

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11140 of 1998

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Ratish Chandra Karn, Son of Late Baidyanath Lal Das, resident of
Village-Kanakpur, P.S.-Jhanjharpur, District-Madhubani.

.... Petitioner/s

Versus

1. The State Bank of India through its Chief General Manager,
Local Head Officer, J.C. Road, Patna.
2. The Chief General Manager, State Bank of India, J.C. Road,
Patna.
3. The Deputy General Manager, State Bank of India, Zonal
Officer, Muzaffarpur.
4. The Assistant General Manager, Region IV, State Bank of India,
Zonal Office, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar Singh, Sr. Adv.

Mr. Kaushal Kumar Jha, Adv.

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

Mrs. Manju Jha, Adv.

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

C.A.V. JUDGMENT

Date: 04-11-2015

The petitioner was initially appointed on the
post of Clerk-Cum-Typist in the State Bank of India
(hereinafter referred to as "the Bank"), in the year 1967



and was subsequently promoted and posted, as Officer-In-Charge, at Jhanjharpur Branch of the Bank, under the district of Madhubani, in the year 1985. By an order, dated 24.12.1994, he was placed under suspension on the allegation of fraud, committed by him, to the tune of Rs.50,000/-, which had come to light when the Balancing Team was placing the Saving Bank Ledgers of the said branch. It was alleged that the petitioner had associated himself in fraudulent transaction in a Saving Bank Account No.11426. After more than two years of placing him under suspension, a charge-sheet was issued to him for the purpose of conducting a departmental enquiry, disclosing following charges:-

"(i) Petitioner has been involved in fraudulently helping in withdrawing of Rs.1,95,000/- from the SB A/C No.Po/16/4080.

(ii) Petitioner has been involved in helping fraudulently withdrawal of Rs.4,69,400/- through 72 transactions.

(iii) Petitioner has facilitated in opening of the account by unauthorisedly verifying the specimen signature of the account holder."

2. The petitioner, responding to the said charge-sheet, vide his communication, dated 17.05.1997,

denied the charges levelled against him. It appears that during the period of his suspension, he was attached to Madhubani branch of the Bank.

3. An Enquiry Officer was appointed, who submitted his report, on 10.02.1998, to the Disciplinary Authority, recording his findings that the charge against him stood proved. By an order, dated 18.04.1998, the Disciplinary Authority imposed upon the petitioner, punishment of dismissal from service. The appeal, preferred by the petitioner, against the order of dismissal, came to be rejected by an order, dated 10.07.1998, passed by the Appellate Authority/Deputy General Manager, Zonal Office, Muzaffarpur.

4. This is the background in which the petitioner has sought for quashing of the order, dated 18.04.1998, passed by the Disciplinary Authority, dismissing him from service, and the order, dated 10.07.1998, passed by the Appellate Authority, rejecting the petitioner's appeal.

5. From the report of the Enquiry Officer, it appears that the petitioner did not participate in the enquiry, which was held on day-to-day basis, from 14.10.1997. Learned senior counsel, Mr. Abhay Kumar Singh, appearing on behalf of the petitioner, has raised a short point for the purpose of challenging the impugned orders,



aforementioned, and has contended that during the period of departmental enquiry, the petitioner was not paid his subsistence allowance because of which, he was prevented from effectively participating in the departmental enquiry. There is specific averment made to this effect in Paragraph 33 of the writ petition. In the counter affidavit, on the other hand, the Bank has taken a plea that the said statement was misleading and, in fact, the petitioner was paid his subsistence allowance, which he was entitled to. A reply came to be filed, to the said counter affidavit, on behalf of the petitioner, Paragraph 13 of which reads as follows:-

"13. *That with regard to paragraph No. 25 of the Counter-Affidavit, it is stated and submitted here that from 24.12.1994 to May 95 no subsistence allowance was paid whereas from June, 95 to June 98 only half subsistence allowance has been paid which is very small amount. Therefore it is correctly stated that the full subsistence allowance has not been paid to the petitioner."*

6. The petitioner's plea that he was paid half of the subsistence allowance, which he was, in fact, entitled to, is based on Clause 5 (a) (iii) of the Shastri/Desai Award, as has been brought on record in his reply to the



supplementary affidavit, filed on behalf of the Bank, according to which, an employee of the Bank is entitled for full salary after completion of one year of the period of suspension. It is the petitioner's case that what was paid to him, as subsistence allowance, during the period of his suspension, was half of his actual entitlement of subsistence allowance.

