of the enquiry, the Enquiry Officer (hereinafter referred to as 'EO') submitted his report, concluding that the charges levelled against the petitioner had been substantiated. The Disciplinary Authority concurred with the findings of the EO and accordingly passed the final order imposing the penalty of removal from service. The petitioner preferred a statutory appeal against the said order of removal; however, the appeal was decided against him. Aggrieved thereby, the petitioner has filed the present writ petition.

3. The specific case made out in the present writ petition is that the entire disciplinary proceeding was conducted and concluded in contravention of the directions contained in the order passed in MAT 2080 of 2017. It is further alleged that the enquiry was conducted in gross violation of the principles of natural justice, inasmuch as the petitioner was not afforded any opportunity to cross-examine the management witnesses. Both the Enquiry Officer and the Disciplinary Authority, contrary to the observations of the Hon'ble Division Bench, proceeded with a pre-conceived mindset, relying solely on the

petitioner's purported admission, and ultimately held him guilty of the charges, resulting in the imposition of punishment.

4. Upon arriving at the conclusion that the writ petition should be decided after exchange of affidavits by the parties, a Coordinate Bench of this Court directed the respondent to file an affidavit-in-opposition. However, despite such direction, no affidavit-in-opposition was filed by the respondent.

5. Mr. Saha, learned advocate appearing for the petitioner, submitted that the petitioner had been made a scapegoat in the entire incident. He argued that, pursuant to the instructions of the then Branch Manager, a sum of Rs. 2,05,000/- was handed over to an employee of the Bank. Subsequently, when a shortage of the said amount was detected in the bank's safe, three other individuals deposited the entire amount, as would be evident from Annexure P8 to the writ petition. He contended that the Bank did not suffer any pecuniary loss as a result of the incident. However, in an attempt to cover up the matter, the petitioner was allegedly coerced into making an admission of guilt. Taking note of these circumstances, the Hon'ble Division Bench, while disposing of the intra-court appeal being MAT 2080 of 2017, set aside the enquiry report, the final order of punishment, and the appellate order. The Hon'ble Division Bench further directed the respondent Bank to commence the enquiry proceedings afresh from the stage of issuance of the charge-sheet. Despite such direction, the Disciplinary Authority, while once again holding the petitioner guilty of the charges,

relied solely upon the petitioner's earlier admission and the materials, including documents and evidence, collected or recorded during the previous enquiry proceedings.

6. Mr. Saha further argued that the fresh enquiry proceedings were conducted during the Covid-19 pandemic through virtual means. While the petitioner participated in the enquiry, he was not afforded any opportunity to cross-examine the management witnesses. He submits that from the report of the Enquiry Officer and the final order of punishment, it is clear that both the Disciplinary Authority and the Appellate Authority relied solely on the admission made by the petitioner during the earlier proceedings in concluding that the charges levelled against the petitioner had been established. He contended that, for these reasons, the enquiry proceedings cannot be sustained, and the final order of punishment, as well as the order of the Appellate Authority, should be set aside.
7. Mr. Saha, drawing attention to the final order of punishment and the order of the Appellate Authority, argued that the same authority had acted both as the Disciplinary Authority and the Appellate Authority.
8. *Per contra*, Mr. Hossain, learned advocate representing the Bank, argued that the petitioner had categorically admitted his guilt. He submitted that while the Hon'ble Division Bench set aside the report of the then Enquiry Officer, the order of punishment, and the order of the Appellate Authority passed earlier, this did not imply that the Hon'ble

Division Bench had set aside the document containing the petitioner's admission of guilt. He further contended that the petitioner had been afforded all reasonable opportunities to defend himself during the enquiry proceedings.

9. Mr. Hossain further argued that the 2010 Regulations were subsequently amended by the BGVB Service (Amendment) Regulations 2013, which substituted the definition of 'competent authority.' The amended regulations defined the competent authority as: (i) The Chairman in respect of officers placed in Scales III, IV, and V; (ii) The General Manager in respect of employees in Scales I and II; and (iii) An officer not below Scale IV in respect of employees in Group B (Office Assistant – Multi-Purpose) and Group C (Multi-Purpose), as decided by the Board. He asserted that, under the new regulations, the appropriate authority had dealt with the appeal, and he contended that the petitioner had failed to establish any grounds warranting interference in this writ petition. In support of his argument, he cited two unreported decisions passed by the Hon'ble Division Bench in RVW 72 of 2021 in connection with MAT 827 of 2020 (*Swapan Kumar Saha vs. BangiyaGraminVikash Bank & Ors.*), and another unreported judgment passed by this Bench in WPA 24355 of 2015 (*Nachiketa Sengupta vs. BangiyaGraminVikash Bank & Ors.*). He informed the Court that the judgment in WPA 24355 of 2015 had been challenged in an intra-court appeal, but the appeal was dismissed.

