

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7840 of 2014

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Rajendra Upadhayay @ R.Upadhyay son of Late Ram Niwas Upadhayay
Resident of Village - Murarpur, P.O. Gundi, P.S. Krishnagarh, District -
Bhojpur, at Present residing at New Mainpur 440, Ward No. 10, Danapur,
P.O + P.S. Danapur, District - Patna

.... Petitioner

Versus

1. The Punjab National Bank through the General Manager Human Resources Development Department, Punjab National Bank Head Office 7 Bhikaji Coma Place Africa Avenue New Delhi
2. The General Manager, Human Resources Development Department, Punjab National Bank Head Office 7 Bhikaji Coma Place Africa Avenue New Delhi
3. The Deputy General Manager (The Circle Head) Punjab National Bank, Patna Circle, Chanakya Tower, R - Block, Patna
4. The Chief Manager, Disciplinary Autgority, Chanakya Tower, R - Block, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mrs. Nivedita Nirvikar, Adv.
Mr. Ratanakar Jha, Adv.

For the Respondent/s : Mr. Raj Nandan Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 18-02-2015 Heard learned counsel for the parties.

The prayer of the petitioner in this writ application is to quash the order of punishment dated 25.7.2012 and its affirmance by the appellate authority in the order dated 16.4.2013.

Mrs. Nivedita Nirvikar, learned counsel appearing on behalf of the petitioner, has raised a very short but quite effective issue, namely, that the appellate order is not at all speaking and in fact seems to have been passed in a most mechanical and routine manner. According to her, when the petitioner had filed a Memo



of Appeal which was followed by personal hearing afforded to him, the appellate authority ought to have at least recorded his own reasons even while concurring with the findings of the disciplinary authority which were assailed by the petitioner in his Memo of Appeal. In this regard reference has been made by her on the judgment of the Apex Court in the case of Karan Pal v. Union of India & ors., reported in AIR 1985 SC 774 as well as the judgment of this Court in the case of Rama Shankar Pandey v. the State of Bihar & ors., reported in 2009(3) PLJR 473 and in the case of State of Bihar through the Secretary, Water Resources Department v. Ratan Kumar Singh & ors., reported in 2012(1) PLJR 36.

Learned counsel for the Bank does not dispute the proposition of law advanced by the learned counsel for the petitioner but then he submits that from reading of the appellate order running into two pages it would be more than clear that the appellate authority had noted each and every events before concluding his finding that no issue was raised by the petitioner beyond what was said by him and therefore, it cannot be said that such an order is a non-speaking order.

In the considered opinion of this Court the very purpose of filing an appeal is to assail the finding of the disciplinary authority



and in this case the petitioner had assailed by giving a number of reasons which also have been noted in the impugned order passed by the appellate authority. He was at least required to apply his own independent mind before rejecting the memo of appeal of the petitioner. The petitioner in fact had raised certain procedural lapse in course of enquiry which was not allowed by the Enquiry Officer and therefore, if the disciplinary authority for his reasons had rejected those submissions that will not mean that the appellate authority will not be required to apply his own independent mind. In any event the issue of punishment being disproportionate could not have been raised by the petitioner before the disciplinary authority because the issue of punishment being disproportionate had emerged only from the order of punishment.

In that view of the matter, this Court will have no difficulty in holding that the appellate order is a product of routine and mechanical application of mind of the appellate authority and is perfunctory. The appellate order is, accordingly, quashed and the matter is remitted back to the appellate authority to decide the appeal of the petitioner afresh by a reasoned and speaking order.

This Court would expect the appellate authority to dispose of the appeal of the petitioner expeditiously, preferably within a

period of six months from the date of receipt of this order.

This writ application succeeds only to the extent indicated
above.

(Mihir Kumar Jha, J)

surendra/-

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