IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Reetobroto Kumar Mitra

FMA 327 of 2024
+
IA No. CAN 2 of 2023

Shri Rajat Kumar Varshney
Versus
Central Bank of India & Ors.

WITH
FMA 328 of 2024
+
IA No. CAN 1 of 2023

Central Bank of India & Ors.
Versus
Shri Rajat Kumar Varshney

For the Appellant [In FMA 327 of 2024]	:	*Mr. Indranil Chakraborty, Mr. Apurba Ghosh, Ms. Apurna Ghosh, Mr. Vaskar Pal.*
For the Respondents [In FMA 327 of 2024]	:	*Mr. Devajyoti Barman, Mr. S.K. Sengupta.*
Hearing is concluded on	:	*22nd April, 2025.*
Judgment On	:	**18th June, 2025.**

Tapabrata Chakraborty, J.

1. Two appeals have been preferred from the impugned order of 3rd May, 2023, which partially allowed the prayers in WPA 11532 of 2017 preferred by the writ petitioner, namely, Rajat Kumar Varshney (hereinafter referred to as Rajat) directing the Disciplinary Authority (hereinafter referred to as DA) to impose a minor penalty of *'reduction to a lower stage in the time scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting the pension'* upon setting aside the major penalty of *'Dismissal which shall ordinarily be a disqualification for future employment'* imposed by the DA and affirmed by the Appellate Authority (hereinafter referred to as AA).

2. The first appeal, being FMA 327 of 2024, has been preferred by Rajat, primarily seeking expunction of the observations made by the learned Judge in the impugned order dated 3rd May, 2023 at paragraphs 13, 14, 15 and 25. The second appeal, being FMA 328 of 2024, has been preferred by the Central Bank of India (hereinafter referred to as the Bank) and its functionaries challenging the scaling down of major penalty.

3. For a better appreciation of the matter, a brief narrative of the facts is presented hereinafter.

4. Rajat had joined the Bank on 29th March, 2010. While serving as the Branch Manager, Rajarhat Branch, he was served a notice on 26th March, 2015 alleging *inter alia* that he had perpetrated several irregularities in his

Savings account, in the Savings account of his wife, namely, Sikha Varshney (hereinafter referred to as Sikha) and in ten loan accounts pertaining to sanctioning of loans under the Swami Vivekananda Swanirbhar Karmasansthan Prakalpa (hereinafter referred to as SVSKP Scheme). Rajat submitted a reply on 1st April, 2015 and thereafter by a memo dated 15th June, 2015, a new set of allegations was levelled and he was asked to furnish an explanation to which he responded and filed a reply on 27th June, 2015 and subsequent thereto, he was issued a charge sheet on 13th July, 2015 invoking the provisions of Regulations 3 and 24 of Central Bank of India Officers Employees' Conduct Regulations (hereinafter referred to as Conduct Regulations) and Regulation 4 of the Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976 (hereinafter referred to as the D&A Regulations). Rajat again submitted a reply on 20th July, 2015 and revising the earlier charge sheet, a new charge sheet was issued on 15th October, 2015 to which Rajat replied on 3rd November, 2015. In the midst thereof, he was placed under suspension by a memo dated 31st March, 2015 and a criminal complaint was also lodged against him on 21st August, 2015 which was registered as FIR no. 402 of 2015. Rajat obtained anticipatory bail in the said criminal proceeding on 21st September, 2015. In the Disciplinary Proceeding (hereinafter referred to as DP) initiated by the revised charge sheet dated 15th October, 2015, the Inquiry Authority (hereinafter referred to as the IA) was appointed. The Presenting Officer (hereinafter referred to as PO) and the Assisting Officer (hereinafter referred to as AO) were also engaged. Upon a detailed enquiry, the IA submitted the report on 21st January, 2016 holding *inter alia* that the charge no.1 had been partially proved, while charge nos. 2, 3, and 4 had not been proved. Surprisingly thereafter the DA by an order dated 18th February, 2016 informed that he was not agreeable to the findings by the IA. The major portion of disagreement by the DA was that he had held charge no.1 to be fully proved, while under charge no.4 he held charges 4.1, 4.2, 4.3, 4.6, 4.7, 4.9, 4.10, 4.11, 4.12, 4.14, 4.15, and 4.17 to be partly proved and charges 4.5, 4.16, 4.17 to be not proved and 4.4 and 4.8 to be fully proved. Compositely charge no.4 was found to be partly proved. The other charges being charge nos. 2 and 3 could not be proved before any of the authorities. After submission of Rajat's representation, the DA imposed the penalty by an order dated 6th April, 2016. The said order was affirmed on 3rd November, 2016 by the AA in the statutory appeal preferred by Rajat. Challenging the same, Rajat preferred the writ petition.

