IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10640 of 2007

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Binod Tiwary, son of Late Govind Tiwary, resident of village and P.O. – Pomdil, P.s. Kurtha, district -Arwal at present resident of village Rajiv Nagar, Road No. 15, P.S. digha District Patna

.... Petitioner/s

Versus

1. The Allahabad Bank through its Chief General Manager, Zonal office, Buddha marg, Patna
2. The Chief General manager, Allahabad Bank, Zonal Officer, Buddha Marg, Patna
3. The General Manager cum Reviewing Authority, Allahaband bank, Zonal Office Buddha Marg, patna
4. The Deputy General Manager cum Disciplinary authority Zonal Office Buddha Marg, Patna
5. The Assistant General manager cum Disciplinary authority Allahabad Bank Regional Office, Buddha Marg, Patna
6. The Presenting Officer cum Enquiry Officer, Regional office, Allahabad Bank, Buddha, marg, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : None

For the Respondent/s : Mr. Ajay Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 21-06-2016

The petitioner, invoking writ jurisdiction of this court under Article 226 of the Constitution of India, has prayed for the following reliefs:-

> ***"(i) For issuance of an appropriate writ in the nature of certiorari for quashing the order dated 24.2.2005 passed by the respondent no. 3 content in his reference No. HO/PA/DC/05/153, whereby and whereunder the respondent no. 3 has been pleased to reject the review petition dated 4.1.05 filed by the petitioner against the order dated 24.10.04 passed by the respondent no. 4 without***

applying any judicial mind.

(ii) For issuance of an appropriate writ in the nature of certiorari for quashing the order dated 14.10.2004 passed by the respondent no. 4 contained in his reference No. RO/PAT/VIG/293/200 whereby and whereunder the respondent no. 4 has been pleased to reject the appeal filed by the petitioner against the order dated 9.8.03, passed by the respondent no. 5 without applying the judicial mind in proper way.

(iii) For issuance of an appropriate writ in the nature of certiorari for quashing the order dated 9.8.03 passed by the respondent no. 5 contained in his reference No. RO/PAT/VIG/293/143 dated 9.8.03 whereby and whereunder the respondent no. 5 has been pleased to impose penalty of dismissal from Bank service of the petitioner with immediate effect without going through the real facts and circumstances of the case as well as without applying proper judicial mind in rational way.

(iv) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the respondent authority to reinstate the petitioner in service after quashing all the aforesaid order and further for issuance of a direction to the respondent authority to pay all the consequential benefit including the arrears of salary except the subsistence allowance which has already been paid during departmental proceeding.

(v) For issuance of an appropriate writ in the nature of MANDAMUS, commanding and directing the respondent authority to pay the regular salary of the petitioner after reinstatement in service.

(vi) For issuance of any other appropriate writ / writs, order/ orders, direction / directions against the petitioner for which he shall be found entitled under the facts and circumstances of the case."

Short fact of the case is that the petitioner, while posted as Branch Manager, Kurtha Branch in the Allahabad Bank, was proceeded departmentally for serious charges. The charges are as follows:-

> ***"1. Shri Binod Tiwary while posted and functioning as Manager at the Bank's Kurtha Branch during the period 16.06.1997 to 15.06.2000 acted fraudulently with malafide intention of providing undue financial accommodation to a customer of the branch in so far as he made a fictitious credit entry of Rs. 565300/- in the account of the customer to create margin of loans allowed to him in an irregular manner.***
>
> ***2. The said Shri Binod Tiwary during the aforesaid period at the above branch acted in a most irregular manner in so far as he allowed a car loan Rs. 2.11 lacs to a customer without obtaining security / security documents and even without passing necessary voucher as also without opening relative pronto account.***
>
> ***3. The said Shri Binod Tiwary during the aforesaid period at the above branch acted in a most irregular manner with malafide intention of providing undue financial accommodation to a customer in so far as he issued a demand draft for Rs. 241000/- for purchasing a tractor without receiving consideration there against. He also falsified / manipulated books / records of the Branch to conceal his irregular acts.***
>
> ***4. The said Shri Binod Tiwary during the aforesaid period at the branch acted in a most irregular manner in so far as he***

allowed tractor loans to three borrowers to the extent of Rs. 728300/- without preparing / passing necessary vouchers, without realizing margin money for the loans so allowed and even without opening relative accounts in the books of the branch.

5. The said Shri Binod Tiwary during the aforesaid period at the above branch acted dishonestly in so far as he misappropriated Rs. 248812/- deposited by a customer for purchasing a demand draft of like amount for his own pecuniary gain.