A Special Leave Petition was also filed against the order passed in that appeal, which was subsequently dismissed.

10. In the present case, a charge sheet was issued on 15.09.2011. Subsequently, the final order of punishment was passed by the Chairman of the Bank on 03.04.2012. However, in compliance with the direction of the Hon'ble Division Bench passed in MAT 2080 of 2017, a fresh enquiry was conducted, and upon its conclusion, a final order of punishment was issued by the Assistant General Manager of the Sponsor Bank, who was deputed as the General Manager, on 28.01.2022. The petitioner thereafter preferred a statutory appeal, which was dismissed by the General Manager, acting as the Appellate Authority, on 16.06.2022.

11. As per Regulation 2(g) of the 2010 Regulations, the term "Competent Authority" refers to the "Chairman" in respect of officers of the Bank, and to the "General Manager" in respect of employees. The proviso to Regulation 2(g) further stipulates that, in the absence of a General Manager, the Chairman shall act as the Competent Authority.

12. Under Regulation 2(g) of the 2013 Regulations, an officer of Scale-IV and above is designated as the Competent Authority in relation to Group-B and Group-C employees. Furthermore, the 2013 amendment substituted Clauses (ii) and (iii) of Regulation 50 of the 2010 Regulations, providing that an appeal shall lie before the General Manager where the Competent Authority is determined by the Board under sub-clause (iii) of clause (g) of sub-regulation (i) of Regulation

2. Accordingly, in the case of Group-B and Group-C employees, the General Manager is the designated Appellate Authority.

13. Therefore, in the present case, the records reveal that the final order of punishment was passed by the Assistant General Manager of the Sponsor Bank, who was deputed as the General Manager. The statutory appeal was thereafter disposed of by the General Manager of the Bank, acting as the Appellate Authority. In contrast, in the case of *Nachiketa Sengupta (supra)*, at the time of initiation of disciplinary proceedings, the petitioner, Mr. Sengupta, was officiating in a post classified as Scale-II officer. While the order of suspension was issued by the Chairman, the charge sheet was issued by the General Manager. It was contended on behalf of Mr. Sengupta that the charge sheet was invalid, as the 2013 Regulations, which designated the General Manager as the Competent Authority for Scale-II officers, came into effect only on 12.08.2013, i.e., after the charge sheet had been issued. Thus, the Court held that Mr. Sengupta did not lose forum of appeal. In the given case, final order of punishment was passed by the Assistant General Manager, a competent authority within the meaning of the clause (iii) of amended regulation 2(g) of 2013. The Appeal was heard and disposed of by the General Manager. Therefore, it is apparent that the petitioner did not lose the forum to prefer the appeal against the order of punishment.

14. In disciplinary proceedings, the scope of judicial review is generally limited to examining the decision-making process. The authority to

punish an employee lies within the employer's domain, and courts normally refrain from intervening unless it is established that the enquiry proceedings have been tainted due to the failure to adhere to established rules or principles of natural justice. This includes the denial of a reasonable opportunity for the employee to defend themselves, or where the punishment is found to be disproportionate to the proven misconduct.

15. When an authority assumes jurisdiction to discharge quasi-judicial function, then such authority must act fairly, impartially and without any bias or pre-determined mind. If the court finds that authority has acted arbitrarily with closed mind and in violation of rules of natural justice and in derogation of the statutory rules, the Court can extend the compass of judicial review to render justice.
16. In the present case, the interpretation of the order dated 16.04.2021, passed by the Hon'ble Division Bench in MAT 2080 of 2017, which has attained finality, has become central to assessing the tenability of the final order of punishment. In that order, the Hon'ble Division Bench quoted a portion of the earlier final order of punishment dated 15.03.2012, wherein the Disciplinary Authority had observed that the charge-sheeted employee replenished the defalcated amount on 28.06.2011, having misappropriated it on 27.06.2011. However, upon examining the payment register, the Hon'ble Bench found that the total replenished amount had actually been deposited by three different individuals. The Bench further noted that "it does

therefore appear that the appellant did never repay the amount though he had confessed to having taken it.” On that basis, the Hon’ble Division Bench found sufficient reason to interfere with the earlier decision. Additionally, the Hon’ble Bench directed the Bank to cause fresh inquiry from the stage of charge sheet, keeping in mind what the Hon’ble Bench pointed out in that order.

