

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2455 of 2015

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Shesh Nath Mishra Son of Late Baban Mishra Resident of Mohalla -
Panchsheel Nagar, Vishnu Path, Takiya Par, P.O. - Digha, Police Station -
Danapur, District - Patna

..... Petitioner/s

Versus

1. The Central Bank of India through its Managing Director, Near Gateway of India, Mumbai
2. The Regional Manager, Central Bank of India, REgional Office, Maurya Lok Patna
3. The Chief Manager - HRD- Cum Disciplinary Authority, NOdal Regional Office, Central Bank of India, Maurya Lok Complex, 2nd Floor, Block - B, Dak Bunglow Road, Patna
4. The Branch Manager (namely Kundan Kumar) Cum Inquiry Officer, Central Bank of India, Circle Office, Patna
5. The Managing Representative (Sri Rohit Priya Ranjan), Central Bank of India, Regional Office, Patna
6. The Branch Manager, Central Bank of India, Dinapur Patna

..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vinay Kumar Mishra, Adv

For the Respondent/s : Mr. Ajay Kumar Sinha, Adv

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

4 13-03-2015 Heard learned counsel for the parties as with

regard to the following reliefs, prayed in this writ

application:-

“For issuance of a writ in the nature of certiorari or any other appropriate writ for quashing of the appellate order dated 08.12.2014 passed by the Appellate Authority, Sri M.F. Noor, Assistant General Manager/Regional manager, Regional Office, Central Bank of India, Patna (hereinafter referred to as the “CBI” only), whereby the award of penalty dated 18.09.2014 has been confirmed, by which the petitioner has been subjected to be dismissed without notice.

For issuance of a writ in the nature of certiorari or any other appropriate writ for quashing of the final order dated 18.09.2014 contained in letter no. 953 passed by the Disciplinary Authority, Sri M.S. Akhtar, Chief Manager, Central Bank of India, Patna, whereby the petitioner has been subjected to be

dismissed without notice in terms of clause 6 (a) of M.O.S. on Disciplinary Action Procedure for Workman dated 10.04.2002.

For issuance of a writ in the nature of certiorari or any other appropriate writ for quashing of the findings of the Inquiry Officer dated 22.04.2014 in departmental enquiry held in pursuance of charge-sheet no. 416 dated 17.06.2013, whereby ex-parte enquiry has been conducted in absence of charged officer and charge no. 1 was found proved, charge-3 partly proved, however, charge no. 2 was not proved.

For issuance of a writ in the nature of mandamus or any other appropriate writ for commanding the respondents to reinstate the petitioner with all consequential benefits.

For holding that the petitioner is subjected to punishment of dismissal without notice in utter violation of principle of natural justice as award has been passed on the basis of ex-parte enquiry report dated 22.04.2014 without providing any proper opportunity to the charged officer, simultaneously on one hand a departmental proceeding has been initiated by letter dated 13.04.2013 and on the other hand Danapur P.S. Case No. 198 of 2013 has been lodged against the petitioner by the Senior Manager, CBI, Danapur Branch, on 12.04.2014."

Learned counsel for the petitioner in support of the aforementioned prayer has straightway proceeded to assail the impugned order of punishment removing the petitioner from service and its affirmance by the appellate authority on a ground that the petitioner was not given reasonable opportunity to defend himself in the departmental proceeding which was held pursuant to the memo of charge dated 17.06.2013.

In this regard, his plain and simple case is that it



was the Central Bank of India which had filed criminal case against the petitioner alleging embezzlement of fund on 03.05.2013, and for the same set of charges had also sought to proceed in the departmental proceeding by framing memo of charge on 17.06.2013. It is the case of the petitioner that since he was named accused in the F.I.R and was apprehending arrest, he had informed the disciplinary authority and/or inquiry officer by filing two petitions on 12.08.2013 and 28.08.2013, that the inquiry proceeding should be postponed till the petitioner was able to get an order on his prayer for anticipatory bail pending before this Court. The categorical assertion of the petitioner in this regard that neither of the two applications filed by the petitioner were disposed of by the disciplinary authority and/or inquiry officer and at least nothing was communicated to the petitioner in relation to those two applications.

The further case of the petitioner is that the petitioner's prayer for anticipatory bail was ultimately allowed by this Court on 10.02.2014 and he was directed

to be enlarged on bail on payment of Rs. 25,000/- within a period of four weeks which the petitioner deposited on 10.03.2014, and was enlarged on bail by the Court below.

