

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16931 of 2008

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i. Sushila Devi wife of Late Mahendra Ram.
ii. Mukesh Kumar Ram
iii. Amit Kumar Ram
iv. Arun Kumar Ram sons of Mahendra Ram.
v. Puja Kumari
vi. Dipti Kumari d/o Mahendra Ram.
All resident of village Araria R/S/ Ward no.5 P.S. and District Araria.
..... Petitioner/s

Versus

The State Bank of India & Ors
..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siya Ram Sahi, Adv.
Mr. Vishwambhar Prasad, Adv.
Mr. Shambhoo Prasad Baranwal

For the Bank : Mr. K.K.Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

10 08-01-2015 Heard learned counsel for the petitioner and the
Respondent s.

In the present case, the original petitioner has challenged the order of dismissal dated 20th March 2007 issued under the signature of the General Manager, (Network-I), State Bank of India, Local Head Office, Patna, respondent no.3 and also the order dated 20th September 2007 issued under the signature of Chief General Manager, SBI, Local Head Office, Patna whereby the appeal of the petitioner has been dismissed and the order of penalty inflicted by the Disciplinary authority has been confirmed.

The original petitioner was appointed as Clerk cum-cashier in the State Bank of India on 7th September 1981 and later on he was promoted as Junior Management Grade-I with

effect from 1st August 1989 and lastly he was transferred to Chanda Branch, District Araria as Junior Manager, Grade-I and while discharging his duties there, a proceeding was initiated against him making allegation of laches in discharge of his duties.

The enquiry proceeding was conducted, there the charges were found proved but the enquiry Officer has recorded his finding which is as follows:

“I have gone through the entire set of Bank’s and defiance documents, submission and deposition of Bank and defence as well. Here it is needless to mention that the P.O. could not present the require material as well as supportive evidences in support of his stand to rightfully substantiate all the allegations, as discussed pointwise, in the report. No doubt the CSO acted on his own, being that newly appointed Branch Manager posted in a remote place and entertained the transactions out of sheer good faith and lack of knowledge as agreed to by the defence also. There was none to help him. These all were carried out by him to book business for the Bank. The removal of Bank’s documents from his custody indicates, as observed, that it has intentionally been done by the insider to protect the

interest of fraudster. The charged officer became victim of fraudster mainly due to lack of promptitude/cautions approach ab initio while handling such situation in a remote area which is not even found connected with telephone line. His complicity with the fraudster is nowhere finding place. No doubt fraud had taken place at the branch due to laxity/ non-application of mind by the SCO.”

The Disciplinary Authority considered the enquiry report and passed order of punishment of dismissal against him.

Being aggrieved by the order of dismissal the original petitioner filed an appeal and the appellate authority on 20th September 2007 rejected the appeal.

The appellate authority while considering the appeal of the petitioner was required to examine the case of petitioner as well as the ground that has been taken in his Memorandum of appeal. After going through the order of the appellate authority, this Court finds that though the order has been passed in seven pages, but upto six pages he has discussed the case of petitioner but did not assign any reasons why he has rejected the defence of petitioner and the order does not show the authority has applied his mind to the matter in issue.

The Hon'ble Supreme Court in the case of

Chairman, Disciplinary Authority v. Jagdish Sharma 2009(3) LLJ 624 the Hon'ble Supreme Court held, appellate authority was required to pass a reasoned order disclosing application of mind. It is necessary to quote Para-8 to 12 of the judgment which is as follows:

Para-8: In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact the said decision in State Bank of Bikaner & Jaipur and Others v. Prabhu Dayal Grover (supra) has it self stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority. The view we are taking was also taken by this Court in Divisional Forest Officer Kothagudem v. Madhusudan Rao, 2008-11-LLJ-671,

and in Madhya Pradesh Industries Ltd. V. Union of India, AIR 1976 SC 1785 etc.

Para-9. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

Para-10. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee v. Union of India, AIR 1990 SC 1984: (1990) 4 SCC 594 is that people must have confidence in the judicial or quasi judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not ? Also giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi judicial order, even if it is an order of affirmation.

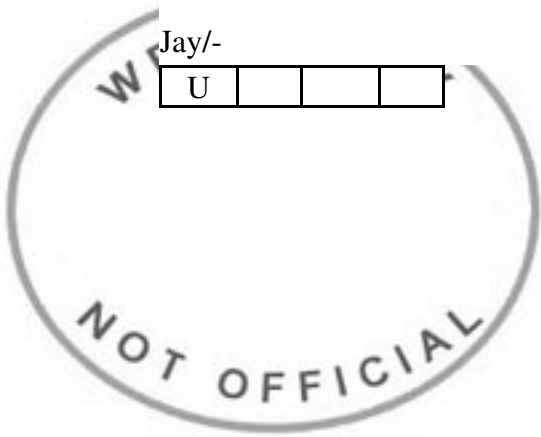
Para-11. No doubt in S.N.Mukherjee v. Union of India (supra) it has been observed (vide para 36) that: “..The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contain^{34d} in the order under challenge.”

Para-12. The above observation, in our opinion, really means that the order of affirmance need not contain an elaborate reasoning as contained in the order of the original authority, but it cannot be understood to mean that even brief reasons need not be given in an order of affirmance. To take a contrary view would mean that appellate authorities can simply dismiss appeals by one line orders stating that they agree with the view of the lower authority”.

In view of the judgment of the Hon’ble Supreme Court, this court finds that the appellate authority has not discharged his duty while disposing of the Memorandum of appeal as he has not given any reason and only discussed the case of petitioner without considering grounds taken in appeal by the petitioner.

In this view of the matter, the order dated 20th March 2007 passed by the appellate authority is quashed and the matter is remanded back to the appellate authority with a direction to consider the case of petitioner and pass order in accordance with law. However, before parting with the judgment, it is directed that while considering the case of petitioner, the appellate authority will examine the conclusion arrived at by the enquiry Officer and will pass order in accordance with law.

With the aforesaid observation/direction this petition
is allowed.



(Shivaji Pandey, J)