

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8580 of 2008

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Ramesh Kumar Srivastava, son of late Kashi Prasad Srivastava, resident of Village-Nasirpur, Post Susuwahi, P.S. Lanka, District Varanasi (U.P.) presently posted as Officer, JMG Scale I at Bank of Baroda, Hira Lal Chowk, Begusarai.

.... Petitioner/s

Versus

1. Bank of Baroda through its' Chairman, Baroda Corporate Centre, C-26, G Block, Bandra Kurla Complex, Mumbai-400051
2. The General Manager (HRM), Bank of Baroda, Baroda Corporate Centre, C-26, G Block, Bandra Kurla Complex, Mumbai-400051
3. The Deputy General Manager (HRM & Admn.), Bank of Baroda, Baroda Corporate Centre, C-26, G Block, Bandra Kurla Complex, Mumbai-400051
4. The Deputy General Manager, Bank of Baroda, Regional Office, Anand Vihar, IIIrd Floor, West Boring Canal Road, Patna
5. The Assistant General Manager, Bank of Baroda, Bihar Region, Anand Vihar, IIIrd Floor, West Boring Canal Road, Patna
6. The Branch Manager, Bank of Baroda, Mokameh Branch, District-Patna.
7. The Branch Manager, Bank of Baroda, Begusarai Branch, Hira Lal Chowk, District Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Purushottam Kumar Jha,
Mr. Dr. Kislay, Advocates.

For the Bank : Dr. Ansuman, Advocate.

For the State : Mr. Mritunjay Kumar Jha, AC to SC 3.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 27-01-2015

Heard the parties.

2. In the present writ petition, petitioner is challenging the order of punishment issued vide Ref.No.RO:BIHAR:HRM/PFO 309/1866 dated 20.8.2007 by the Assistant General Manager, Bank of Baroda, Bihar, Bihar Region, Patna by which he has treated the petitioner to be unauthorized absent from the duty of the Bank from 10.7.2007



to 15.7.2007 and also prayed for quashing the order issued vide Ref.No.RO:BIHAR:HRM:PFO;309/361 dated 18.1.2008 by Deputy General Manager, Bank of Baroda, Regional Office, Patna by which he has treated the petitioner to be unauthorized absent from the duty of the Bank. Further relief has been sought for in the nature of mandamus commanding the respondent authority to transfer the petitioner in the locality of Varanasi and also for giving direction to the respondent for sanction of medical leave to the petitioner from 2.9.2007 to till the date with all consequential benefit and alternatively there is a prayer to accept the resignation of the petitioner from the services of the respondent Bank.

3. During pendency of this writ petition, the petitioner filed an interlocutory application vide I.A. No.4271 of 2014 whereby he sought three additional reliefs, one for quashing the memorandum of charge framed by the Deputy General Manager-cum- the Disciplinary Authority dated 13.2.2009 by which three different charges have been leveled against the petitioner (Annexure-1 to I.A.) and further prayer has been made to quash the enquiry report dated 24.11.2009 (Annexure-2 to I.A.) by which the Enquiry Officer has splitted three charges into four charges and found all four charges proved



against petitioner and further prayed for quashing the order of punishment dated 2.11.2010 (Annexure-3 to I.A.) by which disciplinary authority has imposed the penalty of reduction by two stages in the time scale of pay for a period of two years with further direction that he will not earn increments during the period of such reduction and on expiry of the period of reduction it will have the effect of postponing his future increments.

4. Initially the petitioner was an employee of the Benares State Bank Ltd. which merged with the respondent Bank of Baroda in July, 2002. At the time of merger, the petitioner was in the scale of Officer Grade I. On 24.5.2003 the petitioner along with eight Officers of the Bank were transferred in the Bihar Region. While posted at Begusarai Branch the petitioner filed an application on 1.6.2007 making a prayer for grant of medical leave commencing from 2.7.2007 for one month. The petitioner was orally allowed by the Branch Manager to go for leave on 10.7.2007. In terms of oral order of the Branch Manager, he proceeded on medical leave from 9.7.2007 to 14.7.2007. In upper part of leave register he has been shown to have been granted leave but later on leave granted has been struck out, shown the petitioner absent. While on leave,