7. Mr. Abhay Kumar Singh, learned senior counsel, appearing on behalf of the petitioner, has submitted that non-payment of subsistence allowance, as per the Shastri/Desai Award, amounts to denial of reasonable opportunity to defend a delinquent, in a departmental enquiry. He has contended that the provision for payment of subsistence allowance, during the period of suspension, to an employee, is made in order that he is in a position to attend the enquiry and defend himself. He has, accordingly, argued that payment of half of the subsistence allowance, as he was entitled to, during the period of suspension, made the petitioner incapable of effectively defending himself, in the departmental enquiry.

8. Mr. Ajay Kumar Sinha, learned counsel, appearing on behalf of the Bank, on the other hand, would submit, referring to the counter affidavit and supplementary counter affidavit, filed on behalf of the Bank, that for the



period 24.12.1994 to 23.05.1995, the subsistence allowance, which the petitioner was entitled to, was adjusted, vide credit scroll, dated 13.12.1999. For the period, June, 1995 to June, 1998, he has contended that the petitioner was paid half of the pay and salary, which he was entitled to. As regards, petitioner's claim that he was entitled for full salary, as subsistence allowance, after he had remained under suspension for one year, he would contend that the same is not tenable, in view of the fact that a criminal case for misappropriation of Bank money was pending against him. He has, accordingly, contended, relying upon Supreme Court decision, in case of **"State Bank of India & Anr. Vs. Rattan Singh"**, reported in **(2000) 10 SCC 396**, that the petitioner was not entitled for full salary and allowance after completion of one year of period of his suspension, as a criminal case was being investigated against him by an outside agency. Mr. Ajay Kumar Sinha, learned counsel, has also drawn my attention towards a representation, filed by the petitioner's wife, dated 18.09.2008, wherein, she had claimed payment of arrears against various heads, which her husband was entitled to. As regards, the period between 24.12.1995 to April, 1998, she had mentioned, in the said representation, that the petitioner was receiving half salary for the period 24.12.1995 up-to April, 1998. The said

representation has been brought on record by way of Annexure-E to the supplementary counter affidavit, filed on behalf of the Bank, on 16.05.2015.

9. From the pleadings on record, it transpires, thus, that the petitioner had received half of the salary, as subsistence allowance, on completion of one year of the period of his suspension. I am not referring to what he received and what he did not before completion of one year of period of his suspension, as by then, no disciplinary proceeding was initiated against him. In such circumstance, the questions, which have arisen, are:-

(A.) As to whether the petitioner, in terms of Clause 5 (a) (iii) of Shastri/Desai Award, was entitled to full pay and allowances after completion of one year of period of suspension, keeping in mind, the fact, that a criminal case was also instituted against him, which was being investigated by a outside agency, viz., Bihar Police.

(B.) If it is held that the petitioner was entitled to full salary, as subsistence allowance, after he had completed one year of period of suspension, should the departmental proceeding be held to have been vitiated because the petitioner was not paid the full amount of subsistence allowance, which he was, in fact, entitled to, on the ground of violation of principles of natural justice, in the light of Supreme Court decision, in case of "**Capt. M. Paul Anthony Vs.**

Bharat Gold Mines Ltd. & Anr.”, reported in ***(1999) 3 SCC 679*** and ***"State of Punjab & Ors. Vs. K.K. Sharma"***, reported in ***(2002) 9 SCC 474***, as relied upon by learned senior counsel, Mr. Abhay Kumar Singh, appearing on behalf of the petitioner.

10. If answer to the either of these questions go in negative, it would be difficult to sustain the petitioner's plea of challenge to the order, passed by the Disciplinary Authority, imposing, upon him, the punishment of dismissal from service, as also the order, passed by the Appellate Authority. This is for the reason that I have not found any procedural lapse, having the effect of violation of principles of natural justice in course of departmental proceeding, inasmuch as, the petitioner was given full opportunity to defend his case, deal with the charges framed against him and cross-examine the witnesses, which, he admittedly failed to avail. The findings of the Enquiry Officer, holding that the charges, levelled against the petitioner, stood proved, cannot be said to be perverse, since they are based on oral and documentary evidence. The order of the Disciplinary Authority is well reasoned. The petitioner was given opportunity of personal hearing before the Disciplinary Authority, which he had failed to avail. The order of the Appellate Authority is also well reasoned and speaking.

Situated thus, interference with the action of the respondents, under challenge, would be warranted only if both the questions, set-up as above, are answered by this Court in affirmative.

