

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.346 of 2014

In

Civil Writ Jurisdiction Case No. 4486 of 2008

- =====
1. The State Bank of India through the Chief General Manager 7th Floor, Local Head Office, State Bank of India, West Gandhi Maidan, Patna
 2. The Dy. General Manager - cum - Appellate Authority State Bank of India, Zonal Office, Purnia
 3. The Assistant General Manager - cum - Disciplinary Authority (Region - III), State Bank of India, Zonal Office, Purnia
 4. The Chief Manager - cum - Enquiry Officer, State Bank of India, Katihar Branch
 5. The Branch Manager, State Bank of India, Panighata Branch (Under Zonal Office Purnia), District - Katihar
 6. The Branch Manager, State Bank of India, Tribeniganj under Zonal Office, Purnia

.... Appellants

Versus

Jitendra Kumar Lal Son of Late Bijendran Narayan Lal Resident of Mohalla - Azam Nagar, Police Station - Azam Nagar, District - Katihar

.... Respondent

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Appearance :

For the Appellants : Mr. S. D. Sanjay, Senior Advocate

Mr. Akash Chaturvedi, Advocate

For the Respondent : Mr. Aditya Naain Singh, Advocate

Mr. Kundan Kumar Sinha, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

5 21-08-2015

The State Bank of India has preferred this appeal under Clause 10 of the Letters Patent of this Court, aggrieved by the order, dated 09.09.2013, passed by learned single Judge of this Court in C.W.J.C. No. 4486 of 2008 (Jitendra Kumar Lal vs. The State Bank of India and Others). The sole respondent was the petitioner in writ proceeding before learned single Judge.



2. By the said order, the learned single Judge has set aside the order, dated 22.06.2006, imposing punishment on the sole respondent herein, an employee of the State Bank of India (hereinafter referred to as the 'Bank'), which punishment was based on the report of a second Enquiry Officer. It is not in dispute that an Enquiry Officer was earlier appointed to enquire into the allegation of misconduct made against the Respondent. The said Enquiry Officer had submitted his report to the effect that the charges against the respondent could not be said to have been proved. The Disciplinary Authority did not take any decision on the said enquiry report for a long period of one-and-a-half years and, subsequently, appointed a second Enquiry Officer to enquire into the same set of allegations of misconduct levelled against the Respondent.

3. It appears from the pleadings on record that the respondent did raise an objection against appointment of the second Enquiry Officer to enquire into the same set of charges, which had been enquired into by the Enquiry Officer. The second Enquiry Officer, thereafter, submitted his report holding the charges framed against the sole respondent herein as proved.

4. It appears from the order under appeal that the second Enquiry Officer, without any request having been made

by the Presenting Officer or the sole respondent herein, visited the concerned branch of the Bank to verify certain documents in support of the charges against the respondent.

5. Based on the report of the second Enquiry Officer, the Disciplinary Authority, imposed upon the respondent the following punishments:

“bring down to lower state in the scale of pay by two stages for 15 years (during which period he will not earn any increment) on Shri Lal under clause 6 (e) of the MOS dated 10/4/2002 on disciplinary Action Procedure for Workmen”. At the expiry of such period he will earn future increments in his pay one by one i.e. one increment each year.”

6. The respondent, thereafter, preferred appeal before the Appellate Authority, i.e., Deputy General Manager, Zonal Office, State Bank of India, Purnea, who, by order, dated 09.08.2007, modified the punishment imposed by the Disciplinary Authority on the respondent in following terms :

“bring down him to lower state in the scale of pay by two stages for 6 (six) years (during which period he will not earn any increment to pay) under para 6 (e) of Memorandum of Settlement dated 10.04.2002 on Disciplinary Action procedure for workmen”. After this rigour

period he will earn future increments in his pay once during a year i.e. only one increment during a year.”

7. Aggrieved by the said disciplinary action taken against him, the respondent preferred writ application before this Court, under Article 226 of the Constitution of India, giving rise to C.W.J.C. No. 4486 of 2008. Learned single Judge allowed the writ application and quashed the disciplinary action taken against the writ petitioner-respondent, mainly on two grounds. Firstly, the act of the Enquiry Officer was partisan in nature inasmuch as he himself visited the concerned branch of the Bank to verify the documents in support of the charge. Secondly, learned single Judge held that it was impermissible for the Disciplinary Authority to have appointed a second Enquiry Officer to enquire into the same set of charges with respect to which an Enquiry Officer had already submitted his report holding that the charges against the respondent as not proved.

