

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.106 of 2015

In
Civil Writ Jurisdiction Case No. 4163 of 2015

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1. The Chairman -cum Managing Director , State Bank of India, Nariman Point , Mumbai
 2. The Chief General Manager, State Bank of India , Local Head Office (L.H.O.), West Gandhi Maidan , Patna.
 3. The Generala Manage , State Bank of India , Local Head Office , West Gandhi Maidan , Patna.
 4. The Deputy General Manager (Business & Operation) , State Bank of India , Zonal Office , Kala Bawan Road, Purnea.
 5. The Assistant General Manager , (Domestic Enquiry), State Bank of India , Local Head Office, Patna.
 6. The Chief Manager , State Bank of India , Main Branch , Siwan
 7. The Manager (Vigilance), State Bank of India , Local Head Office , Patna.
 8. Mr. Kumar Gaurav S/o Ravindra Prasad residenet of Mohalla - Jai Prakash Nagar , Purnea College Chowk , P.S.+ Distt. - Purnea , Erstwhile Branch Manager, Agwanpur Branch Saharsa, at Present Posted as a Deputy Manager, Saharsa Main Branch , State Bank of India, Saharsa.

.... Petitioner/s

Versus

Rakesh Roshan Gupta S/O Raghunath Prasad Gupta resident of Flat No. - 305, C/O Satyam Apartment , Monterssori School Lane, Boring Road, P.S.- S.K. Puri, Distt.- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kaushlendra Kumar Sinha, Adv.
For the Respondent/s : Mr. Sunil Kumar Verma Advocate

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 28-07-2015

Heard learned Counsel for the parties.

This is an application seeking review of the order of this Court dated 19.3.2015 in CWJC No. 4163 of 2015.

Mr. Kaushlendra Kumar Sinha, learned counsel for the State Bank of India, the petitioner of this review application, has

submitted that there is no statutory provision for personal hearing to be given to the petitioner. He has also relied on a judgment of the Apex Court in the case of *Oriental Bank of Commerce & Anr. Vs. R.K. Uppal* reported in 2011(8) SCC 695.

This Court fails to understand as to what is being sought to be reviewed. As a matter of fact, in the order dated 19.3.2015, the prayer of the petitioner for personal hearing through a counsel was rejected. Having rejected such submission of the learned counsel for the petitioner, the respondent herein, this Court had given certain observation in the order dated 19.3.2015, which reads as follows:-

"Heard learned counsel for the parties.

Having regard to the fact that the petitioner is aggrieved by an order of punishment passed by the disciplinary authority of the State Bank of India and that the petitioner has statutory alternative remedy of assailing the order of punishment before the appellate authority as per the service regulation of the State Bank of India, this Court is not inclined to entertain this writ application, inasmuch as, petitioner has straightway come to this Court without exhausting statutory alternative remedy.



When such an observation has been made, learned counsel for the petitioner seeks permission to withdraw this application in order to enable the petitioner to file an appeal before the prescribed appellate authority.

At this stage, learned counsel for the petitioner, however, come out with an averment that since the petitioner will not be in a position to explain his case before the appellate authority in course of personal hearing to be given by the appellate authority the petitioner may be allowed to be represented through his counsel before the appellate authority.

Mr. Kaushlendra Kumar Sinha, learned counsel for the State Bank of India, on the other hand has submitted that there has never been such practice or precedence much less provision in the service Rules for appearance of a lawyer or a counsel for the delinquent at the appellate stage in course of personal hearing being given to him.

Learned counsel for the petitioner in reply submits that such privilege may be given in the special facts of the case.



This Court, however, does not find any such special circumstances. The petitioner is a literate person and is capable of at least saying the facts which has already been dealt by the disciplinary authority. The normal rule is that the delinquent be represented by a counsel only if in the departmental proceeding the disciplinary authority or the inquiry officer is aided and assisted by any counsel. Thus only such a case, in order to maintain parity and equality, the delinquent can also ask for assistance of a lawyer before the inquiry officer or disciplinary authority. Such is not the case in hand because at the appellate stage, Mr. Sinha, learned counsel for the State Bank of India informs that no lawyer appears on behalf of disciplinary authority or the Bank before the appellate authority.

If that be so, this Court would find it difficult to create a new tradition which may later on become precedence for everyone. The right of a delinquent to be represented by a counsel in disciplinary proceeding is well circumscribed and the matter is also no longer res integra. The Apex Court and this



Court has consistently held that appearance of a lawyer in a departmental proceeding is not permitted unless provided in the concerned Service Regulation. Reference in this connection may be usefully made to the judgments of the Apex Court in the case of **Bhagat Raja vs Union of India** reported in **AIR 1967 SC 1606** and **Ram Chander Vs Union of India**, reported in **AIR 1986 SC 1173**.

In that view of the matter this Court will not give permission to the petitioner for appearing before the appellate authority through his counsel but then nothing said in this order however will come in the way of the petitioner of being given the opportunity of hearing by his counsel and if the appellate authority finds that there is a complicated question of fact and law, which the petitioner is not in a position to explain himself, he may take its own decision as with regard to affording opportunity of hearing to the petitioner through his counsel.

With the aforementioned observation, this application is permitted to be withdrawn as prayed for."

(underling for emphasis)

A question would arise as to what is sought to be reviewed? Did this Court direct the Bank to give the personal hearing the petitioner? The matter even in the last paragraph underlined for emphasis was left open for the appellate authority. One fails to understand the purpose of filing of such frivolous review application and, therefore, this Court must dismiss this review application with a cost of Rs. 25,000/- to be paid by the State Bank of India to the petitioner for not only delaying the disposal of the appeal over four months but also for making him again to appear in this review application.

Since this is a matter which has delayed in the disposal of appeal, this Court would direct now the appellate authority to dispose of the appeal in accordance with the statutory provision governing the service condition of the petitioner within a period of three months from the date of receipt of this order.

Subject to the aforementioned observation and direction, this application is dismissed.

(Mihir Kumar Jha, J)

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