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Present : The Hon'ble Mr Justice Jayanta Kumar Biswas

**Judgment on : March 12, 2010**

**W.P.No.6357(W) of 2007**

**Shankar Prasad Das**

**-vs-**

**Paschim Banga Gramin Bank & Ors.**

**POINTS:**

Disciplinary Proceedings----Charge sheet to the petitioner, followed by a disciplinary proceeding-----On the basis of report of enquiry final order made by Disciplinary Authority inflicting several punishments -----Petitioner's appeal to the Board of Directors dismissed----Duties of the Appellate Authority---Service Law

**FACTS:**

The petitioner was working as an officer OJM-1 in Mayurakshi Gramin Bank. The Disciplinary Authority initiated proceedings by issuing a charge- sheet. On the basis of the report of the enquiry officer the Disciplinary Authority made the final order inflicting several punishments. Feeling aggrieved the petitioner submitted a petition of appeal. The appeal was dismissed by the board and the petitioner challenged this order by filing the Writ Petition.

In his petition of appeal the petitioner claimed that Shri Prasanta Mukhopadhyay, Senior Manager who as team member of the Special Inspection Team conducted the preliminary enquiry into the alleged irregularities in Dhaltikuri Branch, was also appointed the Enquiry Officer to preside over the said Enquiry proceedings. The scheme was in contrary to the basic principles of justice and as a consequence Shri Mukhopadhyay while acting in his dual role as an Inspecting Officer and Enquiry Officer (i.e. Judge) simultaneously could not come out of bias in drawing up his Report. The total enquiry proceedings were thus vitiated.

**HELD:**

It is evident from its decision that none of the grounds taken by the petitioner in

his petition of appeal was considered by the Appellate Authority that decided the appeal without hearing the petitioner as well. Without referring to any evidence taken down by the enquiry officer, it simply recorded that it had gone through the evidence portion. Such consideration is no consideration in law. The Appellate Authority was required to examine the merits of the grounds and record its specific opinions on each of the grounds, and in the process it was under the obligation to give the petitioner reasonable opportunity of hearing.

PARA--6

Mr. Kali Sankar Banerjee ....for the petitioner

Mr. Soumya Majumdar .....for the respondents

**The Court:**

1. The petitioner in this art.226 petition dated March 29, 2007 is aggrieved by the order of the appellate authority dated December 19, 2006, Annexure P at p.82, and the order of the disciplinary authority dated August 25, 2006, Annexure K at p.69.

2. At the time the petitioner was working as an officer OJM-1 in Mayurakshi Gramin Bank, the disciplinary authority initiated proceedings by issuing a charge-sheet dated January 31, 2005, Annexure A at p.42. On the basis of the report of the enquiry officer the disciplinary authority made the final order dated August 25, 2006 inflicting several punishments. Feeling aggrieved the petitioner submitted a petition of appeal dated October 4, 2006, Annexure M at p.74. Dismissing the appeal the board of directors of the bank qua the petitioner's appellate authority gave its decision dated December 19, 2006 quoted in the letter of the bank's chairman dated January 3, 2007.

3. The decision of the board of directors of the bank is quoted below :

“The entire matters in their proper perspectives have been looked into and it is observed that the extent of irregularities is very high. The NPA position arising out of those concerned advances was alarming. The Board also observed that there has been no miscarriage of natural justice to the charge sheeted officers and reasonable opportunity was given to each of the charged officers and their contentions duly noted at various stages of the proceedings and also during personal hearing(s). Board directors have gone through the evidence portion, submissions of the charge-sheeted Officers, proceedings, the Enquiry Officer's reports along with the

Competent/Disciplinary Authority's orders, Board finds that the orders are speaking ones.

4. On the basis of evidence and other recorded facts, Board feels that the penalty orders as awarded by the Competent/Disciplinary Authority in the two cases, are justified and not disproportionate to the gravity and nature of the misconducts committed by the charge-sheeted officers. The appeals against the final orders passed by the Chairman, Competent/Disciplinary Authority, preferred by the concerned officers do not stand and are dismissed by the Board. The Appeals are hence disposed of."

5. In his petition of appeal the petitioner took as many as nine grounds, and the first two of them are quoted below :

"1. Shri Prasanta Mukhopadhyay, Senior Manager who as team member of the Special Inspection Team conducted the preliminary enquiry into the alleged irregularities in Dhaltikuri Branch, was appointed the Enquiry Officer to preside over the said Enquiry proceedings. The scheme was in contrary to the basic principles of justice and as a consequence Shri Mukhopadhyay while acting in his dual role as an Inspecting Officer and Enquiry Officer (i.e. Judge) simultaneously could not come out of bias in drawing up his Report. The total enquiry proceedings were thus vitiated.

2. Even though the defects in documentations were all rectified with the exception that the equitable mortgage by deposit of a certified copy of the Title Deed in Cash Credit A/C 7/2002 was done (illegible). But as the property was not partitioned, rectification was made by equitable Mortgage of a separate deed of property. Still the Disciplinary Authority awarded the punishment out of a vindictive mind set."

6. It is evident from its decision that none of the grounds taken by the petitioner in his petition of appeal was considered by the appellate authority that decided the appeal without hearing the petitioner as well. Without referring to any evidence taken down by the enquiry officer, it simply recorded that it had gone through the evidence portion. In my opinion, such consideration is no consideration in law. The appellate authority was required to examine the merits of the grounds and record its specific opinions on each of the grounds, and in the process it was under the obligation to give the petitioner reasonable opportunity of hearing.

7. For these reasons, I partly allow this petition, set aside the decision of the appellate authority dated December 19, 2006 dismissing the petitioner's appeal and direct the appellate authority to decide the petitioner's appeal dated October 4, 2006 afresh after giving the petitioner reasonable opportunity of hearing. It shall give a reasoned decision dealing with every ground taken in the appeal within eight

weeks from the date of communication of this order and communicate it immediately. No costs. Certified xerox.

**(Jayanta Kumar Biswas, J)**

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Mr. Kali Sankar Banerjee ....for the petitioner  
Mr. Soumya Majumdar .....for the respondents