

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7114 of 2010

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Mukesh Kumar S/O Shri Krishna Nandan Prasad R/O Mohalla- Rajendra-Puri
(Kalambagh Road), P.S.- Kazi-Mohammadpur, Distt.- Muzaffarpur

.... Petitioner

Versus

1. The Samastipur Kshetriya Gramin Bank (Sponsored By State Bank Of India)
Head Office At Samastipur, Samastipur
2. The Chairman, Samastipur Kshetriya Gramin Bank Head Office At Samastipur,
Distt.-Samastipur
3. The Chairman Cum Disciplinary Authority, Kshetriya Gramin Bank Head
Office At Samastipur, Distt.- Samastipur

.... Respondents

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Appearance :

For the Petitioner : Mr. M.N. Parbat, Sr. Advocate
Mrs. Sudha Ambastha, Advocate,
Ms Amrita Kumari, Advocate

For the Respondents : Mr. S.D.Sanjay, Sr. Advocate
Mr. R.R. Tiwari, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 07-10-2015

I have heard learned counsel for the parties and have
perused the records of the case.

The order dated 02.03.2009 as contained in Annexure 8
issued by the respondent no. 3 inflicting punishment of removal
from service in terms of Rule 38 of the Samastipur Kshetriya Gram
Bank (Officers and Employees) Service Regulations, 2001
(hereinafter to be referred to as “the Regulation”) as well as the
order dated 26.09.2009 issued by the respondent no. 2 as contained
in Annexure 10 by which he has dismissed the appeal preferred by

the petitioner and has upheld the order passed by the respondent no. 3, are sought to be quashed in the present writ application.

The short facts, as set out in the pleadings, stand enumerated as under:-

The petitioner was appointed in the Samastipur Kshetriya Gramin Bank as an officer in the Grade of JMGS-1 on 13.01.1986 and was posted at Mohammaddipur Branch. The petitioner was posted as Branch Manager(Junior Management Grade-1) at Siwaisinghpur Branch of the Bank when vide order dated 10.02.2007 he was put under suspension by the respondent no. 2 in contemplation of a departmental proceeding in terms of the provisions contained in Regulation 38 of the Kshetriya Gramin Bank(Officers and Employees) Service Regulations, 2001(hereinafter to be referred to as "the Regulations"). He was directed to be attached with the Dalsingsarai Branch of the Bank during the suspension. The petitioner was served with the Statement of Charges vide Annexure 2 which is a letter dated 24.04.2007 issued by the Chairman of the Bank. He was directed to submit his written statement which he eventually submitted and, thereafter, he participated in the departmental proceeding. The inquiry report was submitted to the competent authority a copy of which is contained in Annexure 5 dated 10.01.2009. Regarding Charge No. (i) the inquiry



officer has reached to the conclusion that, since the presenting officer could not establish the charges of misappropriation or embezzlement of the Bank's fund, as such, the Charge no. (i) stands only partially proved. Charge No. (ii) was found to be fully proved and Charge no. (iii) was found to be proved in part. Charge no. (iv) was also found to have been proved. Thereafter, Annexure 6 came to be issued by the respondent no. 3. It appears from the letter dated 04.02.2009 addressed to the delinquent petitioner that he has found that Charge no. (i) has also been proved in its entirety and, thus, he has partly disagreed with the opinion of the inquiry officer. So far the other charges are concerned, he has concurred with the opinion of the inquiry officer. Thereafter, he has proposed punishment of removal of the petitioner from service and the petitioner was asked to file a show-cause on the proposed punishment. The petitioner filed his show-cause vide Annexure 7. Thereafter, the order of punishment vide Annexure 8 was passed and, vide Annexure 10, the appeal filed by the petitioner has also been dismissed.

