

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6898 of 1999

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Uma Shankar Prasad, Son of Late Jai Govind Prasad, resident of
Mohalla-Pokharia, Post-Sahebganj, District-Sahebganj.

.... Petitioner

Versus

1. Samastipur Kshetriya Gramin Bank, Head Office, Samastipur,
Sonbarsa Chowk, Post-Kashipur, Samastipur, District-Samastipur,
through its Chairman.

2. Board of Director-Cum-Appellate Authority, Samastipur,
Kshetriya Gramin Bank, Samastipur.

3. The Chairman, Samastipur Kshetriya Gramin Bank, H.O.-
Samastipur.

4. Shai S.P. Jamuar, Ex-Chairman, Samastipur Kshetriya Gramin
Bank, Samastipur.

5. Shri Gauri Shankar Singh, Chairman, Samastipur Kshetriya
Gramin Bank, H.O.-Samastipur.

6. Shir Ashok Kumar Sinha, Enquiry Officer, Samastipur Kshetriya
Gramin Bank, H.O.-Samastipur.

.... Respondents

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Appearance :

For the Petitioner : Mr. Ajay Kumar Sinha, Advocate

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

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

C.A.V. JUDGMENT

Date: 04-11-2015

The petitioner was, at the relevant point of time,



posted as Branch Manager of Rambhadrapur Branch of erstwhile Samastipur Kshetriya Gramin Bank. The said Bank has been amalgamated by virtue of a notification, dated 15.10.2012, with Kshetriya Gramin Bank. Bihar Kshetriya Gramin Bank is, thus, the successor Bank of Samastipur Kshetriya Gramin Bank (**hereinafter referred to as "the Bank"**), having its Head Office at Begusarai.

2. In the present writ application, filed under Articles 226 & 227 of the Constitution of India, the petitioner is aggrieved by an order, dated 25.03.1998, passed by the Disciplinary Authority, whereby, exercising power, under Regulation 30 (1) (E) of Samastipur Kshetriya Gramin Bank, Staff Service Regulations (**hereinafter referred to as "the Regulations"**), punishment of removal from Bank service has been imposed upon him. The petitioner had preferred an appeal, against the said order of punishment, which came to be dismissed by an order, dated 20.04.1999, passed by the Appellate Authority. Both the orders, respectively, dated 25.03.1998 and 20.04.1999, are under challenge, in the present application. The punishment of dismissal from service has been imposed upon the petitioner, on the basis of a departmental enquiry, held against him, with issuance of charge-sheet, communicated to him through a letter, dated



01.04.1997, which is Annexure-6 to the present writ application. Though, the charge, levelled against the petitioner, is divided in three parts. Upon reading of the charge-sheet in its entirety, it would be easily evincible that the main charge, against him, was that he abstained himself from the said branch of the Bank from 03.03.1997, with all keys of the iron chest, other locks, including steel Almirah, and the doors of the branch building. It is alleged against him that because of his absence, on 03.03.1997, the branch of the said Bank remained completely closed for one business day. It was further alleged against him that despite issuance of letters, on 05.03.1997, 19.03.1997, and publication of notice in the daily newspaper, Aaj, he did not submit his joining in the Bank. The charge-sheet was sent to the petitioner's residential address, i.e., Village-Pokharia, Post-Sahebganj, District-Sahebganj. The petitioner submitted his written statement of defence, on 07.06.1997, in response to the said charge-sheet. His written statement of defence was not found satisfactory and, accordingly, in terms of Regulation 30 (3) of the Regulations, an Enquiry Officer was appointed to inquire into the charges levelled against the petitioner and, thus, the departmental enquiry commenced. From the pleadings on record, I find that the petitioner made a request for change of the Enquiry Officer.



3. It transpires from the records that the petitioner, did not, in fact, participate in course of the departmental enquiry. The Enquiry Officer decided to proceed *ex-parte*, as in his opinion, the petitioner was not presenting himself for the enquiry. It is the case of the petitioner that after initiation of departmental proceeding, he was neither given any place of posting nor was put under suspension. Another Officer was posted at the place and on the post, where the petitioner was earlier posted. He was neither paid any salary nor subsistence allowance during the period of departmental enquiry. Non-payment of salary and subsistence allowance, made it impossible for him to present himself on the dates fixed for the enquiry before the Enquiry Officer. Certain communications have been brought on record by way of Annexures, sent to the Disciplinary Authority, by the petitioner, making request for payment of subsistence allowance, through registered-post with acknowledgement due. It is his case that despite his repeated request, the Disciplinary Authority did not pass any order on the point of payment of salary/subsistence allowance/advance, so that he could sustain himself and defend his case in the departmental enquiry.

