

GAHC010045832021



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

Case No. : WP(C)/1614/2021

NARAYAN CHANDRA DAS
S/O LATE NIBARAN CHANDRA DAS, RESIDENT OF G.N.B ROAD, DOOM
DOOMA TINSUKIA, ASSAM

VERSUS

THE ASSAM STATE COOPERATIVE APEX BANK LTD AND 2 ORS
REPRESENTED BY ITS MANAGING DIRECTOR PANBAZAR, GUWAHATI 01

2:THE MANAGING DIRECTOR
THE ASSAM STATE CO OPERATIVE APEX BANK LIMITED
PANBAZAR
GUWAHATI 1

3:THE INQUIRY OFFICER
ZONAL MANAGER APEX BANK LTD. NORTHERN ZONE
TEZPUR
SONITPUR
ASSAM 78400

For the Petitioner(s) : Mr. S. Dutta, Senior Advocate
Mr. G.J. Sharma, Advocate

For the Respondent(s) : Mr. J.K. Goswami, Standing Counsel

Date of hearing : 11.11.2024

Date of Judgment : 11.11.2024

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER(ORAL)

Heard Mr. S. Dutta, the learned Senior Counsel assisted by Mr. G.J. Sharma appearing on behalf of the petitioner and Mr. J.K. Goswami, the learned Standing Counsel appearing on behalf of the respondents.

2. The instant writ petition has been filed challenging the inquiry report dated 20.11.2012 by the Inquiry Officer; the order passed by the Managing Director dated 29.07.2013, whereby the petitioner was dismissed from service as well as the rejection of the appeal filed by the petitioner as communicated vide letter dated 27.02.2020.

3. The case of the petitioner herein, is that a show cause notice dated 30.10.2010, was served upon him to show cause as to why disciplinary action should not be initiated against him under Staff Rules 37 and 38 for his unauthorized absence from duty for a period of 85(eighty five) days from 14.07.2010 to 28.09.2010 amounting to misconduct, gross irregularities, gross negligence of duties. To the said show cause notice, the petitioner submitted his reply wherein he stated that he had not violated the Staff Rules 37 and 38 as alleged.

4. Subsequent thereto, the petitioner was served with another show cause notice dated 07.05.2012, whereby the petitioner was asked to show cause as to why penalties prescribed under Rule 46(a) of the Staff Rules should not be inflicted upon him for committing gross financial irregularities, breach of trust, violation of the bank's rules and procedures, misuse of official position and acting in a manner detrimental to the interest of the bank. From the said show

cause notice it transpires that the allegation was that the petitioner had allowed overdraft in 5 accounts without obtaining adequate securities and without proper documents. The petitioner was therefore, asked to furnish a written reply within 10(ten) days.

5. The petitioner thereupon submitted his written statement of defence on 01.06.2012, against the said show cause notice denying the various charges. Pursuant thereto, the petitioner was issued another show cause notice on 08.06.2012, wherein the petitioner was asked to show cause as to why penalties prescribed under Rule 46(a) should not be inflicted upon him for willful negligence to duties, irregularities of attendance and unauthorized absence from duties. The petitioner was directed to submit the written statement of defence within 15(fifteen) days from the date of the communication.

6. The petitioner submitted another written statement on 25.06.2012, to the additional charge framed against him stating that he was not in a sound health when he joined the Diphu Branch of the Bank. Thereupon, one Sri Dhrubajyoti Gogoi, Zonal Manager, Northern Zone of the Bank and Sri Partha Sarathi Mukherjee, Accountant Tinsukia Branch, I/C Tinsukia Branch were appointed as the Inquiry Officer and the Presenting Officer respectively.

7. Subsequent to the inquiry which was made, a report was submitted on 20.11.2012, whereby it was opined that the charges which were leveled against the petitioner were proved. Thereupon another show cause notice was issued on 11.02.2013 to the petitioner asking him to show cause as to why penalties prescribed in the Rule 46(a)(vi) of the Staff Rules, 1980 should not be inflicted upon him by supplying a copy of the inquiry report within 10(ten) days of the receipt of the notice.

8. The petitioner thereupon submitted a reply. The petitioner was also given a personal hearing in that regard. The record further reveals that the Managing Director of the Respondent Bank passed an order in terms with Rule 46(a)(vi) of the Staff Rules, 1980, thereby the petitioner was dismissed from service with immediate effect. Further, it was mentioned that the period of absence during his service in the Diphu Branch for the period of 14.07.2010 to 06.10.2010 for 85 (eighty five) days would be treated as unauthorized and accordingly, the petitioner be granted extra-ordinary leave without pay for this period of absence for this 85(eighty five) days. It was also mentioned that the amount recovered from the petitioner on account of pecuniary loss caused to the bank by the petitioner due to his irregular action be recovered from him as per law.

9. The petitioner thereupon filed an appeal on 12.08.2013, before the Board of Directors of the Respondent Bank as per the mandate of Rule 48(c) of the Staff Rules, 1980. The said appeal however, was not disposed of for a long time and under such circumstances, the petitioner was compelled to file a writ petition being WP(C) No. 4416/2018. The writ petition was disposed of by an order dated 16.07.2018, whereby taking into account the limited prayer so made, the Coordinate Bench of this Court directed the Respondent Bank to dispose of the appeal by placing it in the next immediate sitting of the Board of Directors of the bank.

