

**L.MOHAPATRA, J & S.K.MISHRA, J.**

W.P( C) NO. 6550 OF 2008 (Dt.30.03.2011)

**SANTOSH KUMAR MOHAPATRA**

.....Petitioner.

.Vrs.

**APPELLATE AUTHORITY-CUM-D.G.M.,  
CENTRAL BANK OF INDIA & ORS.**

.....Opp.Parties.

For Petitioner - M/s. Aswini Kumar Mishra, J.Sengupta, D.K.Panda,  
G.Sinha, A.Mishra & S.Mishra.

For Opp.Parties - M/s. S.K.Saranghi, T.Khan & B.K.Behera.

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**L. MOHAPATRA, J.** The petitioner while working as Branch Manager, Central Bank of India, at Gaikata, faced a Departmental Proceeding and was punished by the disciplinary authority. The appellate authority enhanced the punishment and accordingly in this writ application the petitioner not only challenges the memorandum of charge but also the enquiry report in Annexure-6, the findings and punishment imposed by the disciplinary authority in Annexure-9 and the order of the appellate authority in Annexure-11.

2. The petitioner in the Departmental Proceeding faced seven charges such as sanctioning advances to parties beyond his delegated authority by ignoring the group concept, allowing huge excesses without any delegated authority in the account of M/s. U.P. Filling Station and also suppressing the information in having allowed excesses for which he had no delegated authority, sanctioning a housing loan of Rs.2.50 lacs to one Dilip Kumar Panda in gross violation of loan policy, sanctioning the credit facilities to one Harihara Patra, a defaulter and adjusting the PMRY loan of the borrower by sanctioning cash credit limit for a higher amount and allowing house loan to the said party in spite of the fact that the land was not in the name of the borrower and the owner of the land also was not a co-borrower, sanctioning a term loan of Rs.9.50 lacs to Mrs. Pitambari Rath, aged about 81 years for running an industrial unit knowing fully well that at the age of 81 year, the lady would not be in a position to run any industrial activity, fraudulently allowing demand loan of Rs.17.00 lacs to one P.K. Behera against the norms and also for sanctioning Rs.10.70 lacs to one Mrs. P.S. Samant against a DIC sponsored proposal for Rs.7.20 lacs and permitting the borrower to divert Rs.1.00 lac out of the loan proceeds for payment to one P.K. Behera another borrower. In course of enquiry, evidence was adduced before the Enquiry Officer and in Annexure-6, the report of the Enquiry Officer was submitted. The Enquiry Officer in his report found the petitioner guilty of Charge No.1 in part and Charge No.2 in full. However, he exonerated the petitioner the rest of the six charges. The disciplinary authority though agreed with the findings of the Enquiry Officer in respect of Charge Nos.1 and 2, did not agree with the finding so far as it relates to Charge No.5. The disciplinary authority held that Charge No.5 has been partially proved. The disciplinary authority also imposed

separate punishments for each of the charges. In respect of Charge No.1 which was partially proved, the punishment was reduction to two lower stages in the Time Scale of Pay for a period of three years with further direction that the petitioner will not earn increments of pay during the period of such reduction and on expiry of three years period the reduction will have the effect of postponing the future increments of his pay. So far as Charge No.2 is concerned, the punishment of censure was imposed. So far as Charge No.5 is concerned, the disciplinary authority differed with the Enquiry Officer and held the petitioner is partly guilty of the charge and imposed the punishment, which is same as the punishment in respect of Charge No.1.

The petitioner thereafter preferred an appeal against the order of punishment and the appellate authority accepted the finding of the Enquiry Officer as well as the disciplinary authority so far as Charge Nos.1 and 2 are concerned, agreed with the disciplinary authority so far as Charge No.5 is concerned and differed with the Enquiry Officer as well as the disciplinary authority so far as Charge Nos.6, 7 and 8 are concerned. Accordingly, in respect of Charge Nos.1, 2, 5, 6, 7 and 8, separate punishments were imposed by the appellate authority.

3. Shri A.K. Mishra, the learned Senior Counsel appearing for the petitioner assailed the order of the disciplinary authority as well as the appellate authority on the ground that while differing with the findings of the Enquiry Officer, the said authorities did not record their reasons for differing with the Enquiry Officer, nor was the petitioner given an opportunity to show cause at either stage. It was also contended by Shri Mishra, the learned Senior Counsel appearing for the petitioner that the petitioner had not been given adequate opportunity to cross-examine the witnesses in course of enquiry and was also not supplied with the documents on the basis of which the charges had been framed.

4. Shri S.K. Sarangi, the learned Counsel appearing for the opposite party-Bank submitted that though the disciplinary authority did not agree with the findings of the Enquiry Officer so far as Charge No.5 is concerned, the punishment imposed in respect of Charge No.1 and Charge No.5 being the same, no prejudice is caused to the petitioner for not being served with a notice to show cause. With reference to the record, Shri Sarangi, the learned counsel appearing for the Bank fairly submitted before differing with the Enquiry Officer, the disciplinary authority had not given a notice to show cause to the petitioner and it was also fairly submitted by the learned counsel that the appellate authority while differing with the Enquiry Officer's finding as well as the order of the disciplinary authority, did not give any notice to the petitioner to show cause.

5. The records clearly indicate that the disciplinary authority while differing with the Enquiry Officer in respect of Charge No.5 did not communicate his reasons for differing and no notice was also served on the petitioner to show cause. Similarly the appellate authority while differing with the Enquiry Officer as well as the disciplinary authority, did not communicate his reasons and no notice was given to the petitioner to show cause. The law is well settled that when the disciplinary authority or the appellate authority or both differ with the findings of the Enquiry Officer, they must record their reasons and convey it to the delinquent officer giving him an opportunity to show cause. Admittedly the said procedure has not been followed either by the disciplinary authority or by the

appellate authority. It is, therefore, a fit case to remit the matter back to the disciplinary authority for reconsideration. The contention of Shri Sarangi, the learned counsel appearing for the opposite party-Bank that no prejudice is caused to the petitioner because of the punishment imposed in respect of Charge Nos.1 and 5 is same, is not acceptable considering the fact that admittedly while differing with the Enquiry Officer in respect of Charge No.5, the disciplinary authority neither recorded his reasons nor gave an opportunity of hearing to the petitioner.

6. We, therefore, set aside the order of the disciplinary authority in Annexure-9 as well as the order of the appellate authority in Annexure-11 and remit the matter back to the disciplinary authority for reconsideration of the case in accordance with law. The other contentions of the learned counsel appearing for the petitioner that the petitioner was not given an opportunity to cross-examine the witnesses and that he had not been supplied with the documents, can be gone into by the disciplinary authority, if such a ground is taken in the reply that may be submitted by the petitioner. We, therefore, do not express any opinion in this regard.

7. For the reasons stated above, the writ petition is allowed. The orders in Annexures-9 and 11 are quashed. The matter is remitted back to the disciplinary authority for fresh consideration. In the event, the disciplinary authority proposes to differ with the findings of the Enquiry Officer or proposes any punishment on the basis of the findings of the Enquiry Officer, he shall issue a notice to the petitioner to show cause along with a copy of the enquiry report and after receipt of the reply of the petitioner, a decision shall be taken with regard to the punishment. The petitioner, therefore, is given liberty to raise all the questions raised in this writ petition in his reply to the show cause and in the event such grounds are taken, the disciplinary authority with reference to the record of the Enquiry Officer, shall consider the same and pass a reasoned order.

Writ petition allowed.