(2013) 3 CALLT 447 : (2013) 5 CHN 311

Calcutta High Court

Case No: F.M.A. No. 1237 of 2010

Bhuban Mohan Pal		APPELLANT
	Vs	
The State of West Bengal and Others		RESPONDENT

Date of Decision: July 29, 2013

Citation: (2013) 3 CALLT 447 : (2013) 5 CHN 311

Hon'ble Judges: P.K. Chattopadhyay, J; Murari Prasad Shrivastava, J

Bench: Division Bench

Advocate: Debabrata Saha Roy, Mr. Indranath Mitra and Mr. Pingal Bhattacharya, for the Appellant;Joydeep Kar, Ms. Sarmila Das for the Bank, Mr. Tapan Kumar Mukherjee and Mr. Nilotpal Chatterjee for the State, for the Respondent

Judgement

P.K. Chattopadhyay, J.

This appeal has been filed assailing the judgment and order dated 10th August, 2010 passed by a learned Judge of this Court whereby and whereunder the said learned Judge was pleased to dismiss on merits the writ petition filed by the appellant herein. The appellant herein was an Out-door Officer of the respondent Bank namely, Burdwan Co-operative Land Development Bank, subsequently renamed as Burdwan Co-operative Agriculture & Rural Development Bank Ltd.

2. From the records available before us, we find that on 16th July, 1984 a show cause notice was issued to the appellant wherein certain allegations were levelled against the said appellant. By the said show cause notice, the appellant herein was also informed about the appointment of an enquiry officer and the said appellant was directed to submit reply to the show cause notice to the said enquiry officer. In the aforesaid show cause notice, Executive Officer of the respondent Bank also specifically mentioned that the appellant herein has been placed under suspension pending completion of the enquiry and passing of final orders.

3. However, the appellant submitted his representation in answer to the show cause notice issued by the Executive Officer of the Bank denying all the allegations levelled against him. The Executive Officer of the respondent Bank on behalf of the Managing Committee thereafter without issuing any formal charge sheet and conducting any enquiry asked the appellant to show cause as to why he should not be removed from service. The appellant thereafter submitted a representation against the proposed punishment. The Executive Officer of the respondent Bank by the order dated 15th March, 1986 terminated the service of the appellant. The said order dated 15th March, 1986 issued by the Executive Officer of the respondent Bank is set out hereunder:-

Burdwan Co-Operative Land Development Bank Ltd. Old Court Compound, P.O. & Dist.-Burdwan.

Ref No. 37

Dated: 15.03.1986.

ORDER

Whereas the reply dt. 5/3/86 of Sri Bhuban Mohan Pout, out door officer (under suspension) (hereinafter referred to as the delinquent) of the Burdwan Co-operative Land Development Bank Ltd. (hereinafter referred to as the Bank) in reply to the Bank show cause notice bearing No. 31 dt. 21/2/86 has, after proper study been deemed unsatisfactory on proper verification against the Bank''s documents and records and the results of appropriate enquiry duly held by the Bank on the charges framed by it.

And

Whereas the offences committed by the delinquent are of quite grave nature revealing gross misconduct on the part of an employee.

And

Whereas further retention of the said delinquent, Sri Bhuban Mohan Paul in the services of the Bank will be prejudicial to the interest of the Bank.

And

Whereas this is not the first offence committed by the said delinquent, he having committed another offence in the past.

And

Whereas any further retention of the delinquent in the services of the Bank will cast evil influence amongst other employees of the Bank and its members - existing and future.

Now therefore, I Sri Basudeb Chakraborti, Executive Officer of the Burdwan Co-operative Land Development Bank Ltd. exercising powers of the Managing Committee of the Bank under Rule 48(2) of the West Bengal Co-op. Societies Rules 1974 do hereby terminate the services of Sri Bhuban Mohan Paul, delinquent out door officer (under suspension) on and with effect from 15/3/1986 who shall cease to be an employee of the Burdwan Co-operative Land Development Bank Ltd. on and with effect from 15/3/86.

Sd/-

(Basudeb Chakraborti)

Executive Officer,

Burdwan Co-operative Land Dev. Bank Ltd.

4. The appellant herein filed a writ petition before this Court being C.O. No. 4825(W) of 1986 which was allowed by the Hon''ble Justice Sudhir Ranjan Roy (as His Lordship then was) on 17th March, 1988 whereby the said learned Judge quashed the order of termination issued by the respondent Bank. The relevant extracts from the aforesaid order passed by the learned Single Judge are set out hereunder:-

In the circumstances, the enquiry proceedings be quashed and the impugned order of termination is set aside. The Respondent Bank is allowed opportunity to hold a fresh enquiry against the petitioner from the stage of the issuance of the charge sheet, if it so desires. In the said enquiry the petitioner may be allowed the assistance of another officer of the Bank and if the assistance of any such officer is not available, he may be given the assistance of a lawyer in view of the nature of the charges.

The petitioner should participate in the said enquiry proceedings on proper notice being given to him and in case he fails to participate, the enquiry may be held ex parte in his absence.

The said fresh enquiry, if at all started, should commence within a period of 60 days from this date and should be concluded within a period of 120 days thereafter.

In the said enquiry the petitioner should be given an opportunity to defend himself, to cross-examine the prosecution witnesses, to examine his own witnesses if any and also to produce documents which he may consider necessary. During the entire period, that is from this date till the date of the conclusion of the enquiry, the petitioner should be deemed to be under suspension and should draw subsistence allowance and other allowances as may be admissible under the Rules. No order is made for the time being regarding the past service of the petitioner which will abide by the results of the enquiry proceedings.

In case no enquiry proceeding is started within the specified period or concluded within the period as specified, the petitioner should be deemed to have been reinstated in service with effect from this date with full back wages and all admissible allowances.

