

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Tapabrata Chakraborty

&

The Hon'ble Justice Partha Sarathi Chatterjee

FMA 2144 of 2018

With

CAN 3 of 2024

National Bank for Agriculture & Rural Development & Ors.

Vs.

Sri Kunal Chatterjee

For the appellants : Mr. Soumya Majumder, Sr. Adv.,
Mr. Avishek Gupta,
Mr. Shounak Mukherjee,
Ms. Debika Misra.

For the respondent : Mr. Partha Sarathi Bhattacharyya, Sr. Adv.,
Mr. Soujanya Bandyopadhyay,
Mr. Raju Bhattacharyya.

Hearing is concluded on : 16.01.2025

Judgment on : 10.03.2025

Partha Sarathi Chatterjee, J.**Prelude:**

1. The appeal challenges the judgment dated 21.09.2017 passed by the learned Single Bench in W.P. No. 12624(W) of 2005. In this judgment, the Single Bench set aside the order of the Disciplinary Authority (DA) dated 8.5.2001, as well as the order of the Appellate Authority (AA). The Court further directed the authorities to grant all consequential benefits to the writ petitioner/respondent within a specified time frame.

Facts :

2. Before delving into the issues involved in the appeal, the key facts that led to its filing must be noted, which are as follows:
 - a) While serving as Clerk Grade-I in the Project and Operations Department of the National Bank for Agriculture and Rural Development (in short, NABARD), the writ petitioner/respondent was suspended under Rule 47(5) of the NABARD (Staffs) Rules, 1982, in contemplation of a disciplinary proceeding, by an order dated 16.07.1993.
 - b) Subsequently, a charge sheet vide. no. 1395(A) was issued on 29.07.1993, accusing the writ petitioner/respondent of serious misconduct under Rule 47(1) of the NABARD (Staff) Rules, 1982. The specific charges were that on 26th June 1993, at about 16:45 hours, he wrote abusive, indecent, obscene, and disparaging remarks on the wall near the staircase between the ground and first

floors, targeting a female employee of the bank, thereby assassinating her character and causing indignity to her. Additionally, he was accused of making derogatory remarks about Mr. P.K. Dholakia, the Development Officer, which were deemed to be character assassination. These actions allegedly tarnished the bank's image and created an unhealthy atmosphere within its premises. Be it noted here that certain other delinquent employees were also charge-sheeted along with the writ petitioner/respondent.

- c) During the joint enquiry, one S. Chakraborty, Deputy Manager, Calcutta Regional Office, acted as the presenting officer for the Management, while the writ petitioner/respondent, being the charge-sheeted employee (in short, CSE), was defended by his authorized representative. The Management presented oral testimonies of 9(nine) witnesses, while the CSE presented oral accounts of 4(four) witnesses. Both parties also submitted documents in support of their respective contentions.
- d) After the conclusion of the enquiry, the Enquiry Officer found that the accusations against the CSE had not been proved. However, the Disciplinary Authority (in short, DA) disagreed with the Enquiry Officer's findings and came to conclusion that the charges in the charge-sheet were established which would be reflected from the final order of the DA, dated 21st May 1994, communicated to the CSE through a letter from the Manager (Administration). As a result, a punishment of reduction in pay by three stages in the CSE's

pay scale for one year from the date of the final order, with the effect of postponing the date of future increments, was imposed.

- e) The writ petitioner/respondent challenged the findings of the DA, dated 21st May 1994, in a writ petition *vide*. C.O. 8098(W) of 1994, which was disposed of by an order dated 30th November 2000. By this order, the court directed the appellants herein to treat the findings of the DA as tentative and not final or conclusive, and not to impose the punishment. Additionally, the appellants were directed to proceed with the reply to the second show cause notice, as submitted by the CSE, in light of the observations made in the order, within a specific time frame. Liberty was also granted to the CSE to rejoin his duties, if he had not already done so.
- f) The record suggests that, in compliance with the order dated 30.11.2000, the DA proceeded with the CSE's reply to the second show cause notice. However, it ultimately concluded that there was no merit in the contention raised by the CSE and, therefore, reaffirmed its previous decision by an order dated 8.5.2001. The record further indicates that the order dated 8.5.2001 was given effect to.
- g) The writ petitioner/respondent preferred a statutory appeal against the order of the DA dated 8.5.2001 but the appeal was also decided against him by an order dated 19.08.2022. In view of such circumstances, the writ petitioner/respondent preferred the writ petition being W.P. no. 12624(W) of 2005 challenging the order of the Appellant Authority dated 19.08.2022 and the order of the