6. The said Shri Binod Tiwary during the aforesaid period at the above branch acted dishonestly for his own pecuniary gain in so far as he misappropriated Rs. 90000/- deposited by a customer for purchasing demand draft.

7. The said Shri Binod Tiwary during the aforesaid period at the above branch acted in a most irregular manner with mlafide intention of providing undue financial accommodation to a customer, Shri Surendra Rai in so far as he allowed drawing in his account far in excess of sanctioned limit /security available besides making payments without debiting account. For the purpose he also manipulated books /records of the branch. As a result the account has become sticky and the Bank's funds to the extent of Rs. 7.00 lacs has been exposed to jeopardy.

8. The said Shri Binod Tiwary during the aforesaid period at the above branch acted fraudulently with malafide intention of providing undue financial accommodation to the parties in so far as he created fake security in the form of fake FDRs sum today of Rs. 6.75 lacs and allowed credit

limits of Rs. 5.50 lacs against such fake FDRs.

9. The said Shri Binod Tiwary during the aforesaid period at the above branch acted in a most irregular manner with malafide intention of providing undue financial accommodation to certain persons so much so that he allowed them withdrawals without actually opening accounts in their names.

10. The said Shri Binod Tiwary during the aforesaid period at the above branch acted irregularly and un-authorisedly in so far as he allowed a loan to the Clerk Cum Cashier of the branch without obtaining security / security documents and even without opening account in his name. He also accepted cash against the unaccounted entry of advances so allowed.

11. The said Shri Binod Tiwary during the aforesaid period at the above branch acted irregularly in flagrant violation of the laid down norms and procedure of the branch in so far as he allowed opening of Savings Bank account No. 2226A of Gopal Prasad without photograph and without introduction as also allowed operation in the account without authority of the account holder.

12. The said Shri Binod Tiwary during the aforesaid period at the above branch acted dishonestly for his pecuniary gain in so far as he altered the amount of cheque drawn by a customer from Rs. 105000 /- to Rs. 165000/- and kept the excess amount of Rs. 60000/- for himself.

13. The said Shri Binod Tiwary during the aforesaid period at the above branch misused his official position and acted

fraudulently in so far as he allowed a loan of Rs. 48000/- in an irregular manner and then tried to liquidate the account by way of altering the amount of credit as also by making false credit entries in the account.

14. The said Shri Binod Tiwary during the aforesaid period at the above branch acted fraudulently with malafide intention of providing pecuniary benefit to some unknown persons at the Bank's cost in so far as he allowed payment in cash as well as by transfer of funds without any instrument and without actually posting the entries in any personal account. Thus Shri Binod Tiwary affected all such payments and transfers out of the Banks' fund.

15. The said Shri Binod Tiwary during the aforesaid period at the above branch acted fraudulently in so far as accepted deposits from unknown persons without having account in their names and kept the amount with the Branch in an unauthorized manner.

16. The said Shri Binod Tiwary during the aforesaid period at the above branch acted in a mot irregular manner with fraudulent intention in so far as to conceal the anomalous entries created by him, he manipulated / falsified the advance sheet of the branch by way of reporting concocted figures as also by way of incorporating non existent / imaginary amounts.

17. The said Shri Binod Tiwary during the aforesaid period at the above branch acted dishonestly in so far as he did not account for the cash deposited by the borrowers towards repayment of installments in the books of accounts.

18. The said Shri Binod Tiwary during the aforesaid period at the above branch acted dishonestly in so far as he received cash on behalf of the Bank but did not account for the money so received and misappropriated the same for his personal use.

19. The said Shri Binod Tiwary during the aforesaid period at the above branch failed to discharge his duties with integrity, devotion and in his best judgment in so far as he resorted to misrepresentation in respect of facts and figures of the branch to his Controlling Office. For the purpose he made various alterations / manipulations in the General Ledger and thus falsified the books /records of the branch."