5. It has been submitted on behalf of the appellant that the respondent bank did not initiate any fresh proceeding in terms of the aforesaid order passed by the learned Single Judge on 17th March, 1988 in C.O. No. 4825(W) of 1986 and passed an order on 1st September, 1988 terminating the services of the appellant herein once again.

6. The aforesaid order of termination was challenged by the appellant herein before this Court on the ground that the said order of termination was passed in utter disregard and clear violation of the earlier order passed by a learned Judge of this Court in C.R. No. 7088(W) of 1988. A contempt application was also filed by the appellant herein in this regard which was numbered as C.R. No. 11220(W) of 1988. By consent of the parties both the Writ Petition and Contempt Application being Civil Rule No. 7088(W) of 1988 and Civil Rule No. 11220(W) of 1988 were taken up for hearing and disposed of by the common judgment and order dated 19th April, 1989 by the learned Single Judge. The relevant extracts from the aforesaid order of 19th April, 1989 are set out hereunder:-

That being the position, both the orders dated July 15, 1988 and September 1, 1988 are set aside and the enquiry shall start from the stage of reception of the reply of the petitioner to the charge sheet. The reply must be submitted within May 10, 1989. The enquiry shall continue from the stage as indicated above from May 24, 1989. The enquiry shall be concluded by June 29, 1989. The petitioner shall have the liberty to adduce evidence both oral and documentary. Respondents are directed to give the petitioner a reasonable opportunity of hearing. All the facilities shall be accorded to the petitioner for his defence.

The petitioner shall be present before the Enquiring Officer on the dates specified above as well as the dates to be notified by the Enquiring Officer. Be it, however, recorded that in the event of the petitioner becoming ill, the Enquiring Officer shall not refuse adjournment.

The respondents are hereby directed to pay the petitioner the subsistence allowance for the period he has not been paid by May 15, 1989. Respondents are also directed to go on paying subsistence allowances to the petitioner in terms of the Rules till the service of the order to be passed by the Authority after the conclusion of the enquiry proceedings.

Both the Contempt Rules are disposed of as above without there being any order as to costs.

7. Pursuant to the liberty granted by the aforesaid order passed by the learned Single Judge, appellant herein submitted exhaustive representation to the show cause notice dated 16th July, 1984. By the order dated 24th July, 1989 services of the appellant was again terminated with retrospective effect from 16th July, 1984 by the Executive Officer of

the respondent bank.

8. The aforesaid order of termination was again challenged by the appellant herein before this Court by filing another writ petition being C.O. No. 11027(W) of 1989 and a learned Judge of this Court by the order dated 25th July, 1991 again quashed the aforesaid order of termination dated 24th July, 1989. The respondent bank thereafter preferred an appeal before the Division Bench of this Court being F.M.A.T. No. 2742 of 1991.

9. The Division Bench of this court finally disposed of the aforesaid appeal by setting aside the order under appeal passed by the learned Single Judge and sent the matter back before the learned Single Judge for de novo hearing of the writ petition as expeditiously as possible. Thereafter a learned Judge of this Court by the judgment and order dated 9th April, 1998 finally decided the aforesaid writ petition being C.O. No. 11027(W) of 1989 and allowed the same with costs upon holding the order of dismissal dated 24th July, 1989 as invalid and illegal. The learned Single Judge, therefore, quashed the order of termination and directed the respondents to reinstate the writ petitioner namely, the appellant herein in service.

10. The respondent Bank thereafter preferred an appeal before the Division Bench being M.A.T. No. 1569 of 1998 challenging the aforesaid judgment and order dated 9th April, 1998 passed by the learned Single Judge and the Division Bench by the judgment and order dated 9th July, 1998 disposed of the aforesaid appeal by modifying the order passed by the learned Single Judge and directing the Disciplinary Authority to furnish a copy of the enquiry report to the writ petitioner concerned namely, appellant herein and further directing the Disciplinary Authority to give an opportunity to the appellant herein to make representation against the said enquiry report. The Disciplinary Authority was further directed to consider the matter afresh upon receipt of the representation from the writ petitioner concerned namely, the appellant herein in accordance with law on the basis of the materials-on-record.

11. In compliance with the aforesaid direction of the Division Bench, enquiry report was supplied to the appellant herein. The appellant thereafter submitted representation in connection with the said enquiry report. The Chief Executive Officer thereafter pursuant to the order of the Board of Directors of the Respondent Bank issued a show cause notice on 4th January, 1999 to the appellant herein proposing the punishment of dismissal from service. In the said show cause notice, it has been specifically mentioned that the charges levelled against the appellant have been proved, although the enquiry officer held that only three charges have been established. The Board of Directors did not furnish any reason for not accepting the findings of the enquiry officer with regard to Charge Nos. I, III and V. The appellant herein submitted his representation in answer to the aforesaid show cause notice. The Disciplinary Authority again passed an order of dismissal on 31st May, 1999 upon holding the appellant guilty of all the charges.

12. Challenging the aforesaid order of dismissal dated 31st May, 1999, the appellant herein filed a writ petition before this Court being W.P. No. 16628(W) of 1999 which was finally disposed of by the judgment and order under appeal passed by the learned Single Judge.

13. Assailing the judgment and order passed by the learned Single Judge, Mr. Saha Roy, learned counsel for the appellant submitted that the respondent authorities conducted the disciplinary proceedings in clear violation of the established legal procedures. Mr. Saha Roy submitted that no formal charge sheet was ever issued to the appellant narrating the specific charges levelled against the said appellant. Mr. Saha Roy also submitted that the disciplinary proceedings in the instant case was started on the basis of a show cause notice dated 16th July, 1984 wherein it has not been mentioned that the appellant herein committed any misconduct. Mr. Saha Roy submitted that the disciplinary proceeding starts with the issuance of the charge sheet, although in the present case said charge sheet was never issued. The learned counsel of the appellant submitted that no disciplinary proceedings can be initiated without alleging any misconduct against the employee concerned.