Disciplinary Authority dated 8.5.2001. The writ petition being W.P. no. 12624 (W) of 2005 was disposed of by the order impugned in the present appeal.

Arguments:

3. Mr. Majumder, learned Sr. Advocate, appearing in support of the appeal, inviting our attention to the charge-sheet submitted that on one Sunday, it was spotted that certain scandalous words involving a lady employee were written by the respondent on the wall of the bank. On next day i.e., on Monday, there was an uproar on that issue. As a result, disciplinary proceedings were initiated against the respondent, along with three other employees, whose involvement and active participation in the misconduct were established. Answering our query, Mr. Majumder informed us that those three employees were subsequently transferred to different branches of the bank.
4. Mr. Majumder pointed out that while the Enquiry Officer had concluded that the charges were substantiated, the Disciplinary Authority (DA) disagreed with these findings and overturned the decision. He argued that the respondent's second show cause notice was considered in accordance with the order dated 30.11.2000 passed in C.O. 8098(W) of 1994. Mr. Majumder claimed that since the show cause notice was deemed to lack merit, the DA reaffirmed its original decision which faced another challenge in W.P. No. 12624(W) of 2005, however, by the order under appeal, the same was set aside.
5. He submitted that the decision of the DA was set aside by the order under appeal mainly on three grounds, namely, i) the DA had misinterpreted the

order of remand; ii) the DA should not have reconsidered the matter in its entirety; and iii) the second DA had acted as an Appellate Authority. He argued that a writ court, in exercising its power of judicial review, should limit its inquiry to the legality of the decision-making process rather than the decision itself. However, in this case, the learned Single Bench itself effectively acted as an appellate authority over the decision of the DA. He pointed out that the disagreement with the findings of the Enquiry Officer cannot be treated as perversity that would warrant interference with the decision of the DA.

6. He referred to the victim's deposition, where she identified the respondent's handwriting. He argued that a relationship had developed between the victim and the respondent but subsequently, it became strained. He claimed that the misconduct was in close proximity with the severance of their relationship. He mentioned that one Mrs. Khan had witnessed the entire incident. Although the security guard's oral testimony could not be presented, his letter was proved by the security agent. After the incident, almost all staff members consoled the victim, except for the four employees in question. He claimed that this subsequent conduct added further weight to the circumstantial evidence, and therefore, in his view, there was sufficient evidence to reach a possible conclusion.
7. Thus, according to him, the punishment was correctly imposed. He also informed that the respondent (CSE) had already retired from service, and all admissible dues had been paid to him. However, since the respondent had been punished, the period during which he was under suspension was not considered as "period spent on duty." To strengthen his argument, he cites two decisions, reported at (1998) 7 SCC 84 (*Punjab National Bank & Ors. vs. Sh.*

Kunj Behari Mishra) and (2021) 2 SCC 612(Dy. General Manager (Appellate Authority) & Ors. vs. Ajay Kumar Srivastava, (2021) 11 SCC 321 (Union of India & ors. vs. Dalbir Singh) (1990) 4 SCC 594 (S.N. Mukherjee vs. Union of India).