11. Clause 5 (a) of the Bipartite Settlements, as brought on record by way of Annexure-16 &17 on behalf of the petitioner, prescribes for rate of payment of subsistence allowance to an employee of the Bank, under suspension. There are two circumstances mentioned; (i) where the investigation is not entrusted to or taken up by an outside agency (i.e. Police/CBI), and (ii) where the investigation is being done by an outside agency.

In the first case, an employee is entitled for 1/3rd of pay and allowances, which the employee would have received, but for the suspension for first three months. Thereafter, he would be entitled for half of the pay and allowances. After one year, he is entitled for full pay and allowances, if the enquiry is not delayed for the reasons attributable to the employee or of any of his representatives.

In the second case, as per Clause 5 (a) (iii) of the Bipartite Settlements, where the investigation is done by a outside agency and the said agency has come to the conclusion not to prosecute the employee, full pay and allowances, will be payable after six months from the date of

receipt of report of such agency or one year after suspension, "whichever is later", in the event the enquiry is not delayed for the reasons attributable to the employee or any of his representatives.

12. Applying the said provision in the present case, I find that the petitioner was placed under suspension, on 24.12.1994, on the charge of fraudulent transactions in Saving Bank Accounts and a criminal case was also instituted against him with police, on 15.02.1995, alleging commission of offences punishable under Section 420, 409 and 477/34 of the Indian Penal Code. There is no pleading on record to the effect that the Investigating Agency ever came to a conclusion, not to prosecute the petitioner and submitted any report to this effect, which would have made him entitled to payment of full salary after one year from the receipt of such report. Clause 5 (a) (iii) of the Bipartite Settlements, prescribes full pay and allowances, as subsistence allowance, either after six months from the date of report by the Investigating Agency or one year from the date of suspension, whichever is later. The date with effect from which, an employee, under the said Clause 5 (a) (iii), would be entitled for full pay and allowances, as subsistence allowance, during the period of suspension, will apparently depend upon submission of a report by an outside

Investigating Agency.

13. Mr. Ajay Kumar Sinha, learned counsel, appearing on behalf of the Bank, has rightly relied upon the Supreme Court decision, in case of **State Bank of India Vs. Rattan Singh** (*supra*), Paragraphs 7 and 8 of which reads thus:-

"7. Since the order of suspension was set aside by the Division Bench of the High Court, the High Court has also held that the respondent is entitled to all his legal dues, in accordance with law. In doing so, the High Court has relied upon the provisions relating to subsistence allowance in clause 5 which are in partial modification of para 557 of the Sastry Award and para 17.14 of the Desai Award. In fact, the order of suspension states that subsistence allowance will be paid accordingly. Clause 5(a) deals with the payment of subsistence allowance in cases where the investigation is not entrusted to an outside agency or is not taken up by an outside agency such as the police, or CBI. Sub-clauses (i) (ii) and (iii) of clause 5(a), therefore, deal with such cases viz. where the investigation is neither entrusted to nor taken up by an outside agency such as the police or



CBI. The second half of sub-clause (iii) of clause 5(a) also covers a situation where the investigation is done by an outside agency but the agency has come to a conclusion not to prosecute the employee. None of these situations covers the present case. Therefore, the claim of the respondent to subsistence allowance where a criminal prosecution is pending against him will have to be determined by the appellant Bank de hors clause 5 and in accordance with law and in the light of the Sastry Award, the Desai Award as also the Bipartite Settlement and any rules or regulations of the appellant Bank. In their absence, the matter will have to be decided at the discretion of the disciplinary authority. [See in this connection our order of (sic) in CA No. 3352 of 1997]. The appellant Bank has stated that the respondent is receiving at present half of his salary and allowances as subsistence allowance."

(emphasis supplied)

8. We have not been shown any provision for the enhancement or otherwise, of the subsistence allowance. Therefore, if any representation is made by the



respondent or is pending, for enhancement of his subsistence allowance, it should be decided by the appellant Bank in accordance with law and the relevant terms and conditions governing the grant of subsistence allowance. As the quantum of subsistence allowance during suspension was not directly under challenge, and the basic challenge under the writ petition was to the suspension order, itself, the learned Single Judge while dismissing the writ petition had rightly directed the present appellant to examine the respondent's representation in that connection in accordance with law."

14. In the absence of any specific pleading that the police submitted any report, upon arriving at a conclusion, not to prosecute him, the petitioner cannot claim that he was entitled for full pay and allowances after completion of one year of period of his suspension.