14. Referring to the show cause notice dated 16th July, 1984, learned counsel of the appellant submitted that the Executive Officer of the respondent Bank did not allege commission of any misconduct by the appellant herein.

15. Mr. Saha Roy, learned counsel of the appellant submitted that the enquiry was conducted in the instant case on the basis of a show cause notice and not disclosing the list of witnesses and list of documents. No statement of allegations and imputations of charges were also supplied to the charged employee. The learned counsel further submitted that at the time of issuance of show cause notice, enquiry officer was appointed which according to the learned counsel of the appellant clearly established that the Disciplinary Authority prejudged the issue even before submission of reply by the appellant in answer to the show cause notice.

16. Mr. Saha Roy also submitted that in the instant case, the appellant was asked to submit his reply to the show cause notice dated 16th July, 1994 to the enquiry officer which clearly established that the enquiry officer was appointed before considering the reply of the said appellant in answer to the show cause notice. Mr. Saha Roy submitted that the aforesaid conduct of the Disciplinary Authority would also establish the pre-determined and prejudged attitude on the part of the Disciplinary Authority.

17. It has also been submitted on behalf of the appellant that the enquiry proceeding conducted against the appellant has been vitiated due to non-supply of the documents which were relied upon and/or used in relation to the said enquiry proceeding.

18. Mr. Saha Roy, learned counsel of the appellant submitted that request was made on behalf of the appellant for supply of the documents in order to enable the said appellant to

participate in the enquiry proceeding effectively but according to the learned counsel neither the enquiry officer nor the Disciplinary Authority supplied the documents which were sought for by the appellant herein.

19. Mr. Saha Roy further submitted that perusing the materials on record it would be evident that at no point of time, charge sheet was issued to the employee concerned namely, the appellant herein and domestic enquiry was conducted on the basis of the show cause notice dated 16th July, 1984. The allegations mentioned in the show cause notice were totally vague and indefinite.

20. Mr. Saha Roy specifically urged before this Court that the show cause notice dated 16th July, 1984 did not mention any misconduct allegedly committed by the appellant herein.

21. Referring to the show cause notice dated 16th July, 1984, Mr. Saha Roy submitted that the allegation No. I mentioned in the show cause notice which was described by the enquiry officer as charge No. I cannot be regarded as a charge at all. With regard to the allegation No. II which has been described as charge No. II by the enquiry officer, Mr. Saha Roy submitted that the said charge was allegedly proved according to the enquiry officer on the basis of a confessional statement of the employee concerned, although the said confessional statement was not proved before the enquiry officer in accordance with law.

22. It has been specifically submitted on behalf of the appellant before the enquiry officer that the said confessional statement was extracted under duress and threat.

23. Mr. Saha Roy further submitted that the alleged charge No. II was proved on the basis of an affidavit affirmed by one driver of the respondent Bank, although during the enquiry identity of the said driver was not disclosed and the genuineness of the affidavit was also not proved and authenticated.

24. Furthermore, according to the appellant no opportunity was granted to the said appellant to cross-examine the said driver during the enquiry proceeding. The learned counsel of the appellant submitted that the prosecution tendered the affidavit affirmed by the driver although the same was not authenticated by the said driver and proved during the enquiry. Therefore, according to the appellant it cannot be said that the said allegation No. II, which has been described as charge No. II, has been established.

25. The allegation No. III which has been treated as charge No. III by the enquiry officer however, has not been proved according to the said enquiry officer. The allegation Nos. IV and VI mentioned in the show cause notice which were treated as charge Nos. IV and VI by the enquiry officer were proved on the basis of reconciliation statement of the bank which was tendered in course of enquiry even without any prior intimation to the charged employee namely, appellant herein. The allegation No. V mentioned in the enquiry report was treated as charge No. V by the enquiry officer and the same was however, not

established according to the said enquiry officer.

26. Referring to the report of the enquiry officer, learned counsel of the appellant submitted that the said enquiry officer recommended for dismissal of the appellant herein from service which is not permissible at all since the enquiry officer can only record the findings. Mr. Saha Roy, learned advocate of the appellant further submitted that the enquiry officer could not be permitted to collect any document during the course of hearing from the outsider. Mr. Saha Roy also submitted that the enquiry officer would draw inference on the basis of valid evidence. Mr. Saha Roy further submitted that mere tendering of document by the prosecution could not be sufficient until and unless the contents of the said document are proved.

27. Mr. Saha Roy submitted that in the instant case in order to prove the alleged charge no. II, the prosecution tendered the affidavit affirmed by one driver which was not authenticated and proved by the said driver during the course of enquiry. Mr. Saha Roy also submitted that in order to prove the alleged charge Nos. IV and VI, the prosecution tendered bank reconciliation statement during the course of enquiry without serving any prior intimation to the appellant herein.

28. Mr. Saha Roy submitted that the enquiry officer had no duty to make any recommendation with regard to the punishment though in the present case, the enquiry officer arrived at the conclusion as hereunder:-

I submit that the aforesaid enquiry is destined to dismiss him (appellant herein). By the word ''him'' enquiry officer meant the appellant herein.

29. The learned Advocate of the appellant submitted that the show cause notice was issued on 4th January, 1999 to the appellant herein in terms of proviso to Rule 48(f) of the West Bengal Co-operative Societies Rules, 1987 without considering the exhaustive reply of the said appellant in answer to the report of the enquiry officer.

30. The learned Advocate of the appellant further submitted that in the aforesaid show cause notice dated 4th January, 1999, it has been specifically submitted that all the charges levelled against the appellant have been proved although charge Nos. III and V were not established before the said enquiry officer. The relevant extracts from the enquiry report are set out hereunder:-

Charge No. III - Tour on 16.5.84 in other place instead of Gholde, Gramdihi etc.