Mr. M.N. Parbat, learned senior counsel appearing for the petitioner, has raised sole question at the time of hearing that Annexure 6 suffers from two flaws which would be fatal. First is that though the disciplinary authority disagreed with the inquiry officer so far part of Charge no. (i) is concerned and, as such, he



should have intimated the petitioner for the reasons of difference and, thereafter, upon submission of the reply of the petitioner, a decision should have been taken by him and the findings should have been recorded. However, he has straightway gone to record a finding upon that and proceeded to propose punishment by issuing a show-cause notice to the petitioner regarding the proposed punishment. It is next contended that the disciplinary authority, without sending a copy of the inquiry report for the comments of the petitioner, has straightway recorded its finding and issued a show-cause notice to the petitioner on proposed punishment which, according to the claim of the petitioner, would be in teeth of the Principles of Natural Justice. In support of his submission, learned counsel for the petitioner has placed reliance upon a decision of the Apex Court rendered in **Punjab National Bank and others v. Kunj Behari Misra [(1998) 7 Supreme Court Cases, 84]** as well as **Yoginath D. Bagde v. State of Maharashtra and another [1999) 7 Supreme Court Cases, 739]**. He also places reliance upon a decision of a Single Bench of this Court rendered in **Yogendra Prasad Singh v. The State of Bihar and others (2007(Supplementary) Patna Law Journal Reports 154)**.

Per contra, Mr. S.D. Sanjay, learned senior counsel appearing on behalf of the respondent-Bank, has submitted that



reasonable opportunity was given to the petitioner inasmuch as he was given full opportunity to defend him before the inquiry officer during the course of inquiry and after inquiry also Annexure 6 has been issued by the disciplinary authority almost concurring with the finding of the inquiry officer and, thereafter, had issued notice to the petitioner to show-cause on the proposed punishment for his removal from service. Learned counsel has placed reliance upon the guidelines dated 20.06.1987 issued to the Chairman of all the Regional Rural Banks by the National Bank for Agriculture and Rural Development(hereinafter to be referred to as “NABARD”). He places reliance upon Clauses 19 and 20 in particular thereof. It is submitted that, even if the disciplinary authority disagrees with the findings of the inquiry officer, the only requirement was that he should record his reasons for such disagreement and also record his own findings on such charge(s), if the evidence on record is sufficient for the purpose and the findings as recorded by such authority read with the report of the inquiry officer would become the appropriate findings in respect of the disciplinary action and, thereafter, under Clause 20 he was only required to issue show-cause notice on proposed punishment.

On the aforesaid submission having been made, Mr. Parbat, learned senior counsel appearing for the petitioner, contends that the



disciplinary proceeding has not been conducted in accordance with the said guidelines of the NABARD issued in the year 1987. It is apparent from the impugned Annexures itself that the same has been initiated and concluded under the Regulations framed for the purpose in the year 2001 and, therefore, the respondent-Bank cannot travel beyond it to justify its action. It is contended that had the guidelines been accepted by the concerned Bank or the same would have been included in the Regulations, the respondents could not have relied upon that but that having not been accepted or included in the Regulations, the respondents cannot justify their action as per the guidelines issued by the NABARD in the year 1987.

On consideration of rival submissions, this Court finds the following issues which would fall for consideration:

(I) Whether the action of the respondents in issuing Annexure 6 succeeds in the test of Principles of Natural Justice?

(II) Whether the authority concerned should have supplied the copy of the inquiry report to the petitioner and only after having received his comment, he should have recorded the findings upon the charges?

(III) Whether, in view of the disagreement in part regarding the finding recorded with respect to Charge no. (i) by the inquiry officer, the disciplinary authority ought to have intimated the petitioner

regarding the reasons of the disagreement and, upon consideration of his reply only, he could have recorded his finding or proceeded to record final punishment?

All the aforesaid issues, being intertwined, are being considered together.

The Apex Court in **Kunj Behari Misra(supra)** has dealt with the relevant issue in detail. While doing so, it has also discussed the case of **Managing Director, ECIL v. B Karunakar[(1993) 4 Supreme Court Cases, 727]** as a question arose after Forty-second Amendment of the Constitution that when the inquiry officer was other than the disciplinary authority, which is the fact in the case in hand also, whether the delinquent was entitled to get a copy of the report of the inquiry officer before the disciplinary authority takes a decision on the question of guilt of the delinquent? In that case also, it was sought to be contended that the right to show-cause against the penalty proposed to be levied had been taken away by the Forty-second Amendment of the Constitution, therefore, there was no necessity of giving the delinquent a copy of the inquiry report before the disciplinary authority took the final decision as to whether to impose a penalty or not. Explaining the effect of Forty-second Amendment the Constitution Bench at page 755 in **B. Karunakar(supra)** observed

as under:

"All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges." The Court explained that the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, the enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. It is the second right which was taken away by the 42nd Amendment but the right of the charged officer to receive the report of the inquiry officer was an essential part of the first stage itself. This was expressed by the Court in the following words:

"26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry



officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority that would not constitute an additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."