5. Mr. Chakraborty, the learned advocate appearing for Rajat argues that the transfer of the amount of Rs.25,000/- in Sikha's account upon debiting of the said amount from the internal account of the Bank was erroneously observed by the learned Judge to be an instance of misappropriation of fund failing to appreciate that the Management Witness (hereinafter referred to as MW) in course of the enquiry himself deposed that *'Mr. Nareri was entitled to get Rs. 25,000/- as per his invoice no.281 dated 30/12/2014 from MISD Rajarhat A/c no. 2355713311 from 30/12/*2014 *onwards'*. The learned Judge proceeded being oblivious of the admission on the part of Mr. Nareri that on the basis of his letter dated 30th December, 2014, the amount was routed through the account of Rajat's wife, namely, Sikha Varshney

(hereinafter referred to as Sikha) and that he did receive the said amount and issued a receipt to that effect on 1st January, 2015.

6. Drawing the attention of this Court to the findings of the IA and the DA pertaining to the first charge, he contends that the transfer of the amount Rs. 25,000/- from the Bank's internal account to Sikha's account was done in consonance with the terms of loan transaction and to avoid payment by cash. In view thereof, the IA rightly found the allegation of misappropriation unsustainable. Such finding was, however, reversed by the DA without recording appropriate reasons for disagreement. By such transfer neither any loss was caused to the Bank nor did Rajat earn any benefit. Thus, in the absence of establishment of the fact of misappropriation, the learned Judge erred in law in observing that *'the writ petitioner's honesty and integrity are found to be very much questionable'.* The effect of such observation would severely prejudice his service career and as such the said observation needs to be expunged. Such argument, as urged, was glossed over by the learned Judge and no finding was returned.

7. Mr. Barman, the learned advocate appearing for the Bank and its functionaries argues that the learned Judge having arrived at a clear finding that the Bank Manager's integrity and honesty were questionable, ought to have upheld the order of the DA and the AA along with the punishments meted out thereby.

8. He contends that misappropriation by Rajat of the Bank's funds to the account of his wife was deliberate and intentional and the learned Judge could not have intervened on the ground that the quantum was a lesser amount. Once an act of misappropriation is proved, may be small or large amount, question of showing uncalled for sympathy does not arise. Even repayment of the money cannot absolve the delinquent of the misconduct established. The reinstatement of Rajat would tantamount to foisting a cantankerous and abrasive officer upon the employer. Reliance has been placed upon the judgments delivered by the Hon'ble Supreme Court in the cases of *Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Ltd.) etc. versus The Secretary, Sahakari Noukarara Sangha etc.*, reported in *AIR 2000 SC 3129* and *Narendra Nath Bhalla versus State of Uttar Pradesh and others,* reported in *(2007) 15 SCC 775* and the judgment delivered by the Andhra Pradesh High Court in the case of *Ramulu V.J versus Labour Court, Anantapur,* reported in *2001(2) LLJ 555.*

9. In so far as charge no. 4 is concerned, Mr. Barman argues that the learned Judge carried out a fact-finding exercise and set aside various charges without citing any reasons and only expressing displeasure as regards the conduct of the PO. The AA's order was not considered in its entirety. The said authority upon thorough consideration of the evidence clearly held that Rajat had consistently acted over a prolonged period in a manner detrimental to the Bank's interests, resulting in frittering away public money at the Bank's cost. Regard being had to the facts involved, the nature of post held by Rajat and the conduct expected of him,

the doctrine of proportionality was not invocable. The learned Judge erred in law acting as an appellate authority and re-appreciating the evidence. A concurrent finding that Rajat had transferred an amount from the Bank's internal account to his wife's account had been sought to be diluted for scaling down the major penalty rightly imposed by the DA. Reliance has been placed upon the judgments delivered by the Hon'ble Supreme Court in the cases of *Union of India and others versus P. Gunasekaran*, reported in *(2015) 2 SCC 610* and *Deputy General Manager (Appellate Authority) and Others versus Ajai Kumar Srivastava*, reported in *(2021) 2 SCC 612*.

10. Mr. Barman argues that repeated and successive transactions as entailed in the seventeen sub-charges under Charge 4 cannot all be ascribed to mere negligence of the concerned person in charge, in this case, Rajat.

11. We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

12. It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. Plentitude of pronouncements leaves cleavage in the opinions formed in the

respective cases. There is no dispute as regards the proposition of law as laid down in the judgments upon which reliance has been placed by Mr. Barman, however, the same are distinguishable on facts. In the case of *Deputy General Manager (Appellate Authority) and others (Supra)* the allegation was that the delinquent entered into a conspiracy to defraud the bank and the money of the depositors was at stake. In the case of *Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Ltd.) etc. (Supra),* unlike in the present case, the charge of misappropriation was clearly established. In the case of *Narendra Nath Bhalla (Supra)* the delinquent paid back the money which was held proved against him that he had misappropriated. In the case of *Ramulu V.J (Supra)* the person was found to be guilty of commission of misconduct systemic in nature and that as such the exercise of jurisdiction by the labour Court under Section 11-A of the Industrial Disputes Act interfering with the employer's right in awarding punishment was found to have been rightly quashed. In the case of *Union of India and others (Supra)* an issue which attained finality in an earlier round of litigation was sought to be reopened in the second round of litigation.