4. On the basis of an *ex-parte* enquiry held, the Enquiry Officer submitted his report, holding that the



charges levelled against the petitioner stood proved. Agreeing with the findings, recorded by the Enquiry Officer, the Disciplinary Authority passed the impugned order, dated 25.03.1998, imposing upon the petitioner, punishment of dismissal from service. As has been noted above, the appeal, preferred against the order passed by the Disciplinary Authority, came to be rejected by the appellate order, dated 20.04.1999.

5. Before I proceed to consider the pleadings on record and rival submissions, it is relevant to mention that this Court by an order, dated 04.05.2015, had directed the respondents-Bank, represented by Mr. S.D. Sanjay, learned senior counsel, to produce the original records of the concerned departmental proceeding. Another indulgence was also granted by this Court, vide order, dated 19.05.2015, for the purpose of producing before this Court, the records of the departmental proceeding. On 24.06.2015, when the matter was taken up for hearing, no original records, as directed, could be produced before this Court. Thus, the Court was left with no option, but to direct the Chairman of the Bank to be personally present alongwith the original records of the departmental proceeding. On 01.07.2015, the Chairman of the Bank appeared before this Court. A supplementary counter



affidavit has been filed on behalf of the respondents-Bank, stating therein that the original records of the departmental proceeding could not be traced and, therefore, the Bank was not in a position to produce the same. It was in this background that the Court decided to proceed with further hearing of the case, on the basis of the pleadings on record, as the Bank expressed its inability to produce the records of the proceeding of the departmental enquiry.

6. So far as the reason behind petitioner's absence from the Bank, without seeking any leave from the higher authorities, is concerned, the petitioner has taken a plea that he had disturbed matrimonial life and, on 01.03.1997, when the petitioner was going to Head Office from Rambhadrapur branch, where he was posted, he was abducted and kept in captivity by the henchmen of his wife and her associates with an intention to kill him. A criminal case was also instituted against the petitioner by his wife and his family members. He is said to have married to her after about one month, on 09.04.1997. In order to save his life and also out of fear, he neither went back to Rambhadrapur branch, where he was posted, nor did he reach the Head Office, instead went to his village home, in the district of Sahebganj. It is further his case that after having received the letters, dated 15.03.1997 and



19.03.1997, on 10.04.1997, he had gone to the Head Office to join his duties and to hand over the keys of the said Branch. According to him, he handed over the keys to the Manager (P.T.R.). He was, however, not allowed to join the duties on a plausible plea that the charge-sheet had already been sent to him on his permanent address. Left with no option, it is the petitioner's case that he returned back to his home, whereafter, despite his reminders, he did not receive any order/direction/permission for his joining on any post.

7. It is his further case that he approached the Head Office, on 20.09.1997, with a request to allow him to join his duties, as he was not placed under suspension, which was not acceded to. It is the specific case of the petitioner that since he was not paid any salary or subsistence allowance and was not allowed to join on any post, because of financial constraints, he could not defend himself in the departmental proceeding, which finally culminated into passing of the order of dismissal from service.

8. A counter affidavit has been filed on behalf of the respondents-Bank, denying the allegation that the petitioner was not allowed to join his duties. It has, on the other hand, been stated on behalf of the Bank, in the

counter affidavit, that, as a matter of fact, the petitioner did not intend to join and, therefore, the plea that because of non-payment of salary/subsistence allowance, he could not participate in the departmental proceeding, is not tenable.