10. The record reveals that the Appeal was placed before the Board of Directors of the Respondent Bank on 28.08.2018, wherein it was resolved that as the petitioner had failed to bring new materials to consider relaxation of his punishment, the appeal was dismissed. This order was communicated to the petitioner on 27.02.2020 by the Managing Director. Accordingly, the instant writ petition was filed.

11. Mr. S. Dutta, the learned Senior Counsel appearing on behalf of the petitioner submitted that when an Appeal provision is provided in the Rules, the Appellate Authority is required to reassess the materials on record as to whether a case has been made out for interference. He submitted that a perusal of the impugned resolution would show that the Board of Directors have treated the appeal as a review and had dismissed it on the ground that no new materials were placed. He therefore submitted that the Appellate Authority failed to exercise the jurisdiction as per the mandate.

12. Mr. S. Dutta, the learned Senior Counsel further submitted that from the materials on record it would be seen that the petitioner had filed the appeal contesting the findings made in the inquiry report on merits and therefore, it was incumbent upon the Appellate Authorities to decide the appeal on merits and give few reasons else such an order passed by an Authority without reason would violate the mandate of Article 14 of the Constitution.

13. Mr. J.K. Goswami, the learned Standing Counsel appearing on behalf of the Respondent Bank submitted that the petitioner was rightly dismissed taking into account that the petitioner herein was found to be involved in financial irregularities. He therefore, submitted that when the employer has lost confidence upon the petitioner, the Appellate Authority had rightly not interfered in the Appeal. He therefore, submitted that as there was no illegality in the order passed by the Managing Director inflicting the punishment of dismissal upon the petitioner, which aspect, the Appellate Authority had duly taken note of and as such this Court ought not to interfere in the present proceedings.

14. This Court has duly heard the learned counsels appearing on behalf of the parties and has perused the materials on record. This Court has also perused the records of the proceedings which were directed to be produced by this

Court. It is very pertinent to take note of that apart from the resolution which was adopted on 28.08.2018 and the communication dated 20.07.2020, there is no other documents in the record which would suggest in any manner that any reasons were assigned for dismissal of the Appeal same and except that the petitioner failed to produce new materials.

15. It is a well settled principle of law that when an appeal is provided by a Statue or by the Service Rules the Appellate Authority is required to look into each and every aspect of the objections so raised in the appeal. The provision of Appeal cannot be conferred with the power to revise as review in as much as the power to revise or review is much circumscribed that the provision of Appeal. It is also very pertinent to mention that the Respondent Bank is a State within the meaning of Article 12 of the Constitution and under such circumstances, when a decision is taken by the respondents in exercise of its Appellate jurisdiction there is a requirement for giving due reasons in as much as without reasons being assigned it would result in the order being arbitrary and unreasonable and violative of Article 14 of the Constitution.

16. From the materials on record it transpires the resolution so adopted on 20.08.2018, contained no reasons or merits. Apart from that, it appears that the Board of Directors of the Respondent Board have decided the said appeal in a manner in which a review jurisdiction is to be exercised in as much as the only reason so assigned therein that no new materials were placed for reducing the punishment.

17. From the above, it would be seen that the manner in which the Appeal has been disposed of suffers from a arbitrariness besides being an order passed without proper application of mind.

18. Accordingly, this Court therefore, taking into account that various factual aspects have been raised as grounds of objection in the Appeal is of the opinion that it would be in the interest of justice to direct the Board of Directors of the Respondent Bank to decide the Appeal afresh by giving an opportunity of personal hearing to the petitioner or his authorized representative.

19. Mr. S. Dutta, the learned Senior Counsel appearing on behalf of the petitioner submits that in the meantime, the petitioner had already attained the age of superannuation and as such there is a necessity that the Appeal be directed to be disposed of within a time frame.

20. In view of the above, this Court therefore, disposes of the instant writ petition with the following observations and directions:

- (i) The impugned resolution dated 20.08.2018, insofar as Agenda No. 5 is concerned is set aside and quashed.
- (ii) The impugned communication dated 27.02.2020, issued by the Managing Director of the Respondent Bank to the petitioner is set aside and quashed.
- (iii) The Board of Directors of the Respondent Bank are directed to hear the appeal afresh and in doing so provide a due opportunity of personal hearing to the petitioner as his authorized representatives.
- (iv) The Board of Directors are directed to dispose of the said Appeal as expeditiously as possible and not later than 4(four) months from the date of service of a certified copy of the instant judgment upon the Managing Director of the Respondent Bank.
- (v) For the sake of clarity, this Court observes that this Court had not decided the legality and validity of the inquiry report dated

20.11.2012 as well as the order of the Managing Director dated 29.07.2013. Under such circumstances, the objection raised in the Appeal filed by the petitioner remains open and unfettered by the observations made in the instant proceedings.

21. The records which are produced are returned.

JUDGE

Comparing Assistant