15. Having held thus, I could have straightway rejected the plea that the departmental proceeding stood vitiated because of non-payment of full pay and allowances, as subsistence allowance, as claimed by the petitioner, without referring to the second question, as to

whether any prejudice would be said to have been caused to the petitioner because of non-payment of subsistence allowance.

16. I have, however, considered it appropriate to deal with the second question also. From the report of the Enquiry Officer, I find that the enquiry was held at Muzaffarpur/Jhanjharpur. The petitioner is a resident of a village, under Jhanjharpur police station. The petitioner participated in the said departmental enquiry with his defence counsel, from 04.09.1997 till 11.12.1997. On 23.12.1997, it transpires that the petitioner and the defence counsel, both, withdrew themselves from the said proceeding, without assigning any reason. After the said date till conclusion of hearing by the Departmental Enquiry, on 04.01.1998, the petitioner did not participate in the enquiry. Evidently, thus, though initially the petitioner participated in the departmental proceeding, but he disassociated himself from the said proceeding for few days, from 24.12.1997 to 04.01.1998. Can it be said in such circumstance that non-payment of full pay and allowances, as subsistence allowance, prevented the petitioner from participating in the departmental enquiry, particularly, when he was, admittedly, getting half of the pay and allowances, as subsistence allowance?



17. The Supreme Court decision, in case of ***Capt. M. Paul Anthony*** (*supra*), upon which learned senior counsel, Mr. Abhay Kumar Singh, appearing on behalf of the petitioner, has relied upon, in my view is distinguishable on facts. In the case before the Supreme Court, the delinquent was not paid any amount, as subsistence allowance, and noticing the fact that the employer did not suggest that the delinquent had any other source of income, the Supreme Court held the departmental action taken against to be in violation of principles of natural justice. The said decision does not have application in the present facts and circumstances of the case.

18. It is true that non-payment of subsistence allowance, as per the extant Rules, to an employee, during the period of his suspension, pending departmental enquiry, may have the effect of vitiating the departmental proceeding, on the grounds of violation of principles of natural justice. However, in my considered opinion, for the purpose of assailing a disciplinary action, on the ground that it was because of the financial constraints, which prevented an employee from participating in the departmental enquiry because of non-payment of full pay and allowances, as subsistence allowance, he would be required to make specific pleadings to this effect and



establish it. I may refer to a decision of Supreme Court, in case of **"Indra Bhanu Gaur Vs. Committee, Management of M.M. Degree College and Ors."**, reported in **(2004) 1 SCC 281**, wherein the Apex Court held, unless delinquent took stand in the departmental proceeding that such non-payment incapacitated him or caused prejudice to him in defending his case, he is precluded from challenging the departmental action on such ground. Paragraph 7 of the said decision, in case of **Indra Bhanu Gaur** (*supra*), can be usefully quoted hereinbelow:-

"7. From the judgment of the High Court, in the writ petition it appears that there is no reference to the alleged infirmity on account of subsistence allowance having not been paid. There was also no specific finding recorded for the question of bias as alleged presently. We find that there was total lack of cooperation from the appellant as the factual background highlighted above would go to show. Ample opportunity was granted to the appellant to place his case. He id not choose to do so. It is only a person who is ready and willing to avail of the opportunity given, who can make a grievance about denial of any opportunity and not a person like the appellant who despite repeated



opportunities given and indulgence shown exhibited defiance and total indifference to extending cooperation. Therefore, on that score the appellant cannot have any grievance. So far as the effect of not paying the subsistence allowance is concerned, before the authorities no stand was taken that because of non-payment of subsistence allowance, was not in a position to participate in the proceedings, or that any other prejudice in effectively defending the proceedings was caused to him. The appellant could not plead or substantiate also that the non-payment was either deliberate or to spite him and not due to his own fault. It is ultimately a question of prejudice. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso facto be a ground to vitiate the proceedings in every case. It has to be specifically pleaded and established as to in what way the affected employee is handicapped because of non-receipt of subsistence allowance. Unless that is done, it cannot be held as absolute proposal in law that non-payment of subsistence allowance amounts to denial of opportunity and vitiates departmental proceedings. ."

19. In view of the discussion as above, I do not find any merit in the facts and circumstances of the present case in the plea that the disciplinary action, initiated against the petitioner, can be held to be vitiated on account of non-payment/less payment of subsistence allowance than his actual entitlement.

20. Having discussed thus, I do not find any merit in this application, which is dismissed, accordingly.

(Chakradhari Sharan Singh, J.)

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