8. *Per Contra*, Mr. Bhattacharya, learned senior advocate representing the respondent, drawing our attention to the contents of the charge-sheet argued that words used in the charge-sheet are relevant factors to be considered.
9. He argued that misconduct can be categorized into two types: enumerated and unenumerated. He contended that the alleged misconduct did not fall under enumerated misconduct. He argued that admittedly, a writ court, while exercising judicial review, cannot re-assess the evidence from a departmental inquiry, however, if the decision is found to be perverse or unsupported by evidence, the court can examine the evidence.
10. Drawing our attention to certain portion of the evidence, he argued that evidence of all the witnesses of the Management is hear-say evidence. He contended that the Departmental Authority primarily relied on Dr. Khan's testimony to conclude that the charges against the CSE were proven, but he argued that Dr. Khan's evidence was unreliable. Her presence at the scene was questionable, and he pointed out that it would be hard to believe that a female employee, upon witnessing such an incident, would remain silent, leave the scene without raising any alarm, and would not disclose it to any colleague.
11. The findings of the DA, he argued, is contradictory to the matter of record. In defending the order under appeal, he contended that the learned single Judge had correctly observed that the DA, in his subsequent order, merely dismissed

the issue raised by the CSE in his reply and attempted to justify his earlier decision.

12. He further argued that the order of the appellate authority was also perverse and showed a clear lack of application of mind. He submitted that the issues raised before the appellate authority had not been properly addressed. He contended that the learned Single Judge was right in setting aside both the DA's order after remand and the Appellate Authority's order. To support his argument, he cited the decision in *Roop Singh vs. Punjab National Bank & Ors.*, reported at (2009) 2 SCC 570.

Analysis:

13. Undeniably, the scope of judicial review is generally limited to the decision-making process, but if a decision is found to be perverse, irrational, or grossly disproportionate, it falls within the purview of judicial review. Article 14 of the Constitution of India mandates fairness in State actions. Judicial review aims to prevent arbitrariness, irrationality, unreasonableness, bias, and mala fides. In a departmental inquiry, the delinquent must be given a reasonable opportunity to defend himself by demonstrating that the evidence against him is not credible or showing that the charges, even if proven, do not warrant severe penalties such as dismissal, reduction in rank, scale of pay or stoppage of increments etc.
14. Notably, a disciplinary proceeding is quasi-judicial and quasi-criminal in nature. The principle of fair play applies equally in administrative, judicial, and quasi-judicial matters. When an authority assumes jurisdiction to perform quasi-judicial functions, it must act fairly, impartially, and without bias or

preconceived notions. If the court finds that the authority has acted arbitrarily, with a closed mind, or in violation of the rules of natural justice, statutory regulations, or established legal principles, the court can expand the scope of judicial review to ensure that justice is served.

15. 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 against the delinquent must be proven based on convincing and cogent evidence before any punishment can be imposed. It should also be emphasized that mere suspicion cannot replace proof.
16. The broad principles dictate that authorities may receive and place on record all necessary, relevant, cogent, and acceptable material facts, even if not strictly proven in accordance with the Evidence Act. However, the material must be pertinent and relevant to the facts in issue. Inferences drawn from evidence and circumstances must be carefully distinguished from mere conjecture or speculation. There must be either direct or circumstantial evidence from which a necessary inference can be made to prove the facts in issue. Without positively proven facts, whether oral, documentary, or circumstantial, upon which an inference can be based, the method of inference fails, leaving only speculation or conjecture.
17. In the present case, as noted earlier, charges were brought against the CSE for writing derogatory remarks on the wall of the bank premises involving a female employee. Rule 47(1) of the National Bank for Agriculture and Rural Development (Staff) Rules, 1982 (in short, the Rules) enumerated various misconducts, including negligence, actions detrimental to the bank's interests,

breaches of discipline, or any other act of misconduct. Writing derogatory remarks targeting a female employee constitutes 'any other act of misconduct,' and if proven with convincing evidence, it may result in the prescribed punishment.

18. Significantly, the order dated 30th November 2000 in C.O. 8098 (W) of 1994 has not been challenged by either party and is therefore binding on both. This order directed the appellants to address the second show cause notice, as submitted by the CSE, in light of the observations made. In his reply, the CSE raised several issues indicating irregularities in the decision-making process, including omission of supply certain documents, deprivation of opportunity to inspect the certain documents, deprivation of the opportunity of presenting himself for examination etc. during the inquiry proceedings. However, in his subsequent order dated 8th May 2021, the DA and/or the Competent Authority referred to a portion of the order dated 30.11.2000 and concluded that, since the CSE participated in the proceedings without raising any objections, no prejudice was caused to him, based on a similar observation made in C.O. No. 8098 (W) of 1994. Therefore, the CSE can be considered precluded from re-agitating this point.