The charge levelled against the charged officer on this point could not be established beyond doubt by the presenting officer.

Charge No. V - Erasing and/or over writing of some carbon Receipts.

The charge itself is not clear and specific to me and as such I do not find any opportunity to consider at the merit of the charges, on the ground.

The charged officer is exonerated of the charges levelled against him.

31. The learned Advocate of the appellant specifically submitted before this Court that the Disciplinary Authority never disagreed with the findings of the enquiry officer and therefore, the said Disciplinary Authority had no occasion to come to the conclusion that all the charges levelled against the appellant herein have been proved ignoring the fact that the alleged charge Nos. III and V were not proved before the enquiry officer.

32. Mr. Saha Roy, learned Advocate of the appellant therefore, submitted that the show cause notice was issued by the Disciplinary Authority on 4th January, 1999 without proper application of mind. The learned advocate of the appellant specifically urged before this Court that the order of dismissal was also passed by the Disciplinary Authority in respect of the appellant herein without assigning any reason.

33. The learned counsel of the appellant herein referred to and relied on the following decisions in support of his arguments:-

(a) On the proposition that departmental proceedings is ordinarily said to be initiated when a charge sheet is issued.

I. Union of India Vs. K.V. Jankiraman, etc. etc.,

II. UCO Bank and Another Vs. Rajinder Lal Capoor,

(b) On the proposition that charges should be specific and not vague and indefinite.

I. Surath Chandra Chakrabarty Vs. State of West Bengal,

II. The Government of Andhra Pradesh and Others Vs. A. Venkata Rayudu,

III. Steel Authority of India Ltd. v. Debasish Biswas, reported in (2007) 2 Cri LJ (CAL) 209.

(c) On the proposition that appointment of enquiry officer even before receipt of reply of delinquent employee to the charge sheet pre-judged the issue:

I. State of Punjab Vs. V.K. Khanna and Others,

(d) On the proposition that non-supply of documents clearly violates of principle of natural justice.

I. State of U.P. Vs. Shatrughan Lal and Another,

II. State of U.P. and Others Vs. Saroj Kumar Sinha,

(e) In the final order of punishment, reasons to be disclosed and reply to the show cause notice should be dealt with.

I. Roop Singh Negi Vs. Punjab National Bank and Others,

II. Prasanta Kumar Ghosh v. Union of India & Ors., reported in (2010) 2 WBLR (CAL) 487.

34. On behalf of the respondent Bank, it has been submitted that issues as regards non-issuance of the formal charge sheet, non furnishing of list of documents, list of witnesses, statement of allegations and imputations and also the alleged defect in the show cause notice which was subsequently treated as charge sheet by the enquiry officer and the Disciplinary Authority and challenge to the appointment of enquiry officer before submission of reply to the show cause notice are all barred by the principle of res judicata and/or constructive res judicata. According to the respondent Bank, aforesaid issues cannot be raised by the appellant anymore at this stage.

35. The learned counsel of the respondent Bank submitted that the appellant herein had raised the aforesaid issues in various proceedings initiated earlier before this Court in the earlier writ petitions and therefore, the said issues cannot be challenged once again in the present proceedings. The learned counsel of the respondent Bank submits that the res judicata applies in different stages of the same proceedings. The learned counsel of the respondent Bank relied on the following decisions of the Supreme Court in this regard:-

1. Bhanu Kumar Jain Vs. Archana Kumar and Another,

2. Ishwar Dutt Vs. Land Acquisition Collector and Another,

36. The learned counsel of the respondent Bank further submitted that res judicata is not a technical doctrine but a fundamental principle and relied on the following decision of the Supreme Court:-

M. Nagabhushana Vs. State of Karnataka and Others,

37. The learned counsel of the Bank submitted that the principle of res judicata not only covers the point urged, but the points which ought to have been urged but not urged are also hit by the principle of constructive res judicata and it is not open to the appellant herein to urge any of the aforesaid points which were urged or which could have been urged in the earlier proceedings upto the stage of Enquiry report as that would affect the doctrine of finality which is fundamental principle of law pronounced by the Hon''ble Supreme Court in accepting the principle of res judicata/constructive res judicata as discussed above.

38. Mr. Joydeep Kar, learned counsel for the respondent Bank submitted that even if the charge sheet does not fit into the description of a formal charge sheet, it specifically

discloses the charges and it would appear from the reply submitted by the appellant herein that he had fully understood the charge and raised no objection during the departmental enquiry about non-furnishing of statement of allegations.

39. Mr. Kar also submitted that there is no formal form of charge sheet. When the appellant herein clearly understood the charge and replied to the same, even on the touch stone of prejudice, it cannot be said that the appellant herein has suffered any prejudice.

40. Mr. Kar therefore, submitted that merely on the ground that no formal charge sheet was issued in its proper from (sic form) along with the statements as alleged, disciplinary proceeding, which has been brought to a logical conclusion should not be interfered with by this Court.

41. Mr. Kar relied on the decision of the Supreme Court in the case of State Bank of Bikaner and Jaipur and others Vs. Prabhu Dayal Grover,

42. Mr. Kar also submitted that the Disciplinary Authority is not required to pass a reasoned order when the said Disciplinary Authority agrees with the findings of the enquiry officer. Mr. Kar relied on the following decisions in this regard.

1 Ram Kumar Vs. State of Haryana,

2. State Bank of Bikaner and Jaipur and others Vs. Prabhu Dayal Grover,

3. National Fertilizers Ltd. and Another Vs. P.K. Khanna,

43. The appellant herein specifically urged before this court that the order of punishment was passed by the Disciplinary Authority without any application of mind since the said Disciplinary Authority specifically held that all the charges levelled against the appellant had been established ignoring the fact that the enquiry officer clearly held that the alleged charge No. 1 cannot be treated as a charge and further held that the alleged charge No. III and V have not been established and/or proved. The learned counsel of the respondent Bank further submitted that the Disciplinary Authority never proceeded that all the charges are proved.

