



Facts, relevant for disposal of the leave petition are as follows:

The present respondent No.1 filed an application under section 4 of the Act before the Administrative Tribunal No.1, Dhaka for declaration that the order dated 29.04.14 and 09.10.14 passed by the respondent No.4 is illegal and not binding upon the petitioner. The said application was registered as Administrative Tribunal Case No.184 of 2014.

In the said application it is contended that a departmental proceeding was drawn against the present respondent under Agrani Bank Limited Karmochari Chakuri Probidhan-Mala, 2008 on the allegations, inter alia, that while the respondent was working as officer (cash) at Agrani Bank, Jhenaidah District Branch, he received an amount of Tk. 1,44,000/- from the father of one Atiur Rahman on the false promise of giving a job to Atiur Rahman. Further, he (respondent) received Tk.15,000/- and Tk. 20,000/- from Azizur Rahman and Ismail Hossain Roni, the two employees of Agrani Bank respectively for managing their transfer from Sylhet to Jhenaidah. Further, the respondent used to create pressure on Zonal Head of the Agrani Bank in matter of transfer of employees. The charge framed against the respondent is false as there is no date and time of misconduct. The respondent submitted his statement of defence denying the allegations leveled against him. Though the three employees who made complaints subsequently had withdrawn their complaints in writing, but Deputy General Manager, Agrani Bank by his order dated 29.04.2014 imposed the penalty of withholding of increment for three years on the respondent. Besides, another penalty imposed in the form of 'Transfer' though Agrani Bank Karmochari Chakuri Probidhamala

does not recommend the same. Against the said penalty the respondent preferred departmental appeal to the Board of Directors. Accordingly the Board of Directors reduced the penalty of withholding of three increments to one increment and gave approval regarding penalty of 'Transfer'. Challenging the legality and propriety of the said order dated 29.04.2014 and 09.10.2014 the respondent filed the above case.

The present petitioner contested by the case by filing a written objection denying the respondent claim and contending, inter alia, that the impugned penalty was legally imposed on the respondent in accordance with law after giving him full opportunity of defence.

The Tribunal after hearing the case by its judgment and order dated 15.09.15 disallowed the case with the findings that the allegations brought against the respondent were serious and grave in nature but the penalty imposed upon him by the order dated 29.04.2014 was a minor and the appellate authority reduced the penalty of withholding of three annual increments to one showing sufficient leniency for which nothing found to interfere therewith. The Tribunal also opined that though the allegation leveled against the petitioner was not proved in second inquiry but the same was proved in first inquiry.

Being aggrieved by and dissatisfied with the judgment and order the respondent preferred appeal under section 6(2) of the Act vide Appellate Tribunal case No.09 of 2016.

The Appellate Tribunal after hearing the appeal allowed the same and set aside the judgment and order passed by the Tribunal.

Feeling aggrieved by the said judgment and order the Agrani Bank as petitioner has filed this civil petition for leave to appeal.

Mr. Md. Hefzul Bari, learned Advocate, appearing for the leave petitioner submits that the allegations brought in the charge sheet against the respondent were proved by inquiry and he was found guilty, therefore he was punished in accordance with the provision of Agrani Bank, Karmachari Chakuri Prbidhan-mala, 2008, but the Appellate Tribunal failed to appreciate this aspect and erroneously came to a wrong decision.

Mr. Bari further submits that the Appellate Tribunal failed to consider that the respondent has admitted the allegation that was brought against him in his reply. The charge brought against him was established by inquiry and accordingly the inquiry officer submitted inquiry report before the Bank authority. On the basis of the inquiry report Bank completed the proceeding against the respondent according to the Agrani Bank Limited, Karmachari Chakuri Probidhan Mala, 2008 and the respondent was punished by the competent authority.

It is further submitted that the Appellate Tribunal failed to consider that the allegations brought against the respondent were serious and grave in nature but the penalty imposed upon him by the order dated 29.04.2014 was a minor and the appellate authority reduced the penalty of withholding of three annual increments to one showing sufficient leniency. As such the judgment and order passed by the Appellate Tribunal is illegal and liable to be set aside.

Per contra, Mr. Mohammad Hossain, learned Advocate, appearing for respondent No.1 submits that the Appellate

Tribunal on proper consideration of the facts and circumstances of the present case coupled with the relevant provision of Bidhimala rightly and legally passed the impugned judgment setting aside the order of the Tribunal and there is no scope to interfere with the same. He further submits that in the service Rule there is no provision for transfer as punishment and the Appellate Tribunal rightly set aside the said order.

We have considered the submissions of the learned Advocates for the respective parties, perused the judgment passed by the Appellate Tribunal as well as the Tribunal and other documents as placed before us.

Upon perusal of the judgment of the Appellate Tribunal, it transpires that Appellate Tribunal set aside the order of the Tribunal mainly on two grounds:

- i. The first inquiry was not held against the appellant under Rule 46 of the Agrani Bank Limited, Karmachari Chakuri Probidhan Mala, 2008 and
- ii. no punishment included in Probidhan-Mala No.43(1)(ka) of the Probidhan-Mala regarding transfer of any employee of Agrani Bank Limited from one place to another place and that none can be punished twice at a time.

The Tribunal in its judgment held that:

The first complaint was brought by one Atiur Rahman to the effect that the petitioner had received Tk. 1,44,000/- from him for giving him a job. Another allegation which was brought by Azizur Rahman is that the petitioner received Tk.15,000/- from him for his transfer from Sylhet to Jhenaidah. The third allegation of this nature was brought to the effect that the petitioner took Tk. 20,000/- for transferring Ismail Hossain

Roni, an employee of Agrani Bank from Sylhet to Jhenaidah. Those 3 persons subsequently in writing withdrew their allegations. The petitioner did not submit any of the inquiry reports for the reason best known to him. The learned lawyer appearing for the petitioner during hearing of this case disclosed that in the first inquiry the allegations were proved, but in the second inquiry the allegations were not proved. From this submission of the learned lawyer it can be inferred that at the time of first inquiry the allegations of receipt of huge amount of money by the petitioner from three employees of the Agrani Bank for their transfer were not withdrawn. Accordingly the allegations were proved. In second inquiry the allegations were not proved probably on the ground that the three employees who made complaints had withdrawn their complaints in writing.

However, the Appellate Tribunal without adverting to the said findings, in particular that the first allegation has been proved in the inquiry, passed the impugned judgment.

It is true, in the order of punishment besides withholding of one increment it has been mentioned to transfer the respondent. But there is no scope to hold the said order of transfer is a punishment. It is an Administrative order which cannot be challenged and cannot be treated as a punishment.

Having considered as above, we find merit in the leave petition.

Accordingly, the leave petition is disposed of.

The judgment and order passed by the Administrative Appellate Tribunal is hereby set aside and judgment passed by the Administrative Tribunal is hereby maintained.

**C.J.**

**J.**

**J.**

*B/O.Imam Sarwar/  
Total Words:1,500*