8. Mr. S. D. Sanjay, learned Senior Counsel, appearing on behalf of the appellant Bank, has contended that there was no irregularity or illegality in appointment of a second Enquiry Officer and, according to him, the decision of the appellate authority did not require interference by the learned



single Judge as the charges of misconduct, against the respondent, came to be finally proved in the subsequent departmental enquiry. He has further contended that no fault can be found with the conduct of the Enquiry Officer in visiting the concerned branch in order to verify the documents as it is the duty of an Enquiry Officer in a departmental proceeding to find the truth.

9. Mr. Aditya Narain Singh, learned Counsel, appearing on behalf of the writ petitioner-respondent, on the other hand, has submitted that as per provisions contained in 7th Bipartite Settlement, a second enquiry was not permissible and, having gone into the conduct of the Enquiry Officer, learned single Judge has rightly interfered with the order passed by the authorities of the Bank imposing punishment on the respondent.

10. We have perused the records of this case and have given our anxious consideration to the rival submissions made on behalf of the parties.

11. It is settled position that upon receiving the report of the Enquiry Officer in a departmental proceeding, the Disciplinary Authority can either accept the findings recorded by the Enquiry Officer or he may differ from such findings. In case, the findings of the Enquiry Officer are favorable to the



delinquent and the Disciplinary Authority intends to differ from the findings of the Enquiry Officer, he may proceed after supplying to the proceedee his tentative notes of proposed disagreement from the findings of the Enquiry Officer. It is open to the Disciplinary Authority to cause a *de novo* enquiry, if the service rules permit, in appropriate cases, on the ground of any patent irregularity in the departmental enquiry.

12. It is, however, impermissible for the Disciplinary Authority to appoint, if he does not agree with the findings of the Enquiry Officer, another Enquiry Officer for the purpose of fresh enquiry into the same set of allegations. What the Disciplinary Authority did, in the present matter, was, indeed, a second enquiry and not further enquiry on the same set of charges and the material on record. The course, adopted by the Disciplinary Authority, by appointing a new Enquiry Officer, to hold a fresh enquiry, after the first Enquiry Officer had held that none of the charges stood proved, was, in our opinion, abuse of process of law. Our view finds support from Supreme Court decision in case of *Union of India v. K. D. Pandey and another*, reported in (2002) 10 SCC 471. In our considered view, it would, indeed, be a travesty of justice if the impugned process is allowed, the enquiries can go on perpetually until the view of an

Enquiry Officer is found to be in accord with that of the Disciplinary Authority.

13. We are also of the view that an Enquiry Officer, holding enquiry in a departmental proceeding, exercises *quasi judicial* function. He is not supposed to act as a prosecutor to prove the charge. He is supposed to be an impartial person for the purpose of coming to a conclusion whether, on the basis of evidence adduced, in course of departmental enquiry, the charges of misconduct framed against the delinquent could be said to be proved or not.

14. We do not find any infirmity in the reasoning assigned by the learned single Judge for allowing the writ application and for setting aside the order imposing punishment. The order under appeal, in our considered view, does not require any interference.

15. Learned Senior Counsel, appearing on behalf of the appellant Bank, has informed us that a contempt proceeding, being M.J.C. No. 44 of 2015, is pending alleging violation of this Court's order under appeal, dated 09.09.2013. He submits that the period for compliance of the order passed by the learned single Judge may be extended by two weeks from today. He further submits that personal appearance of the Chief General

Manager, State Bank of India, has been directed by the learned single Judge on 26.08.2015.

16. In view of the assurance given by the learned Senior Counsel, appearing on behalf of the appellants that the order under appeal, passed by the learned single Judge, dated 09.09.2013, shall be positively complied with, within two weeks from today, the time for compliance of said order is hereby extended by two weeks from today. The order under appeal, dated 09.09.2013, passed in C.W.J.C. No. No.4486 of 2008, stands modified to the extent aforementioned.

17. This appeal, accordingly, stands dismissed with the modifications and observations as above. Interlocutory Application, if any, stands disposed of

18. No order as to costs.

(I.A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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