44. Mr. Kar specifically submitted that the Disciplinary Authority has never held that charge Nos. III and V were proved. We are however, unable to accept the contentions of the learned counsel of the respondent Bank since the Disciplinary Authority in the show cause notice dated 4th January, 1999 specifically opined otherwise. The relevant extracts from the aforesaid show cause notice dated 4th January, 1999 are set out hereunder:-

Burdwan Co-Operative Agriculture & Rural Development Bank Ltd.

Old Court Compound

Ref. No. 687

P.O. & Dist.-Burdwan

Dated..... 199

To

Shri Bhuban Mohan Pal,

Vill. & P.O. - Belari,

P.S. - Ausgram,

Dist. - Burdwan

**** ***** *****

**** ***** *****

The Board of Directors have carefully gone through the record of the enquiry proceedings, other connected papers and the evidence recorded in the enquiry and findings of the Enquiring Officer on the said evidence recorded in the enquiry and the reply of you on the Enquiry Report and is of the opinion that the charges levelled against you have been sufficiently proved.

By the order of the

Board of Directors.

Sd/-.

Chief Executive Officer.

45. Furthermore, in the final order of punishment, said Disciplinary Authority specifically held that the appellant is guilty of all the charges. The relevant extracts from the aforesaid final order of punishment dated 31st May, 1999 are set out hereunder:-

Burdwan Co-Operative Agriculture & Rural Development Bank Ltd.

Old Court Compound

Ref. No. 198

P.O. & Dist.-Burdwan

Dated. 31.5.1999

To

Shri Bhuban Mohan Pal,

Vill. & P.O. - Belari,

P.S. - Ausgram,

Dist. - Burdwan

**** ***** *****

**** ***** *****

We, the Board of Directors of the Bank hold that the charged officer Sri Bhuban Mohan Pal is guilty of all the charges and hereby pass an order of dismissal of the charged officer with immediate effect from the service of the Bank.

By the order of the

Board of Directors.

Sd/-

Chief Executive Officer.

46. The charge Nos. IV and VI have been proved according to the enquiry officer on the basis of reconciliation statement. The said reconciliation statement according to the respondent Bank was prepared by the charged officer namely, the appellant herein although the appellant specifically claimed that he had prepared another statement and not the one which was relied upon during the enquiry proceeding. The respondent Bank charged the appellant herein for defalcation of Rs. 222/- and therefore, the learned advocate of the appellant submitted that the punishment inflicted upon the appellant herein was shockingly disproportionate.

47. Mr. Kar, learned counsel of the respondent Bank further submitted that the quantum of defalcation is immaterial although in the instant case, there was temporary misappropriation/defalcation but the same is sufficient according to the respondent Bank to attract the major penalty.

48. Mr. Kar also submitted that the appellant herein was a Bank Officer and therefore, he was required to maintain highest order of integrity. Mr. Kar relied upon the decision of the Supreme Court in the case of Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar,

49. The learned counsel of the respondent Bank therefore, submitted that the learned Single Judge rightly dismissed the writ petition and there is no scope to interfere with the impugned order under appeal passed by the learned Single Judge.

50. Mr. Tapan Mukherjee, learned Additional Government Pleader representing the State Respondents submits that the State Government did not pass any order in respect of the appellant herein and the impugned order was passed by the respondent Bank. The learned counsel of the State Respondents virtually adopted the arguments advanced on behalf of the respondent Bank and submitted that the impugned order under appeal passed by the learned Single Judge is an appropriate order in the facts of the present case.

51. The learned Single Judge upon considering the enquiry report held that since the charge Nos. II, IV and VI were proved in the enquiry proceeding, there is no scope of interference with the enquiry report in course of judicial review. The learned Single Judge further held that the disciplinary authority since relied upon the findings of the enquiry authority and there was no disagreement with the findings of the enquiry, officer, no further reason was required to be assigned for imposing the punishment.

52. Accordingly, learned Single Judge refused to grant any relief to the appellant herein and dismissed the writ petition on merits. The appellant herein was therefore, dismissed from service even without issuance of a formal charge sheet and on the allegation of defalcation of an amount of Rs. 222/- only. In the banking service, amount of defalcation may not be a matter for consideration but in deciding the involvement of a bank officer, quantity alleged to have been defalcated should be taken into consideration in order to arrive at a conclusion whether any defalcation was at all made or there was any unintentional mistake on the part of the employee concerned.

53. The possibilities of erroneous calculation cannot be also ruled out but before coming to the aforesaid conclusion, we will have to examine what really transpired in course of enquiry proceedings. It is not in dispute that no formal charge sheet was ever issued to the appellant herein. The show cause notice dated 16th July, 1984 was treated as the charge sheet.

54. It is now to be decided whether the said show cause notice can be treated as charge sheet at all. The aforesaid show cause notice dated 16th July, 1984 issued to the appellant herein is set out hereunder:-

Burdwan Co-Operative Agriculture & Rural Development Bank Ltd.

Old Court Compound

Ref. No.

P.O. & Dist.-Burdwan

Dated..... 199

ORDER

Order No. 42

Dated, Burdwan the 16th July, 1984

Whereas, Sri Bhuban Mohan Paul, Out-door officer in the scale of Rs. 190-10-240-12-300-15-360-20-400-25-450/- was attached to Khandoghosh circle and is, at present, attached to Bhatar Circle of this Bank;

And Whereas, the duties of the Out-door officer, amongst others, are-

(1) to enquire into the loan applications as and when received;

(2) to pursue the loanee members to repay their loans in time;

(3) to receive any amount offered by the loanee members towards repayment of loan from time to time and issue a Kachcha Receipt from the Duplicate Carbon Receipt Book in use by him;

(4) to remit the amount of collection collected by issuing Kachcha Receipt to the Head/Branch office Cashier and get the fact of such remittance authenticated by the concerned Cashier;

(5) to perform journeys within the circle allotted to him in the interest of Bank"s service.