9. Mr. Ajay Kumar Sinha, learned counsel, appearing on behalf of the petitioner, has drawn my attention to several communications made by the petitioner to the Disciplinary Authority, which have been brought on record by way of Annexures, sent through registered-post/telegram, whereby, the petitioner had been consistently demanding for payment, so that he could defend himself effectively in the departmental enquiry. He has submitted that there is no denial of the fact that another Officer was posted at the place, where the petitioner was posted, prior to initiation of departmental proceeding against him. He further submits that the petitioner was not given any posting thereafter, which the respondents were obliged to do. He further contends that in the event the respondents-Bank intended to keep the petitioner away from service, by way of interim measure, during the pendency of the departmental proceeding, they had only option of putting him under suspension with payment of subsistence allowance in accordance with the provisions under the Regulations. Mr. Ajay Kumar Sinha,



learned counsel, has placed reliance upon Supreme Court decisions, reported in **(1986) 3 SCC 131 [Fakirbhai Fulabhai Solanki vs. Presiding Officer & Anr.]**, **1999 LAB. I.C. 1565 [Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr.]** and **(2002) 9 SCC 474 [State of Punjab and Ors. vs. K.K. Sharma]**, in support of his submission that non-payment of subsistence allowance, during the pendency of the departmental proceeding, amounts to violation of principles of natural justice.

10. Mr. S.D. Sanjay, learned senior counsel, appearing on behalf of respondents-Bank, on the other hand, has submitted that the action of the Bank does not require any interference, as there has been no infirmity, on account of non-payment of subsistence allowance, and his non-participation in the departmental proceeding was deliberate, without any valid reason, and due to his own fault. He contends that non-payment of subsistence allowance cannot *ipso facto* be a ground to vitiate the proceeding in every case. Mr. S.D. Sanjay, learned senior counsel, has also submitted that the petitioner has developed a false story in the writ application of having been abducted by the henchmen of his wife and having been kept in captivity by them because of which, he could not attend his duties, as Branch Manager, during the period

of captivity. He has contended that had that been so, the petitioner could have filed a criminal case with the police. He further submits that such story, developed in the pleadings, is nothing more than a cock and bull story, which cannot be believed.

11. I find substance in the submission, made on behalf of the respondents-Bank, to the extent that the story, as narrated by the petitioner of his abduction and illegal confinement, at the instance of his wife, cannot be easily accepted, as he did not inform the police with respect to the alleged occurrence. What he has asserted in this regard, in the writ application, constitutes cognizable offence, which he was duty bound to inform the police, which he failed to do.

12. However, at the same time, I find that the respondents-Bank have miserably failed to take specific stand as regards, the status of the petitioner during the period the departmental proceeding was pending against him. Nothing has been brought on record to show that the petitioner was given any place of posting other than the place, where he was earlier posted, prior to initiation of departmental proceeding. It is also not the case of the Bank that no other person was posted at the concerned Branch on the post, which was earlier hold by the



petitioner. Once someone else was posted at the place, where the petitioner was earlier posted, it was obligatory on the part of the Bank to have either placed the petitioner under suspension or to have given him any place of posting. In no circumstance, the Bank could have stopped payment to the petitioner altogether of salary or subsistence allowance, without any valid ground. The contention that the petitioner was not willing to join his duties is also not acceptable to this Court, as the respondents-Bank have not been able to convince this Court that there was any place or post of which the petitioner was asked by the Bank to join.

13. As has been noticed above, the respondents-Bank have failed, despite indulgence granted to them, to produce the original records of the departmental proceeding. The stand of the petitioner that he kept on making request for payment of subsistence allowance/salary, during the pendency of the departmental proceeding, thus, remained uncontroverted. Reference has been made to various communications, brought on record by way of Annexures, wherein, the petitioner took specific plea that because of want of money, it was impossible for him to participate in the departmental enquiry. Despite such request, the respondents-Bank did not respond to it. There are specific pleadings, in the writ application, as to

how non-payment of subsistence allowance prevented him from participating in the departmental enquiry and, thus, breached his case in the departmental proceeding.

14. In such circumstance, Mr. Ajay Kumar Sinha, learned counsel, appearing on behalf of the petitioner, is right in his submission that non-payment of subsistence allowance has vitiated *ex-parte* departmental enquiry, conducted against him. He has rightly placed reliance upon Supreme Court decision, in case of "**Ghanshyam Das Shrivastava vs. State of Madhya Pradesh**", reported in **(1973) 1 SCC 656**, Paragraph 5 of which reads thus:-