Branch Manager gave telephonic call directed the petitioner to join the service of the Bank whereupon the petitioner again joined the service on 16.7.2007. The General Manager of the Bank vide order dated 20.8.2007 communicated to him, his absence from duty from 10.7.2007 to 15.7.2007 though 15.7.2007 was Sunday and 16.7.2007 was Monday. The petitioner filed an application dated 4.9.2007 (Annexure-3) for medical leave for 21 days, he filed an application dated 2.9.2007 (Annexure-5) for medical leave for further 21 days and again the petitioner filed an application for medical leave on 13.10.2007 (Annexure-6) for medical leave for 30 days. As the petitioner was under the medical leave he filed an application on 30.10.2007 (Annexure-7) by which he requested for release of money for the medical and domestic expenses and also tendered resignation from the Bank service by giving three months of notice and made request for payment of PF, EPF, Gratuity etc.

5. The Branch Manager of the Bank vide letter dated 30.10.2007 informed the petitioner as he had not taken permission to leave from the headquarter in terms of the Regional Office Instruction, his absence, was treated as unauthorized absence and not entitled to salary.



6. The petitioner wrote a letter dated 7.11.2007 (Annexure-9) by which he informed that he was suffering from illness and on that reason applied for medical leave and also stated that on the oral instruction of the Branch Manager he had left the Bank. In the application he stated that he had taken leave on the various grounds i.e. on the medical ground as well as marriage of the nephew whereupon Senior Manager requested him not to proceed on leave up-to 7.7.2007 as he was to be relieved, reply to inspection report was to be submitted and balancing of loans from 2006 was to be done . While he was at Allahabad in connection with marriage of his nephew, he received telephonic call, accordingly returned and joined the duty on 16.7.2007. The Assistant General Manager addressed a letter dated 15.11.2007 (Annexure-10) to the petitioner whereby he was informed that resignation submitted by the petitioner was a conditional one and suggested if he was intended to resign from Bank's service then he should submit an un-conditional resignation. The Deputy General Manager vide letter dated 16/17, November, 2007 (Annexure-11) informed the petitioner with respect to non-sanction of leave. There also it has been mentioned that letter dated 30.10.2007 is conditional letter if he intended to resign from the Bank's



service he should submit an unconditional application. It has been informed that Bank was not in a position to respond the issue without knowing the attending facts about non sanction of leave. It has been mentioned that application filed by him was not clear as to why he had left the headquarter without prior sanction of leave and why his medical check up could not be done at Begusarai and asked him to submit his clarification on these issues addressed to the Assistant General Manager, Bihar.

7. The petitioner filed an explanation dated 1.12.2007 (Annexure-12) to the Deputy General Manager (HRM & ADMINI) Bank of Baroda, Mumbai stating therein that he had gone for medical leave on the oral sanction made by the Branch Manager but wrongly deducted six days salary. The Assistant General Manager vide letter dated 22.11.2007 (Annexure-13) asked the petitioner to report for his medical examination to one Dr. Biswas Kumar Verma on 30.11.2007 at Varanasi. In case of failure, the Bank may initiate a proceeding against him. As per the statement made in the writ petition in paragraph nos. 23 and 24 he appeared before Dr. Biswas Kumar Verma for his medical check up on 7.12.2007, deposited his fee of Rs.1,000/- who examined the petitioner on



12.12.2007 found him was suffering from Spondylitis with Osteo Arthritis (Annexure-14). The petitioner submitted representation dated 12.12.2007 before the Assistant General Manager where he stated that he was suffering from several diseases. It is very difficult for him to stay at his place of working and requested for recommendation for his transfer to Varanasi.

8. Petitioner again filed an application dated 17.12.2007 (Annexure-15) annexing the prescription and report of Dr. Biswas Kumar Verma, Varanasi including the finding on X-ray report and requested to grant him medical leave with full pay with effect from 4.9.2007 to 15.11.2008. He further requested for transfer from Bihar Region to Varanasi and also made a request for release of salary for the month of September, October and November, 2007. The petitioner again filed a representation dated 1.1.2008 (Annexure-16) requesting for release of his salary for the leave period and informed that his disease was spreading. This was replied by the Deputy Regional Manager vide his letter dated 18.1.2008 (Annexure-17) informing that he had neither sought prior permission from reporting authority to leave the headquarter nor informed him, accordingly his absence from 2.9.2007 was treated as

unauthorized with consequential effects and he was advised to report back to Begusarai Branch and take further treatment at Begusarai, if any.