And whereas, it appears from the Log Book maintained for the purpose of recording the movement etc. of the hired vehicles that he performed a journey with vehicle No. WBA 9876 on 15/4/84 to Bhatar etc. which was subsequently confessed by him in writing that the tour was not actually undertaken by him and instead he made the vehicle more to some places of Tarakeswar P.S. for personal purpose;

And whereas, it appears from the said Log Book that he undertook a tour with the same vehicle on 16/584 to the villages of Gholda, Gramdihi etc.; and on enquiry it has been revealed that the vehicle did not go to the said places and he made the vehicle more elsewhere;

And whereas, it appears from the Duplicate carbon Receipt Books (Kachcha) that in quite a number of cases, the collected amounts were held by him unnecessarily even upto a period of 3 months;

And Whereas, it appears that the figures in quite a good no of cases in the Carbon copy of the Duplicate carbon Receipt Books have been erased and/or overwritten with some ulterior motive, and as a whole, the carbon copies were, in almost all the cases, not

placed before the Cashier of Head/Branch office for authentication of the receipt of the collected amount.

And whereas, it appears from the original copies of Kachcha Receipt Nos. 1418 dt. 9/6/83, 1443 dt. 27/6/83 and 1482 dt. 30/6/83 that Rs. 872-00, Rs. 700-00 and Rs. 500-00 respectively was collected by him and instead Rs. 800-00, Rs. 650-00 and Rs. 400-00 respectively have been shown to have been received by the process of erasing and/or overwriting.

Now, Therefore, Sri Bhuban Mohan Paul is directed show cause in writing oh or before 26/7/84 and submit it to Sri P.K. Samaddar, Deputy Manager, who is hereby appointed as the Enquiring Officer, as why suitable penal action should not be taken against him for gross negligence, serious dereliction in discharge of duties, falsification of office Registers and misappropriation of Bank''s money.

Pending completion of the enquiry and passing of final orders, Sri Bhuban Mohan Paul is hereby placed under immediate suspension on and from 16/7/84 and he shall, during the pendency of the enquiry i.e. the period of his suspension, draw ï¿½ of his pay as subsistence Allowance.

Sd/-

Executive Officer

Burdwan Co-op. Land and Dev. Bank Ltd.

55. The appellant specifically denied the allegations levelled against him in his reply dated 13th August, 1984. In the said reply, appellant herein specifically mentioned that the Kachcha receipts mentioned in the show cause notice have been subsequently manufactured erasing and overwriting the figures in order to entangle the appellant in a false case. The relevant extracts from the aforesaid reply of the appellant in answer to the show cause notice are set out hereunder:-

To

The Executive Officer,

Burdwan Co-operative Land Development Bank

Limited,

Burdwan.

Dear Sir,

In reply to your order Number 42 dated 16.7.84 I am filing the following show cause:

(1) .....

(2) .....

(3) .....

(4) .....

(5) .....

(6) ..... So those kancha receipts have been subsequently manufactured erasing and over writing the figures only for the purpose of entangle me in a false case.

Date, Burdwan

The 13th August, 1984

Yours faithfully,

Sd/-

Bhuban Mohan Pal

Out-door-Officer.

56. The enquiring officer or the disciplinary authority however, did not supply the relevant documents to the appellant herein in order to enable him to defend himself in the enquiry proceeding which was conducted pursuant to the allegations mentioned in the aforesaid show cause notice dated 16th July, 1984. The disciplinary authority, ultimately terminated the services of the appellant with effect from 15th March, 1986.

57. Challenging the aforesaid order of termination, a writ petition was filed before this court and the learned Single Judge while disposing of the aforesaid writ petition being C.O. No. 4825(W) of 1986 allowed the respondent Bank to hold a fresh enquiry against the appellant herein from the stage of the issuance of the charge sheet if it so desires.

58. Pursuant to the aforesaid liberty when a fresh enquiry was held by the respondent Bank, no formal charge sheet was issued. Thereafter the authorities of the respondent Bank without following the directions of this Court conducted the enquiry proceedings and dismissed the appellant from service of the Bank. The appellant herein had to initiate several legal proceedings before this Court and ultimately pursuant to the order passed by the Division Bench of this court presided over by S.B. Sinha, J. (as His Lordship then was) proceeded de novo from, the stage of second show cause notice against the appellant herein.

59. A copy of the second show cause notice was supplied to the appellant herein and the appellant herein submitted a reply to the second show cause notice on 16th January, 1999 denying all the charges levelled against him. The relevant extracts from the aforesaid reply of the appellant herein in answer to the aforesaid show cause notice are set out hereunder:-

To

The Chief Executive Officer,

Burdwan Co-operative Agr. & Rural Development Bank Ltd.,

Burdwan

**** ***** *****

**** ***** *****

Charges so far levelled against me in the purported charge sheet are not specifically mentioned and all are vague, insufficient, uncertain and without any foundation.....

Regarding charge No. II - Using the Bank vehicle for personal purpose and making false entries in the Lok-Book.

****** ****** ******

****** ****** ******

Sri Subash Chandra Das the driver of the said vehicle wrote a letter on 15.5.84 and in support of that letter he sweared an affidavit on 2.6.89 i.e. More that five years after. That letter and affidavit is marked as Ext. P-7 by The Enquiring officer. Why Subash Chandra Das sworn an affidavit after 5 years and under whose instruction he sworn an affidavit and why Subash Chandra Das living in Burdwan town did not appear before the Enquiring officer and why I have been deprived to cross-examine that Subash Chandra Das, without producing the said driver before the Enquiring officer and without giving me any opportunity to cross-examine the said driver how the Enquiring officer can accept Ext. P-7 as genuine. Enquiring officer ought to have considered that the said driver is a subordinate staff under the controls of Deputy Manager who is at present presenting officer. So Enquiring officer cannot rule out the possibility of influence applied by the Deputy Manager at present presenting officer upon his sub-ordinate staff like driver.