It has also been held in **Kunj Behari Misra (supra)** that even if the inquiry officer has given adverse finding, as per **Karunakar's case**, the first stage ends only when the disciplinary authority arrives at its conclusions on the basis of evidence, the inquiry officer's report and the delinquent employee's reply to it even when an opportunity was granted earlier by the inquiry officer. The first stage of inquiry is not completed till the disciplinary authority records its finding in the aforesaid manner. The relevant passages from the aforesaid decision are quoted as under:

"18. Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the



enquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in Karunakar's case.

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

In Yoginath D. Bagde (supra), the decision rendered in

Kunj Behari Misra (Supra) came to be considered by the Apex Court and it was held that requirement of affording opportunity of hearing as held in **Kunj Behari Misra (supra)**, being in consonance with Article 311 (2) of the Constitution, has to be read into a rule which does not make specific provision to this effect.

From perusal of the aforesaid judicial pronouncements, it is apparent that the Supreme Court has held that the effect after the 42nd Amendment of the Constitution would be to advance the stage at which the representation of the employee against the inquiry officer's report would be considered. Now, after the aforesaid Constitutional Amendment, the disciplinary authority has to consider the representation of the employee against the inquiry report before it arrives at its conclusion with regard to his guilt or innocence.

In my view, the aforesaid has not been followed by the disciplinary authority as, without seeking the comment of the delinquent petitioner on the findings recorded by the inquiry officer by sending a copy of the inquiry report to him, straightway findings have been recorded by it either inconsonance or in difference with the inquiry report. In my view, that would be against the Principles of Natural Justice. Though the procedure in such a detail has not been recorded in the Regulations as nothing has been stated as to



how the matter would proceed after submission of the enquiry report before the disciplinary authority but, in view of a decision of the Apex court rendered in **Yoginath D. Bagde (supra)**, that has to be necessarily read into a rule which does not make specific provision to this effect. A Single Bench of this Court also in **Yogendra Prasad Singh(supra)** has held that in case disciplinary authority disagrees with the findings of the enquiry officer he ought to have issued a notice to the delinquent giving out his reasons for which he is in disagreement.

By way of last attempt, Mr. S.D. Sanjay submitted that the officers and employees of the Bank cannot be termed as employees under Civil Services of the State and, as such, the provisions contained in Article 311 (2) of the Constitution would not be applicable in the case of the Bank's employees. However, he forgets that if it is accepted then the situation would become worse for him as, in such a situation, in case the Article 311(2) after the 42nd Amendment of the Constitution would not be applicable in the case of the Bank employees then a show cause notice would have to be issued twice, i.e., before taking any decision on the inquiry report and then again on the proposed punishment. He also forgets that in **Kunj Behari Misra (supra)** also an employee of Punjab National Bank was contesting the matter and in that case it has been held that



for compliance of the Principles of Natural Justice, it would be required by the disciplinary authority to send a copy of the enquiry report to the delinquent for his comment before it reaches to any conclusion and records its final finding upon guilt. It has also been held that in case of difference with the enquiry officer then again a notice would be required to be sent asking for comment of the delinquent employee on that and then only he can record his final finding.

However, in the present case, the disciplinary authority has straightway recorded its finding without asking comments of the delinquent and issued show-cause notice on the proposed punishment. He has partly disagreed with the findings recorded by the enquiry officer so far Charge no.1 is concerned but on that also he had never issued notice. Though he had recoded reasons for disagreement but the delinquent was never given any opportunity to comment on it. The appellate authority has also not applied its mind in view of the aforesaid judicial pronouncements which holds the field till date

In my view, both the impugned orders cannot be sustained and the same are quashed and set aside. The matter is remitted back to the disciplinary authority for fresh consideration.

However, since copy of the inquiry report is already in

possession of the petitioner, the disciplinary authority would be at liberty to ask for comment of the petitioner upon the finding of the enquiry officer straightway and, thereafter, he would proceed in accordance with law.

This application stands allowed.

Till a final decision is taken, since the petitioner was already suspended, he will remain under suspension and, for the concerned period, he would be entitled for subsistence allowance also in accordance with law.

(Dr. Ravi Ranjan, J)

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