19. In his reply, the CSE further argued that the chain of events was unsubstantiated, unsupported by any evidence, and unrelated to the charges. He contended that the evidence was insufficient to establish the charges against him. In response, the DA, in his subsequent order, merely stated that the Competent Authority had analysed the evidence and found a chain of events. He also concluded that Dr. Khan's testimony was trustworthy and that the failure to examine the Security Guard was not critical to the case.

20. Indisputably, the purpose of an inquiry is not merely to establish the charges against the delinquent, but to uncover the truth. When any official is called upon to act as an Inquiring Authority or Disciplinary Authority, they assume the role of an independent arbiter. In this capacity, they are obligated to determine whether the Management has proven the allegations of misconduct, free from any pre-determined bias or assumptions.
21. In the case at hand, the reply to the show cause notice, along with the arguments made on behalf of both the CSE and the appellant, indicates that the CSE's primary grievance is that the decision of the DA and/or Competent Authority is based on no evidence. As previously noted, the Enquiry Officer concluded that the charges against the CSE were not established. However, the DA and/or Competent Authority disagreed with these findings. The DA merely asserted that the Competent Authority had analysed the evidence and concluded that the charges were proven. However, the DA did not evaluate the evidence to demonstrate how the CSE was linked to the alleged incident or how he concluded that the charges were substantiated. Therefore, the facts and circumstances of this case warrant a limited examination of the evidence to determine whether the decision is perverse or unsupported by evidence.
22. Evidence shows that on 28th July 1993, derogatory remarks involving a female employee of the bank were found written on the wall. It was suspected that those remarks were written by the insiders (own men of the bank) on 26th July 1993, a Saturday, after office hours. Since the premises were closed the following day being Sunday, the matter went undetected until Monday. According to the victim's testimony, the main gate of the bank was closed at 2 p.m. on Saturday. Subsequently, on 6th July 1993, Dr. Khan (MW-9) wrote a

letter to the bank claiming that she had witnessed the CSE and three other employees writing the remarks on the wall at about 4:45 p.m.

23. The learned Single Bench, after assessing the evidence, concluded that the testimonies of MW-1, 2, 3, 4, and 5 are opinion evidence. Their evidence suggested that the misdeeds might have been committed by insiders. The victim (MW-6) testified that she suspected it was '*most probably*' Shri Kuntal Chatterjee (the CSE). She explained the reasons for her suspicion by stating that, having worked with the CSE in the same section from 1986 to 1988, she had become familiar with his handwriting, particularly the letter 'K'. She further stated that, upon noticing the derogatory remarks on the wall, the CSE took no action, expecting that he would later approach her to "patch up." She also mentioned that she had requested the office to identify the person responsible and take appropriate action. However, the learned Single Bench, after considering the nature of the victim's deposition, concluded that her evidence was based on suspicion. In the present case, no efforts have been made to obtain any authenticated and/or admitted handwriting sample from the CSE. Relying solely on a visual comparison between writing on a wall and a handwriting sample allegedly seen by the victim 5-7 years ago is not a reliable basis for determining guilt.

24. The management produced an undated letter written by Raj Kishore Sharma, who claimed to have served as a security guard on 26th July 1993. The letter was authenticated by the Security Agent, but Raj Kishore Sharma himself did not testify. However, the mere proof of a document does not automatically establish the truth of its contents. Therefore, the proof of the letter does not automatically prove that the individuals named in it committed the misdeed.

Evidence must be direct, meaning thereby that the person who witnessed the incident must come forward and testify that he observed the occurrence. As such, the evidence provided by the security agent and the proof of the letter are insufficient to link the CSE to the alleged misconduct.