Regarding Charge No. IV - Holding of Bank"s money unnecessarily for a long period.

I have deposited complete reconciliation statements duly signed by me and mentioning date along with forwarding letter before the Executive officer. Those are in custody of

Executive officer. If those genuine statements are not placed before the Enquiring officer at the time of enquiry I have nothing to do. From the very beginning a conspiracy is going on against me.

Regarding charge No. VI - Misappropriation and defalcation of Bank money.

I boldly deny the charge of mis-appropriation and defalcation against me. Those false charges have been brought against me for the purpose of creating grounds of my dismissal from service. When Enquiring officer dismissed the charge No. III then how he can accept the charge No. VI when the grounds of charge No. III and VI are same.

****** ****** ******

****** ****** ******

Thanking you,

Dated:-16-1-99

Yours faithfully,

Sd/-

Bhuban Mohan Pal

Vill. + P.O. Belari,

Dist. - Burdwan

60. The aforesaid serious questions raised by the appellant herein in the reply to the show cause notice dated 4th January, 1999 were required to be considered and dealt with by the Disciplinary Authority.

61. The Division Bench of this Court while deciding the appeal being M.A.T. No. 1569 of 1998 with C.A.N. No. 3981 of 1998 on 9th July, 1998 directed the Disciplinary Authority not only to furnish a copy of the enquiry report to the appellant herein but also directed the said Disciplinary Authority to give an opportunity to the appellant herein to make a representation against the said enquiry report. The Division Bench further directed the Disciplinary Authority to pass an appropriate order upon receipt of the said representation from the appellant herein and after applying mind afresh. The relevant extracts from the aforesaid judgment and order passed by the Division Bench dated 9th July, 1998 are set out hereunder:-

******* ****** ******

****** ****** ******

Although the order of termination is set aside, the Disciplinary Authority shall furnish a copy of the enquiry report to the petitioner, if not already furnished, and further shall give him an opportunity to make a representation there against. Upon receipt of such representation from the writ petitioner, if any, the Disciplinary Authority shall apply his mind afresh and pass an appropriate order in accordance with law on the basis of the materials on record.

****** ****** ******

****** ****** ******

62. Therefore, the Disciplinary Authority was under an obligation and duty bound to consider the representation submitted by the appellant herein pursuant to the specific order passed by the Division Bench and said Disciplinary Authority was also required to pass an appropriate reasoned order in accordance with law on the basis of materials on record and upon applying the mind afresh. Instead of doing so the Disciplinary Authority simply held the appellant guilty of all the charges without considering the specific objections raised on behalf of the appellant herein which were mentioned in the representation submitted by the appellant in reply to the show cause notice dated 4th January, 1999.

63. The learned Single Judge has held that the Disciplinary Authority relied upon the findings of the Enquiry Officer and therefore; no further reason was required to be assigned for imposing the punishment which we are unable to accept in the facts of the present case since the Disciplinary Authority was required to take appropriate decision pursuant to the specific direction passed earlier by the Division Bench on 9th July, 1998 whereby the said Disciplinary Authority was directed to consider the representation of the appellant herein and pass an appropriate order after application of mind afresh.

64. The aforesaid specific direction of the Division Bench casts an obligation upon the Disciplinary Authority in the instant case to consider the specific objections raised by the appellant in the representation in answer to the show cause notice which the Disciplinary Authority failed to discharge.

In the case of Roop Singh Negi (supra), Hon''ble Supreme Court observed:-

Para 23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned.

65. In the present case, no formal charge-sheet was ever issued on behalf of the respondent-Bank. The allegations made against the appellant in the show cause notice dated 16th July, 1984 was treated as charge-sheet by the respondent-Bank. Several orders were passed earlier by this Court in various proceedings initiated by the parties herein but at no point of time this Court exempted the respondent-Bank from issuing any

formal charge-sheet against the appellant herein. Validity and/or legality of the initiation of the disciplinary proceedings by the respondent-Bank without issuing formal charge sheet was never considered and decided by this Court in any of the earlier proceedings. Therefore, it cannot be said that disciplinary proceedings can be issued without issuing any formal charge sheet. When the aforesaid issue was not decided in any of the earlier proceedings by this Court, question of application of principle of res judicata cannot and does not arise.

66. Furthermore, departmental proceeding cannot be initiated merely by issuance of show cause notice and the same is initiated only when a charge is issued. The Hon''ble Supreme Court following the earlier decision in the case of Union of India Vs. K.V. Jankiraman, etc. etc., held in the case of UCO Bank and Another Vs. Rajinder Lal Capoor,

21 .....The departmental proceeding, it is trite law, is not initiated merely by issuance of a show cause notice. It is initiated only when a charge-sheet is issued (See Union of India Vs. K.V. Jankiraman, etc. etc.,

67. In any event, even if we go by the order passed earlier by the Division Bench of this Court on 9th July 1998 in M.A.T. No. 1569 of 1998 with C.A.N. No. 3981 of 1998 it cannot be said that the Disciplinary Authority was not required to pass a reasoned order after considering the representation submitted by the appellant herein. The Disciplinary Authority was required to pass appropriate reasoned order only after application of mind afresh on the basis of the materials on record.

68. In the present case, from the impugned order passed by the Disciplinary Authority we find total non application of mind on the part of the said Disciplinary Authority. The Disciplinary Authority did not consider the representation of the appellant herein in answer to the show cause notice dated 4th January, 1999 at all.