Before initiating departmental proceeding the petitioner was noticed. Thereafter, he filed representation and finally Conducting Officer was appointed. Following all the procedures the departmental proceeding proceeded and Enquiry Officer submitted its report. During enquiry by the Conducting Officer several serious charges were got proved, some of the charges were partly proved. The enquiry report was also communicated to the petitioner and finally the disciplinary authority vide order dated 9.8.2003 passed order for dismissal of the petitioner from the Bank's service. After order of dismissal the petitioner preferred Appeal. Thereafter, by a reasoned order the Deputy General Manager & Appellate Authority rejected the Appeal. The petitioner after rejection of the Appeal again filed a review petition, which too was rejected vide order contained in Annexure – '3' to the writ petition. After rejection of the review petition the present writ petition was filed on 18.8.2007. Earlier, repeatedly none appeared on behalf of the petitioner. Thereafter, vide order dated 25.6.2013 the writ petition stood dismissed due to non -prosecution. Subsequently, the writ petition was got restored and again after restoration there was non -appearance yesterday and today again none has appeared on behalf of the petitioner, whereas Sri Ajay Kumar Sinha, learned counsel for the respondent / Allahabad Bank is present. On perusal of the charges the court is of the opinion that on such charges besides initiating departmental proceeding against the petitioner the Bank was also at least required to initiate criminal prosecution. However, to the reasons best known to the Bank, it appears that no such action was taken nor any counter affidavit has been filed. In the present writ petition some of the charges showing commission of criminal offence is required to be reiterated hereinbelow:-

> ***"1. Sri Binod Tewary, the Charged Officer fraudulently and with malafide intention provided financial accommodation to a customer by making a fictitious credit entry of Rs. 565000/- in his SB account no. 2220 to meet the requirement of margin of a loan allowed to him irregularly.***

2. He allowed car loans for Rs. 2.11 lacs to a borrower without obtaining documents, passing necessary vouchers and even without opening relative pronote account in the books of the Bank

3. He issued a demand draft for Rs. 241000/- to a borrower for purchasing of Tractor without receiving a consideration there against. He also falsified / manipulated books of the Bank to conceal his irregular acts.

4. He allowed Tractor loans in three accounts sum total Rs. 7.28 lacs without preparing, passing vouchers, without realizing margin money for the loan so allowed and even without opening loan account in the books of the bank.

5. He acted dishonestly for his own pecuniary gain in so far as he misappropriated Rs. 90000/- deposited by a customer for purchasing demand draft.

6. He allowed overdrawing in the cash Credit a/c of a customer far excess to the sanctioned limit besides made payments without actually debiting the concerned account. For this purpose he manipulated books/records of the Bank.

7. The said Sri Binod Tewary acted with malafide intention of providing undue financial accommodation to certain persons so much so that he allowed withdrawals without actually opening account in their names.

8. The said Sri Binod Tewary received cash from the various account holders

> ***and misappropriated the same for his personal use.***
>
> ***9. He made a number of alteration / manipulation in the General Ledger to conceal the facts from the controlling office."***

The record suggests that departmental proceeding was proceeded in accordance with law providing full opportunity to the petitioner to participate in the departmental proceeding and in agreement with the report of the Conducting Officer the disciplinary authority passed the order of dismissal. The order of dismissal i.e. Annexure – '1' to the writ petition categorically speaks about the reasons and also clarifies that enquiry was conducted in accordance with law. The Enquiry Officer submitted his report on 25.4.2003. A copy of the same was sent to the Charged Officer vide letter dated 7.5.2003 which was received by him and he also submitted his comment on the enquiry report on 28.5.2003. The disciplinary authority has observed that enquiry has been conducted in accordance with the provisions laid down in the Bank's Regulation. The Charged Officer participated in the departmental proceeding along with defence. He was provided reasonable opportunity to defend his case. Accordingly, the disciplinary authority was satisfied that the principle of natural justice was fully observed during the course of enquiry. The order of the disciplinary authority was assailed by the petitioner, which too was rejected assigning detailed reason. Thereafter, review petition too stood rejected. The petitioner in the writ petition assailing the orders has raised the following questions of law:-

> ***"(i) WHETHER the action of the respondent authority is illegal, arbitrary, malafide, unreasonable and untenable in law?***
>
> ***(ii) WHETHER the action of the respondent authority is justified to terminate the petitioner from service for the allegation of pitty charges?***
>
> ***(iii) WHETHER the action of the respondent authority is justified to award major punishment for minor and pitty charges?***
>
> ***(iv) WHETHER the action of the respondent authority is justified to terminate the petitioner from the service without applying any judicial view and mind?***
>
> ***(v) WHETHER the action of the respondent authority is otherwise bad in law?"***

Once in a departmental proceeding principles of natural justice is followed and delinquent is allowed to participate in the same, unless and until there is an allegation that departmental proceeding was proceeded contrary to the provisions particularly the principles of natural justice, only then the order of the disciplinary authority can be examined while exercising the power of judicial review under Article 226 of the Constitution of India. The order of the disciplinary authority has already been approved by the Appellate Authority and review petition too was rejected. After rejection of the review petition and in view of facts and circumstances of the present case the court is satisfied that no writ can be issued in favour of the petitioner.

The writ petition stands dismissed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23-06-2016
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