"5. With respect, we find it difficult to share the view taken by the High Court. Para 5 of the writ petition expressly alleges that on December 5, 1964, the appellant sent a letter to the Enquiry Officer informing him that unless he was paid subsistence allowance he would not be able to face the enquiry proceedings. The letter was filed along with the petition. It is Annexure H. The letter stated that "Until and unless I am paid subsistence allowance... I categorically refuse to face any proceeding ... as I have no capacity to do so because of acute shortage of funds." (emphasis added). This is obviously specific pleading on the



point that for non-payment of subsistence allowance he was short of funds and could not attend the enquiry. It is true that his affidavit does not give any particulars about his sources of income and the estimate of expenses to be incurred in the enquiry. But it would prima facie suggest that he had no other sources of income except his pay. If he had no other sources of income, he could not invent them for the purpose of mentioning them in the affidavit. More significantly, the government affidavit does not allege that he had any other source of income except pay. The fact that he had been drawing a monthly pay of Rs 300/- till October, 1964, would not necessarily show that he had sufficient money to enable him to go to Jagdalpur to attend the enquiry in February 1965. He was suspended on October 30, 1964 and thereafter he did not get subsistence allowance until March 20, 1965. Having regard to the prevailing high price, it is not possible to draw any adverse inference against him from the mere circumstance that he had been receiving a monthly pay of Rs 300/- till October 1964. The fact that he filed a writ petition immediately on the passing of the order of dismissal



and thereafter came in appeal to this Court, would not establish that he had enough resources to enable him to attend the enquiry. It seems to us that on the whole the High Court has gone by conjectures and surmises. There is nothing on the record to show that he has any other source of income except pay. As he did not receive subsistence allowance till March 20, 1965, he could not, in our opinion, attend the enquiry. The first payment of subsistence allowance  was made to him on March 20, 1965, after a part of the evidence had already been recorded on February 9, 10 and 11, 1965. The enquiry proceedings during those days are vitiated accordingly. The report of the Enquiry Officer based on that evidence is infected with the same defect. Accordingly, the order of the Government dismissing him from service cannot stand. It was passed in violation of the provisions of Article 311(2) of the Constitution for the appellant did not receive a reasonable opportunity of defending himself in the enquiry proceedings."

15. Similar view has been taken by Supreme Court, in case of ***State of Punjab & Anr. vs. K.K. Sharma***

(supra). In case of **M. Paul Anthony vs. Bharat Gold Mines Ltd.** (supra), it has been held in Paragraph 33 as follows:-

"33. *Since in the instant case the appellant was not provided any Subsistence Allowance during the period of suspension and the adjournment prayed for by him on account of his illness, duly supported by medical certificates, was refused resulting in ex parte proceedings against him, we are of the opinion that the appellant has been punished in total violation of the principles of natural justice and he was literally not afforded any opportunity of hearing. Moreover, as pleaded by the appellant before the High Court as also before us that on account of his penury occasioned by nonpayment of Subsistence Allowance, he could not undertake a journey to attend the disciplinary proceedings, the findings recorded by the Inquiry Officer at such proceedings, which were held ex parte, stand vitiated."*

16. In view of the discussions, as above, and in view of the admitted fact that the departmental proceeding held against the petitioner, without paying him any salary or subsistence allowance, is vitiated for violation of



principles of natural justice, in view of the law laid down by the Supreme Court in the cases, as noted above. I, accordingly, set-aside the order, dated 25.03.1998, passed by the Disciplinary Authority, and the order, dated 20.04.1999, passed by the Appellate Authority.

17. The respondents-Bank directed to reinstate the petitioner in service forthwith, if he has not attained the age of superannuation. The period during which the petitioner remained out of service, by virtue of the impugned order of removal of service, shall be treated to be under suspension. In the facts and circumstances of the case, I direct that for the said period, the petitioner shall be paid fifty percent of the salary and allowances, which he would have been entitled to, had he been in service. Such payments must be made within a period of two months from the date of receipt/production of a copy of this judgment. Upon such reinstatement, if any, it will be open to the Disciplinary Authority to proceed afresh against the petitioner from the stage of submission of written statement of defence. The respondents-Bank will be at liberty to appoint a new Enquiry Officer, as the earlier Enquiry Officer might not be in service. Should the respondents-Bank intend to proceed against the petitioner, in the light of present judgment, the Bank must proceed within a period

of three months from the date of receipt/production of a copy of this judgment.

In the event, the petitioner is found to have attained the age of superannuation, the respondents-Bank shall be required to pay the said amount of fifty percent of salary and allowances for the period in question. The respondents-Bank will be at liberty to proceed departmentally against the petitioner, if the service Regulations provides for taking departmental action after reinstatement of its employee.

18. With the above observation, this application is, accordingly, allowed.

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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