9. The petitioner again wrote a letter dated 25.1.2008 (Annexure-18) where he stated that he was suffering from illness, shown his inability to join the Begusarai Branch as he did not know any doctors who was more competent than the doctors at Varanasi. He used not go outside of his house on account of illness, remained surrounded with his family members at Varanasi even advised by Doctor not to go upstairs, advised for several precautions. It was further stated that the Bank did not respond to several letters addressed to the Bank. It was further stated if the Bank desired, he would file fresh resignation letter and he requested to supply the draft copy of the same, requested for payment of PF, EPF, gratuity and leave encashment etc.

10. The Bank vide letter dated 21st/ 23rd January, 2008 (Annexure-19) replied the letter of petitioner dated 9.1.2008 whereby it has been informed that the petitioner had remained absent without prior sanction or permission even not sought permission over phone, under that circumstances, his absence was treated as unauthorized that too without pay. The



petitioner wrote a letter to the Chairman on 1.3.2008 (Annexure-20) where he narrated his illness, illness of his wife and marriage of nephew in his family and explained that he was on leave with effect from 9.7.2007 for one month, he reached to Varanasi on 7th/8th August, 2007 consulted his Doctor who prescribed medicine for 21 days again he requested for sick leave. He disputed the fact that he had not applied for the leave nor sought permission to leave his place of posting, further said that the Bank had wrongly withheld his payment of salary from 1.9.2007. He further said that he had submitted letter of resignation dated 30.10.2007 but was termed conditional one whereupon he request the Bank to provide him a format so that he could apply for the resignation in the proper format but he did not receive any response. In the said letter it has been requested to intervene in the matter, his wife also wrote a letter to Prime Minister of India to do needful, whereupon the Deputy General Manager, HRM Administration wrote a letter to the petitioner dated 21/23 January, 2008 (Annexure-22) where by it was informed that petitioner had neither taken sanction of the Branch Manager nor informed about his absence from duty from 10.7.2007 to 15.7.2007. The explanation submitted by the petitioner was not

found satisfactory and advised him not to leave the headquarter without prior sanction/permission of Branch Manager. In spite of such advise he remained absent from Branch without any written or oral permission with effect from 2.9.2007.

11. As it appears from the record, when the petitioner did not report for duty, a charge sheet dated 13.2.2009 (Annexure-1 of I.A. No. 4271 of 2014 was framed and served upon him where the allegation has been made against the petitioner that he remained absent from 10.7.2007 to 15.7.2007 without any communication and was issued the advisory note dated 20.8.2007 informing his absence was treaded as unauthorized and also warned not to repeat such action in future and in spite of the advise, the petitioner had left the headquarter without permission from 1.9.2007 and continued to remain absent till date, meaning thereby up to the date of issuance of charge-sheet.

12. In pursuance of the service of charge-sheet upon the petitioner, enquiry proceeding was initiated against him, enquiry officer gave opportunity to the petitioner to participate therein, there the petitioner was also given chance to examine the defence witness but the petitioner did not opt to examine any defence witness in support of his contention. On the basis of the material on record and also examining the documentary



or oral evidence brought by him the Enquiry Officer arrived to a conclusion that both the charges against the petitioner have stood proved. The petitioner was the served copy of the enquiry report along with second show-cause. The disciplinary authority considered the case of the petitioner and found that the petitioner remained absent for one year five months and such deliberate action is required strict action against the petitioner as the Bank is based on customers service, absence of supervisory staff hamper the business and service of customers. Casual and irresponsible attitude does not serve the purposes of the Bank which is highly deplorable and such staff is not of any help to the Bank and after considering all pros and cons passed the order of reduction by two stages in the time scale of pay for a period of two years with further direction that he will not earn increments during the period of such reduction and on expiry of the period of reduction it will have the effect of postponing his future increments.