13. The contents of the order impugned reveals the learned Judge has proceeded to hold in paragraphs 13, 14 and 15 that the crediting of the amount of Rs.25,000/- in Rajat's wife's account upon debiting the said amount from the internal account of the bank *'tantamounts to misappropriation of fund'* and that the Court *'finds no reason to interfere with the findings of the disciplinary Authority and the Appellate Authority with regard to Charge no.1 and those are hereby affirmed'.* In paragraph 25, the

learned Judge also observed that *'the writ petitioner's honesty and integrity is found to be very much questionable since he had intentionally diverted the Bank's fund (which is public money) to his wife's account and thus misappropriated the said sum Rs. 25000/-.'* However, in the concluding part of the order, the learned Judge had thought that the amount of misappropriation *'is not hefty, justice would be subserved if the petitioner is awarded with the minor penalty as mentioned in clause 4 (e) of the said Regulations of the year 1976.'*

14. The first charge was that Rajat had debited the internal account of the Bank by Rs. 25,000/- and had credited the amount to a savings account belonging to Sikha, Rajat's wife thus, imputing that Rajat had deliberately allowed misappropriation of the Bank's fund for benefiting his family member. The contents of the charge need to be considered together and not in isolation. A particular clause cannot be taken up and highlighted. The charge no.1 was of misappropriation but such misappropriation could not be established by the IA, the DA and the AA. On the rudiments of the factum of transfer bereft of misappropriation, the DA could not have held that the entire charge stands proved. The AA concurred with such finding of the DA observing that the transfer of the said amount to be an *'act of misappropriation from various angle'* without disclosing any such angle. It can be conclusively held that the Bank had not suffered any pecuniary loss from this transaction. In the said conspectus, the learned Judge, in our opinion erred in observing that *'the writ petitioner's honesty and integrity is found to be very much questionable since he had intentionally diverted the*

Bank's fund (which is public money) to his wife's account and thus mis-appropriated the said sum Rs. 25000/-'. The contention of Rajat that such observation would severely prejudice his service career cannot be ruled out moreso when the process in reaching the decision appears to be erroneous.

15. The word *'integrity'* is synonymous with probity, purity, uprightness, rectitude, sinlessness and sincerity. In the instant case, there is no evidence on record to allege that Rajat's integrity was questionable. The right to reputation comes within the purview of fundamental right. Rajat had rendered service in the Bank since the year 2015 without any sort of misconduct in course of his past service and a person who has earned reputation cannot be ousted through imposition of a stigma on the basis of perverse findings. An employer also has an obligation to protect its employees from being victimised and from being ousted from his service which is the highest punishment in the service jurisprudence. In view of the impugned observation, Rajat would have to carry the stigma of questionable integrity throughout his life. Accordingly, we expunge the observation made by the learned Judge at paragraph 25 of the order impugned that *'the writ petitioner's honesty and integrity is found to be very much questionable since he had intentionally diverted the Bank's fund (which is public money) to his wife's account and thus mis-appropriated the said sum Rs. 25000/-.'* The appeal preferred by Rajat being FMA 327 of 2024 along with connected applications, if any, is, accordingly, disposed of.

16. In so far as charge no. 4 is concerned, we are unable to comprehend as to why, while considering charge no. 4 and the various loan transactions / disbursements thereunder, on the basis of the very same evidence and without introduction of any fresh evidence, the DA came to a contrary view from that of the IA that some of the charges were partly proved and two particular charges were fully proved. In all other charges which were held to be partly proved by the DA, it has been categorically held in the DA's own report that all units were functional and the money disbursed in terms of the scheme had been made for the benefit of such units/assets. In the circumstances, no disclosure had been made by the DA as to why or in what circumstances he had occasion to differ from the findings made by the IA on the very same evidence and documents before the concerned authorities. In the said conspectus, the learned Judge rightly quashed and set aside the findings of the DA and the AA with regard to charge no.4.

17. The AA in its order of 3rd November, 2016 made a caustic remark that the PO had not come ready and could not place the Bank's case in a proper manner. The AA also proceeded to hold that the PO had failed to adduce documents in the inquiry based on which the charge sheet was framed. If such be the case, then there was no ground to agree with the findings of the DA and to hold that Rajat, was guilty of serious misconduct and to remove him from service. In view thereof, the learned Judge rightly set aside the major penalty as imposed by the DA and affirmed by the AA and directed imposition of a minor penalty as detailed in paragraph 27 of the order impugned. In view thereof, we are unable to accede to the Bank's

prayer for setting aside the portion of the order impugned scaling down major penalty. Accordingly, the appeal preferred by the Bank and its functionaries being FMA 328 of 2024 along with connected applications, if any, is dismissed.

18. There shall, however, be no order as to costs.

19. Urgent Photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Reetobroto Kumar Mitra, J.) **(Tapabrata Chakraborty, J.)**