17. In the subsequent proceedings, the petitioner, relying on the order of the Hon’ble Division Bench, raised objections to certain Management exhibits on the ground that they had been referred to in the earlier proceedings. The Enquiry Officer overruled these objections, citing the following reason:

“The High Court did not set aside the original Charge Sheet and the allegations cited therein. Therefore any pertinent document having lawful correlation with the allegations, no matter whether those were referred earlier, cannot be discarded in any way.”

18. A close scrutiny of the findings returned by the Enquiry Officer (EO) reveals that the EO observed the petitioner had retracted his earlier confession and introduced a new version of events—namely, that on 27.06.2011, acting on the instruction of the then Branch Manager, a sum of Rs. 2,05,000/- was handed over to Mr. Ashish Chakraborty. However, the petitioner failed to substantiate this claim with any convincing evidence. In an attempt to justify the deposition of the shortfall amount by three other individuals, the EO noted that these individuals had replenished the amount to rescue the petitioner.

However, it must be noted that no evidence was adduced to support this assertion either. As previously noted, the EO ultimately based his findings solely on the admission and/or confession of the petitioner.

19. An Enquiry Officer is a quasi-judicial authority, and the functions discharged by such an officer are quasi-judicial in nature. It is, therefore, incumbent upon the Enquiry Officer to conduct the proceedings fairly, reasonably, and in accordance with the principles of natural justice. In this context, profitable reference may be made to two celebrated decisions of the Hon'ble Supreme Court reported at (2009) 2 SCC 570 (*Rup Singh Negi v. Punjab National Bank*) and (2009) 2 SCC 541 (*Union of India & Ors. v. Prakash Kumar Tandon*).

20. It is a well-settled proposition of law that an enquiry must be conducted fairly and objectively, and not in a subjective or biased manner. The findings returned by the Enquiry Officer must not be perverse or unreasonable, nor should they rest on conjectures or surmises. Furthermore, the Enquiry Officer is duty-bound to record clear and reasoned findings of fact, particularly in light of the statutory provisions defining the alleged misconduct. The purpose of a disciplinary enquiry is not merely to secure a finding of guilt at any cost, but to ascertain the truth behind the allegations levelled against the delinquent employee.

21. Although, in a disciplinary proceeding, the strict mode of proof prescribed by the Evidence Act should not be applied with equal rigor but the substantive rules of evidence based on principles of natural

justice cannot be ignored. A charge framed against the delinquent must be held to be proved before any punishment can be imposed on him. Be it noted here that mere suspicion should not take place of proof.

22. Taking note of the fact that, although the petitioner admitted his guilt, the shortfall amount was deposited by three other individuals, the Hon'ble Division Bench directed the authority to conduct a fresh inquiry. Accordingly, the purpose of the subsequent proceeding ought to have been to ascertain the reason why, despite the petitioner's admission, those three individuals deposited the amount in their own names and/or accounts. In this context, it was essential that those three individuals be examined as witnesses, as they were in a position to shed light on the genuine course of the events. The petitioner should have been afforded an opportunity to cross-examine them, in keeping with the principles of natural justice.

23. Even assuming, for the sake of argument, that the charge sheet was not quashed by the Hon'ble Division Bench and that the petitioner's admission remained on record, such a document, in the given circumstances, could have served only as an additional and/or supplementary link in the chain of events. It ought not to have been treated as the basis for the Enquiry Officer's finding. From the petitioner's reply to the findings of the Enquiry Officer, it is evident that the petitioner pointed out that several documents, namely, M.EX. 2, 7, 8, 9, 10, 13, 14, 15, and 16 which includes his earlier reply to the

charge sheet and the previous inquiry report, were also relied upon by the Management in the subsequent proceeding. Therefore, the question inevitably arises as to how the subsequent proceeding can be regarded as a fresh inquiry. In essence, it appears to be a case of presenting the same content in a new form- essentially, the old wine in a new bottle.

24. In the subsequent proceeding, the Management presented three witnesses. In his response to the findings of the Enquiry Officer (EO), the petitioner categorically stated that he was not afforded an opportunity to cross-examine those witnesses. He further asserted that whenever he attempted to put questions to them, the EO disallowed the same on the ground that the petitioner was allegedly exerting mental pressure on him. In the present case, although the respondents were directed to file an affidavit-in-opposition, they failed to do so, thereby leaving these serious allegations uncontroverted. As previously noted, the entire enquiry proceeding was concluded in three consecutive days—i.e., from 02.06.2021 to 04.06.2021 and the same was conducted through virtual mode. All the witnesses were examined on 04.6.2021. Notably, the minutes of the proceedings have not been produced to refute the petitioner's claims. The EO has made a statement that the petitioner had cross-examined them. Going a step further, the DA stated that all these witnesses were examined, cross-examined and re-examined. This contradiction raises a doubt.

