

GAHC010011162015



2024:GAU-AS:7708

**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WP(C)/1826/2015

MUKUL KALITA

S/O LT. NAJENDRA KALITA, R/O VILL. and P.O. BALBALA, P.S. AGIA, DIST-
GOALPARA, ASSAM, PIN-783120

VERSUS

THE UNION OF INDIA and 6 ORS
REP. BY THE MINISTRY OF FINANCE AND BANKING, NEW DELHI

2:THE UNITED BANK OF INDIA SPONSORED BANK
REP. BY ITS CHAIRMAN
A GOVT. OF INDIA
UNDERTAKING NATIONAL BANK
HEAD OFFICE SITUATED AT HEMANTA BASU SARANI
KOLKATA-01

3:THE GRAMIN BIKASH BANK
A JOINT UNDERTAKING OF GOVT. OF INDIA
GOVT. OF ASSAM
AND UNITED BANK OF INDIA
REP. BY ITS CHAIRMAN HAVING ITS HEAD OFFICE SITUATED AT G.S.
ROAD

4:THE GENERAL MANAGER
ASSAM GRAMIN VIKASH BANK
G.S.ROAD
BHANGAGARH
GHY-5
ASSAM

5:THE REGIONAL MANAGER
AGVB

THANA ROAD
P.S. and DIST- KOKRAJHAR
BTAD
PIN-783370

6:THE CHIEF MANAGER
AGVB
GOALPARA BRANCH
DIST- GOALPARA
PIN-783101

7:THE CHIEF MANAGER PERSONAL
AGVB
G.S. ROAD
BHANGAGARH
GHY-5
ASSA

Advocate for the Petitioner : MR.F A HASSAN, MR.A DAS,MR.A K PURKAYASTHA

Advocate for the Respondent : MR.SIDHANT DUTTAR-3to7, MR.C SHARMA(R-3to7),MS.N MODI(R-3to7),MR.S DUTTA(R-3to7),MS.M CHOUDHURY(R-3to7),ASSTT.S.G.I.

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioners : Shri AK Purkayastha

Advocates for the respondents : Shri S. Dutta, Sr. Counsel
Shri Subham Dutta, R.-Bank

Date of hearing : **30.07.2024**

Date of Judgment : **07.08.2024**

JUDGMENT & ORDER

An order of dismissal from service dated 27.05.2014 in a Disciplinary Proceeding is the principal subject matter of challenge in this petition filed under Article 226 of the Constitution of India. The grounds of challenge, *inter alia*, are

on the procedural aspect and also on the proportionality.

2. As per the facts projected, the petitioner was appointed as Clerk-cum-Cashier in the Assam Gramin Vikas Bank (hereinafter called the Bank) in the year 1985. The period concerning the allegations is from 05.04.2001 to 20.07.2005 when the petitioner was posted at the Goalpara Branch. The allegations pertained to an irregular account of one customer, namely, Nirupam Das. Detecting certain irregularities in the said account, the petitioner was issued a notice dated 03.12.2011 directing him to appear before the Investigation Officer. It is the case of the petitioner that in the said proceeding, his statement along with those of the others were recorded. According to the petitioner, the investigation had culminated in a report dated 13.12.2011 in which the petitioner was exonerated from the allegations. The petitioner also claims to have deposited an amount of Rs.30,000/- in the said account. Thereafter, the Disciplinary Proceeding was initiated by the show-cause notice dated 02.06.2012 which the petitioner had replied followed by initiation of an enquiry. It is, however, the contention of the petitioner that in the said Disciplinary Proceeding, the earlier Investigation Officer was examined which according to him had caused prejudice. The Enquiry Report was prepared in which, out of 5 charges, charge nos. 1 to 4 were held to be proved and the 5th charge was held to be not established and vide the second show-cause notice dated 11.11.2013, the said Enquiry Report was forwarded to the petitioner. The petitioner replied to the said show-cause notice and thereafter, the impugned order of dismissal from service was passed on 27.05.2014. The said penalty was imposed as per Regulation 39.2 (B) of the Assam Gramin Vikash Bank (Officers and Employees) Service Regulation 2010.

3. I have heard AK Purkayastha, learned counsel for the petitioner. Also heard

Shri S. Dutta, learned Senior Counsel assisted by Shri Subham Dutta, learned counsel for the respondents – Bank, who has also produced the records in original pertaining to the enquiry proceeding.

4. Shri Purkayastha, the learned counsel for the petitioner has submitted that the enquiry was initiated in which the initial Investigation Officer was produced as a witness. It is submitted that when such Investigating Officer had given a report in favour of the petitioner, he could not have been produced as a witness in the enquiry. It is also submitted that certain signatures alleged to be of the petitioner were held to be proved by depending on the opinion of a Forensic Officer who, however was not examined. He has also raised the issue of discrimination by submitting that the allegations also involved other personnel of the Bank against whom no action was taken and only it was the petitioner who was singled out. He submits that such aberrations would be fatal and would vitiate the entire proceeding which would call for interference by this Court.