13. Against the order of the disciplinary authority the petitioner filed an appeal, when the appeal was not disposed of he served the legal notice upon the Bank for its disposal. The appellate authority vide order dated 30.8.2011 (Annexure-1 to the I.A. No.5205 of 2014) rejected the appeal of the petitioner.



14. Learned counsel for the petitioner submits that before leaving the place of posting he applied for leave for one month which was orally allowed by the Branch Manager of the Bank and on that basis he had gone for leave, when he received the telephonic call he instantly returned and joined the Bank on 16.7.2007 as his physical condition was in such state of affair that it was not possible for him to work. He repeatedly requested that either he should be transferred to Varanasi so that he should get proper medical treatment or he should be allowed to resign from the services of the Bank and so much so he should be paid the leave salary but every time the Bank has turned their deaf ear and did not extend favour to him. He has further submitted that in terms of the direction of the Bank he had appeared before the Dr. Biswas, found him suffering from disease of Spondylitis with Arthritis. In such condition when he was suffering from such serious ailment it was not practically possible for the petitioner to serve the Bank at Mokama or Begusarai always he had filed an application for granting him medical leave. He further submitted that when he was asked to appear before the Medical Officer of the Bank he arrived to a finding of suffering from aforesaid disease in that circumstances up-holding punishment which has been



approved by the appellate authority is not sustainable in law. The counsel for the Bank has submitted that as the petitioner remained absent unauthorizedly, he was informed that he had left the Bank without taking prior permission from the controlling authority and so much so he was advised not to repeat the same even then he remained absent from 2.9.2007, thereafter he never joined, in such a manner, he remained absent for one year five months.

15. There is no dispute that the petitioner was given every opportunity to defend himself, he was allowed to examine his witness and cross examines the witness of the Bank. So much so he was given the enquiry report along with second show cause thereby all procedure required with regard to granting a fair opportunity was followed. While exercising power of judicial review this Court cannot act as an appellate court and can not substitute the finding with its own finding.

16. The Court under judicial review has to examine whether the Management has followed the due process of law in the departmental proceeding by giving proper opportunity to defend himself. If there is no illegality in the decision making process, only the requirement of enquiry under judicial review would be whether the materials which were required to be



taken into consideration was taken into consideration or not or whether the finding recorded by the enquiry officer or disciplinary authority are perverse and whether the finding recorded in the departmental enquiry so unreasonable, no prudent person can arrive to such finding. It will be appropriate to rely on the judgment of the Hon'ble Supreme Court in the case of B.C. Chaturvedi V. Union of India and others, reported in AIR 1996 SC 484 where the Hon'ble Supreme Court held that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an inquiry proceeding is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry proceeding was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. It will be

appropriate to quote paragraph nos. 12, 13 and 14 of the aforesaid judgment:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.



13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.

14. In *Union of India v. S.L. Abbas* when the order of transfer was interfered with by the Tribunal, this Court held that the Tribunal was not an appellate authority which could substitute its own judgment to that bona fide order of transfer. The Tribunal could not, in such circumstances, interfere with orders of transfer of a government servant. In *Administrator of Dadra & Nagar Haveli v. H.P. Vora* it was held that the Administrative Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the efficiency bar of a public servant. Recently, in *State Bank of India v. Samarendra Kishore Endow* a Bench of this Court of which two of us (B.P. Jeevan Reddy and B.L. Hansaria, JJ.) were members, considered the order of the Tribunal, which quashed the charges as based on no evidence, went in detail into the question as to whether the Tribunal had power to appreciate the evidence while exercising power of judicial review and held that a tribunal could not appreciate the evidence and substitute its own conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of evidence to substitute its own findings of fact to that of a disciplinary/appellate authority.”



17. In the present case it is not in dispute that the petitioner was proceeded departmentally on account of his unauthorized absence. Petitioner was given opportunity to defend his case, so much so he was given show cause along with enquiry report and enquiry Officer after proper examination of evidence on record found evidence against the petitioner. The disciplinary authority looking to the facts and circumstance took leniently view, passed the order that has been up-held by the appellate authority considering his unauthorized absence for one year five months. This Court is of the view that action taken by the Bank is correct and this Court does not intend to interfere with the same.

18. Accordingly this writ petition is dismissed.

Vinay/-

(Shivaji Pandey, J)

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