25. The three Management witnesses stated that the petitioner was one of the joint custodians of the Bank's safe, along with the then Branch

Manager. The Branch Manager testified that there was no emergency that would have warranted instructing the petitioner to hand over the amount to Mr. Ashish Chakraborty. Additionally, the Management relied on the document containing the petitioner's admission. These three materials formed the basis of the Management's case.

26. However, the crucial question raised by the Hon'ble Division Bench—namely, why three other individuals deposited the shortfall amount in their own names and/or accounts remains unanswered. The Enquiry Officer attempted to address this by stating that the petitioner had borrowed the amount from them. Yet, this explanation fails to clarify why the deposits were made in the names of those individuals, and not directly on behalf of the petitioner. That aspect of the matter remains unresolved.

27. Therefore, in this context, the only reasonable conclusion that can be drawn is that the so-called fresh enquiry was not conducted in accordance with the letter and spirit of the order passed by the Hon'ble Division Bench. By relying on materials from the earlier proceeding, failing to afford the petitioner an adequate opportunity to cross-examine the Management witnesses, omitting to address the crucial issue highlighted by the Hon'ble Division Bench, and proceeding with an apparent pre-conceived mindset, the entire enquiry process stands vitiated and is rendered legally unsustainable. Consequently, the order of punishment, and the order of the Appellate Authority also cannot also be sustained.

28. The next inevitable question that arises is whether it would be appropriate to remit the matter once again to the Disciplinary Authority for conducting a fresh enquiry. Fundamentally, the Management has failed to offer any plausible explanation or material to justify the deposition of the shortfall amount by three other individuals in their own names. In this context, such remittance may, in effect, amount to affording the Management yet another opportunity to fill up the gaps in its case, or it may result in issuance of replica of earlier decision in a different.

29. In a decision, reported at (2004) 8 SCC 683 (*E.T. Sunup vs. C.A. N.S.S. Employees Assn.*), the Hon'ble Apex Court lamented that it has become a tendency with the government officers to somehow or the other circumvent the orders of Court and try to take recourse to one justification and other. This shows complete lack of grace in accepting the orders of the Court. This tendency cannot be countenanced. In a democracy, the role of the Court cannot be subservient to administrative fiat. The executive and the legislature have to work within the constitutional framework and the judiciary has been given the role of watchdog to keep the legislature and executive within check.

30. Therefore, considering these aspects, I am of the view that in the present case, it would not be appropriate to remit the matter back to the respondents. Thus, direction is to be given to reinstate the petitioner. Consequently, the next question that falls for consideration is payment of back wages. It is understood that when a dismissal,

removal, or termination is found to be illegal, it automatically leads to an order for reinstatement of the employee, which, in turn, raises the issue of back wages.

31. However, no uniform formula can be applied to the payment of back wages, as each case must be decided based on its unique facts. Reinstatement of an employee restores him to his position before dismissal or removal. In the decision, reported at (2019) 17 SCC 184 (*Jayantibhai Raojibhai Patel vs. Municipal Council, Narkhed & Ors*, quoting the proposition set in the judgment of *Deepali Gundu Surwase*, reported in (2013) 10 SCC 320 with approval, the Hon'ble Court emphasized that the injury suffered by an employee due to an illegal dismissal or termination cannot be compensated solely with money. If the employer has grossly violated statutory provisions, natural justice, or victimized the employee, the court or tribunal may order full back wages. The Court further stated that the nature of the misconduct, the employer's financial condition, and other relevant factors should be considered.

32. In the present case, the petitioner did not render any service since 2011. Admittedly, neither of the parties has presented any evidence or materials to shed light on the issue. Considering all relevant factors, I am of the view that a balance would be maintained and the interest of justice would be sub-served through issuance of a direction upon the respondents to disburse 50% of the back wages. Such direction would balance the equities among the parties.

33. In view of the foregoing, the order of punishment dated 28.01.2022 and the appellate order dated 16.06.2022 are hereby set aside. The respondents are directed to reinstate the petitioner with all consequential benefits within one month from the date of receipt of a copy of this order. Further, the respondents shall release all consequential benefits, including arrears of pay, if any, in favour of the petitioner within a period of two months thereafter. However, it is clarified that the petitioner shall be entitled to 50% of the back wages for the period of his absence.

34. With these observations and order, this writ petition is, thus, disposed of. However, there shall be no order as to the costs.

(ParthaSarathiChatterjee, J.)

Later:

After pronouncement of the judgment in open court, Mr. Hossain, the learned advocate representing the bank, prayed for a stay on the operation of the judgment. The prayer was duly considered but rejected.

(Partha Sarathi Chatterjee, J.)