5. *Per contra*, Shri Dutta, the learned Senior Counsel for the respondents - Bank has submitted that there is no procedural irregularity or illegality in the enquiry. It is submitted that the initial investigation was done only to ascertain certain facts. The examination of the Investigating Officer in the departmental enquiry cannot be said to be illegal or that it has caused any prejudice to the petitioner. By referring to the records of the Disciplinary Proceeding which had been handed over, he has submitted that the enquiry was held in the transparent and fair manner.

6. The learned Senior Counsel has also dealt with the submission that the punishment imposed upon the petitioner was discriminatory. It is submitted that another Officer Islamuddin Ahmed was also punished in a Disciplinary Proceeding pertaining to the same allegations. Shri Dutta has extensively

referred to the pleadings in the affidavit-in-opposition filed on 02.09.2019.

7. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

8. The grounds of challenge, as indicated above, are on the procedural aspect, discrimination and on the severity of the penalty. It appears from the records that initially an investigation was done which according to the petitioner was in his favour. The first ground that examination of the said Investigating Officer is illegal cannot be countenanced for more than one reason. Apart from the fact that the initial investigation was a discrete enquiry, examination of the earlier Investigating Officer cannot be termed to be illegal, more so, when such Officer was subjected to the cross-examination on behalf of the petitioner. The petitioner, on his own has contended that the initial report was in his favour. This Court, therefore, fails to understand as to how prejudice has been caused to him by examination of the said Investigating Officer. Therefore, the said ground is negated.

9. As regards the allegation of discrimination, this Court has gone through the affidavit-in-opposition filed by the respondent - Bank. In paragraph 9 thereof, there is a specific statement that another Officer of the Bank namely, Islamuddin Ahmed was imposed penalty in connection with the same incident.

10. As regards the ground that the Officer of the Forensic Science was not examined, this Court has examined the records of the enquiry proceeding which reveal that there is only one witness of the Management, namely, one Hari Ghosh. This Court has however found that the opinion of one Shri Tilak Das, Scientific Officer was taken into consideration to come to a conclusion regarding the signatures of the petitioner on the concerned instruments. This Court is of

the view that if such opinion of the Forensic Officer is taken into account, such Officer would have to be produced in the enquiry and be subjected to cross examination from the delinquent. Admittedly, there is only one witness of the Management, namely, Shri Hari Ghosh and the statement made by Shri Hari Ghosh will not be sufficient to establish the charges.

11. Though the aspect of discrimination has not been found to be established in this case, the ground that the Officer of the Forensic Science was not examined would have a crucial role in the decision making process of this Court. Since this Court finds sufficient force in the manner by which the charges were established, it may not be required for this Court to go to the aspect of the ground of severity of the penalty imposed. This Court has already observed that the opinion of the Scientific Officer was taken to prove the signatures of the petitioner in certain instruments / documents. If such opinion was taken into consideration which was detrimental to the delinquent petitioner, it was incumbent upon the respondent - Bank to produce the said Officer in the enquiry and subject him to cross examination. If such Officer is not being able to be produced, any competent Officer / person has to be produced to establish the charge. It is a trite law that whenever any pre-recorded statement is used against a delinquent, the person making such statement has to be produced before the Enquiry Officer and give the delinquent an opportunity to cross examine.

12. In the case of ***State of Mysore v. Shivabasappa Shivappa*** reported in ***AIR 1963 SC 375***, it has been held as follows:

"It is on the observation that "the evidence of the opponent should be taken in his presence" that the decision of the learned Judges that the

evidence of witnesses should be recorded in the presence of the person against whom it is to be used is based. ...

... When the evidence is oral, normally the examination of the witness will in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word, and sentence by sentence, is to insist on bare technicalities, and rules of natural justice are matters not of form but of substance. In our opinion they are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross-examine them.

13. In the case of ***State of U.P. v. Om Prakash Gupta*** reported in **(1969) 3 SCC 775**, the Hon'ble Supreme Court has reiterated the aforesaid principle in the following manner:

“12. This Court has repeatedly laid down that the fact that the statements of the witnesses taken at the preliminary stage of the enquiry were used at the time of the formal enquiry does not vitiate the enquiry if those statements were made available to the delinquent officer and he was given opportunity to cross-examine the witnesses in respect of those statements.”

14. In view of the above discussion, this Court is of the view that the manner

by which the charges have been held to be proved is not in accordance with law. At the same time, having a *prima facie* look at the nature of the allegations, a balance is required to be reached.

15. Accordingly, the writ petition is allowed by setting aside the impugned order of dismissal of service dated 27.05.2014. However, it is directed that the respondent - Bank would be at liberty to either produce the Forensic Officer in the proceeding and give the petitioner an opportunity to cross-examine or in the alternative, produce any such competent witness who can identify the signatures of the petitioner in the concerned instruments / documents. Since there is an issue as to whether the petitioner is still within the age of service and if he has not surpassed the age of superannuation, the respondent - Bank would be at liberty to keep the petitioner under suspension till the completion of the aforesaid process and the petitioner is directed to cooperate in the completion of the enquiry, in the manner indicated above. Such reinstatement of the petitioner would however be with the condition that he would not be entitled to any back wages on the principles of "no work no pay".

16. The writ petition accordingly stands allowed, in the manner indicated above.

17. The records, in original are returned back to the learned counsel for the respondent – Bank.

JUDGE

Comparing Assistant