Amidst these facts, the petitioner submits that the entire departmental proceeding conducted ex parte against the petitioner cannot be sustained because the petitioner was precluded in appearing before the inquiry officer for justified reason, inasmuch as, he was apprehending his arrest in a criminal case lodged by the Bank itself.

Mr. Ajay Kumar Sinha, learned counsel appearing for the Central Bank of India, does not dispute this fact and in fact in counter affidavit there is no denial to the statement made in paragraph no. 12 of the writ application which reads as follows:-

“That two applications dated 12.08.2013 and 28.08.2013 had been submitted before the Enquiry Officer on behalf of the petitioner with request to postpone the proceeding of departmental enquiry as he has apprehension of arrest in Danapur P.S. Case No. 198 of 2013 and he has filed anticipatory bail application before the Hon’ble Court. Ignoring the difficulty of the petitioner, ex-parte departmental proceeding was initiated by the enquiry officer.”



He, however, submits that it cannot be said that the ex parte inquiry conducted behind back of the petitioner was bad because the inquiry had proceeded on the admitted documents. According to him, not in all cases, it cannot be said that the order of punishment is bad if the inquiry is held ex parte.

Mr. Sinha, has also sought to defend the impugned orders of punishment by saying that at least the petitioner had availed the opportunity of personal hearing before the disciplinary authority after submission of the inquiry report and therefore, the petitioner cannot take a plea that he was prejudiced in any manner.

This Court however cannot accept the aforesaid submission of learned counsel for the Bank for more than one reason. The departmental inquiry was held at a point of time when the petitioner was facing criminal prosecution. Such prosecution was at the instance of the Bank and the inquiry officer was therefore already informed by the petitioner that he could not participate



in the inquiry because of his apprehension of arrest in a criminal case lodged by the Bank. The inquiry officer was under an obligation to consider such prayer of the petitioner made in two petitions on 12.08.2013 and 28.08.2013, but if he did not choose to pass any order and/or had stayed the inquiry, holding of the departmental proceeding ex parte cannot be said to be justified.

The submission of Mr. Sinha, that the statement made in paragraph no. 12 of the writ application is at variance with Annexure-6 appended in support of the prayer made in paragraph no. 12 will also make no difference because even if it is assumed that the petitioner has filed an application before Chief Manager, H.R.D., Central Bank of India, Regional Office, Patna, it was his duty to put the matter before the inquiry officer specially when the memo of charge dated 17.06.2013 was issued by that very Chief Manager. This Court therefore is satisfied that the inquiry proceeding conducted ex parte was wholly unjustified.



The petitioner was prevented by reasonable cause of not appearing before the inquiry officer and participating in the departmental enquiry and therefore, the inquiry proceeding held behind the back of the petitioner has held to be bad. The submission of Mr. Sinha learned counsel for the Bank that the petitioner had availed an opportunity of personal hearing before the disciplinary authority after submission of the ex-parte inquiry report cannot be a substitute for the inquiry proceedings. If that be so, in all the cases the disciplinary authority will become the sole adjudicator and therefore, would be no need of inquiry proceeding and report of the inquiry officer. At the stage of inquiry proceeding the delinquent has a right to not only cross examine the witnesses but also to lead evidence in his defence. This cannot be done before the disciplinary authority. This Court therefore, will not be satisfied that the personal hearing given to the petitioner by the disciplinary authority after completion of ex-parte inquiry and the submission of one sided inquiry report

would be the substitute of opportunity of hearing in the departmental inquiry.

Based on these conclusions there would be no option but to hold that the petitioner's order of punishment dated 18.09.2014, and its affirmance by the appellate authority dated 08.12.2014, as also the inquiry report are bad and cannot be sustained either on fact or in law. They are, accordingly, quashed.

Since this Court has quashed the order of punishment only on the ground of violation of principles of natural justice, it would direct the petitioner to appear before the inquiry officer on 15th of April, 2015 and the inquiry officer thereafter would proceed *de novo* from the stage of allowing the petitioner to file his written statement of defence and also conduct the departmental proceeding as per the regulations laid down by the Central Bank of India.

It is however made clear that the salary of the petitioner for the integerrum period would be governed by the result of departmental proceedings as held in the

case of **Managing Director, ECIL, Hyderabad and Ors vs B. Karunakar and Ors.** reported in **1993(4) SCC 727** wherein it was held as follows:-

"..... The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled."

With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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