25. As previously noted, the DA and/or Competent Authority heavily relied upon the evidence of Dr. Khan, who claimed to have witnessed the incident on 26th July, 1993 at 4.45 p.m. Admittedly, a fact in issue can be proved based on testimony of sole witness if on scrutiny, such evidence is found to be intrinsically reliable, inherent probable and wholly trustworthy. In assessing the evidence of eyewitness, it is to be taken into consideration whether in the circumstances of the case it was possible for the eyewitness to be present at the scene and whether there is anything improbable or unreliable. Such evidence would be tested for its inherent consistency and the inherent probability of the story, consistency with the evidence of other witnesses, consistency with undisputed facts, the power of the observation of the witness etc.

26. From the defence evidence, a suspicion was raised about her presence in the office at 4:45 p.m. on Saturday. It is be noted that from evidence, it emerged that the main gate was closed at 2 p.m. on that day. Additionally, the defense evidence, as noted by the Enquiry Officer in his report, stated that the section to which Dr. Khan was attached was closed on Saturday. The management made no effort to dispel the suspicion arising from the evidence.

27. Dr. Khan's testimony reveals that, despite being an educated professional in a responsible position, she took almost 10 days to disclose witnessing the incident and failed to mention that the security guard had also seen it. Similarly, the security guard did not note Dr. Khan's presence, even though

both claimed to have observed the CSE writing. Dr. Khan also testified that she saw the writing up to the words 'P.K.,' suggesting she had been watching the incident for a significant period without being noticed. The circumstances indicate that the CSE and his associates chose to write after office hours but failed to take precautions to ensure that no one would notice them. Dr. Khan's evidence raises doubts, which the Management failed to address.

28. Though the settled proposition of law dictates that no evidence should be judged adversely, evidence must be tested for inherent inconsistencies, its probability, consistency with the testimony of other creditworthy witnesses, alignment with undisputed facts, and the credibility of the witness. In the present case, according to the Management's version, two individuals, namely, the security guard Mr. Sharma and Dr. Khan, witnessed the incident. However, neither did they raise an alarm nor did disclose the incident to anyone for a significant period, and they remained unnoticed by the four employees alleged to have committed the misdeed. Although evidence cannot be dismissed solely based on the witness's failure to act/ behave in a certain manner, it is reasonable to expect that a person's behaviour in such circumstances would reflect typical human reactions.

29. Considering these aspects, the learned Single Bench observed that the defense evidence has seriously contradicted the Dr. Khan's testimony. Due to its lack of inherent consistency, lack of probability, and inconsistencies with other evidence, including the admitted facts, we are of the considered opinion that the learned Single Bench did not commit any error in holding that Dr. Khan's evidence does not inspire confidence.

30. Upon close scrutiny of the DA and/or Competent Authority's order dated 8th May 2001, it becomes evident that the order attempts to dismiss the issue raised by the CSE and justify his previous order under the pretext of complying with the order dated 30th November 2000 in C.O. 8098(W) of 1994. The order dated 8.5.2001 also failed to address the CSE's claim that the evidence was insufficient to link him to the alleged misconduct and that the charges had not been substantiated. Rather than demonstrating how the charges were proven, the order instead sought to unjustifiably defend the conclusion that the charges were established. For these reasons, the learned Single Judge commented that the DA and/or Competent Authority acted as an appellate authority over its own order. We have carefully gone through the decisions relied on by the appellants. There cannot be any scintilla of doubt regarding binding precedent of those decisions but those are distinguishable on facts.
31. In the present case, the Management, the victim, and even Mr. Majumder, in his arguments, emphasized the subsequent conduct of the CSE, specifically his failure to console the victim, which they argued suggested his guilt. However, conduct must have a direct connection with the fact in issue or a relevant fact, either influencing or being influenced by it. The mere fact that one person did not console the victim cannot be used as evidence to suggest the commission of the misconduct.
32. Thus, for the reasons outlined in the preceding paragraphs, we find no justification to disagree with the observations and the order under appeal. We also do not find any infirmity or perversity in the order that would warrant interference. We are aware that, during the pendency of this appeal, the time specified in the order for the release of consequential benefits has expired.

Therefore, the deadline for releasing all consequential benefits to the CSE is extended until the end of March 2025.

33. Consequently, the appeal and its connected application stand dismissed. There shall be, however, no order as the costs.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)