69. Furthermore, the said Disciplinary Authority held the appellant herein guilty of all the charges even after confirming the findings of the Enquiry Officer which confirms the total non application of mind on the part of the Disciplinary Authority. The Enquiry Officer considered the allegation No. I as the Charge No. 1.

70. We fail to understand how the duties of the Out-door Officer can be a charge against an employee. The duties of the Out-door Officer mentioned in the show cause notice dated 16th July, 1984 was treated by the Enquiry Officer as Charge No. I. The aforesaid duties of the Outdoor Officer which was regarded as Charge No. I are set out hereunder:-

And Whereas, the duties of the Out-door officer, amongst others, are-

(1) to enquire into the loan applications as and when received;

(2) to pursue the loanee members to repay their loans in time;

(3) to receive any amount offered by the loanee members towards repayment of loan from time to time and issue a Kachcha Receipt from the Duplicate Carbon Receipt Book in use by him;

(4) to remit the amount of collection collected by issuing Kachcha Receipt to the Head/Branch office Cashier and get the fact of such remittance authenticated by the concerned Cashier;

(5) to perform journeys within the circle allotted to him in the interest of Bank"s service.

71. The duties of the Out-door Officer cannot be a charge against an employee as no misconduct has been alleged. The description of the duties of Out-door Officer cannot be shown as a charge against an employee which the respondent Bank did in the present case. The Disciplinary Authority was totally biased against the appellant herein and therefore treated the aforesaid description of the duties as the charge against the appellant even though no misconduct was alleged. The enquiry officer in the enquiry report specifically mentioned that the appellant herein cannot be held guilty in respect of the charge No. III and exonerated the appellant from the charge No. V. Therefore, the Disciplinary Authority while accepting the findings of the enquiry officer could not arrive at the conclusion that the appellant was guilty of all the charges.

72. The learned counsel of the respondent Bank desperately argued to cover up the latches and lapses on the part of the Disciplinary Authority by raising the plea of res judicata but no answer was given how the duties of the Out-door Officer could be treated as the charge against the appellant herein.

73. We also fail to understand how the Disciplinary Authority arrived at the conclusion that the appellant herein was guilty of all the charges when the enquiry officer did not hold so and the Disciplinary Authority accepted the findings of the enquiry officer without raising any objection.

74. The learned Single Judge however, held that the charge Nos. II, IV and VI have been established before the enquiry officer without realizing that the explanations given by the appellant herein in the reply to the show cause notice were never considered by the Disciplinary Authority as improper, incorrect and unreliable. As a matter of fact, it is not in dispute that an affidavit was sworn by the driver of the presenting officer after a lapse of more than 5 years and without granting any opportunity to the appellant to cross-examine the said driver which clearly violates the principle of natural justice and procedural justice. Regarding charge No. IV, the appellant specifically submitted in his reply to the show cause notice that he had deposited complete reconciliation statement duly signed by him which were not placed before the enquiry officer at the time of enquiry.

75. The aforesaid serious allegations made by the appellant herein were not considered and dealt with by the Disciplinary Authority. With regard to misappropriation and defalcation charge, the appellant herein specifically stated in the reply to the show cause

notice that the said charges were not only false but have been brought for the purpose of creating grounds for dismissing the appellant from service.

76. A serious question was raised by the appellant that when the enquiry officer held that charge No. III has not been established against the appellant herein then how the charge no. VI has been said to be established specially when the grounds of charge No. III and charge No. VI are same. The aforesaid serious questions raised by the appellant herein was also not discussed by the Disciplinary Authority. The Disciplinary Authority, as a matter of fact, did not consider anything mentioned in the representation submitted by the appellant herein pursuant to the specific direction passed earlier by the Division Bench of this Court. The final order of punishment was issued by the Disciplinary Authority without proper application of mind as already mentioned hereinbefore which goes to show the scant regards of the Disciplinary Authority in respect of the orders passed earlier by this Court.

77. For the reasons discussed hereinabove, the impugned order of dismissal passed by the Disciplinary Authority cannot be approved specially when we find that the Disciplinary Authority acted in clear violation of the specific direction passed earlier by the Division Bench on 9th July, 1998 by not considering the representation submitted by the appellant herein in answer to the show cause notice and also not deciding the serious objections raised by the said appellant upon application of mind afresh in accordance with law and on the basis of materials on record.

78. We, therefore, quash the order of dismissal passed by the Disciplinary Authority. For the identical reasons, the impugned judgment and order under appeal passed by the learned Single Judge also cannot be sustained and the same is therefore, set aside.

79. The appellant herein attained the age of superannuation during the pendency of the writ petition and retired from service on 31st July, 2000. Therefore, no direction can be issued at this stage for reinstatement of the appellant in service.

80. In the aforesaid circumstances, we direct the respondent Bank to treat the appellant in service all through as if no dismissal order was passed against the said appellant and pay admissible salary and allowances to the said appellant till the date of superannuation i.e. upto 31st July, 2000 and thereafter grant admissible retrial benefits to the said appellant without any further delay. While computing the arrear dues towards the salary of the appellant herein in terms of this order, appellant bank will adjust the amount which has been paid to the said appellant by way of subsistence allowance.

81. With the aforesaid directions, we allow the instant appeal. Considering the sufferings and harassment of the appellant herein on account of the biased attitude of the respondent Bank since the issuance of the show cause notice dated 16th July, 1984, we are of the opinion that an exemplary costs should be awarded in the present case. Therefore, we award costs assessed at 1000 Gms. to be paid by the respondent Bank to

the appellant herein within 4 (four) weeks from the date of communication of this order. Since a considerable time has already passed, we direct the respondent Bank to pay the entire admissible dues in terms of this order to the appellant within a period of 4 (four) weeks from the date of communication of this order.

Let urgent xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Murari Prasad Shrivastava, J.

I agree.