IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.785 of 2013

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Muneshwar Choudhary son of Late Lal Bihari Choudhary Resident of Mohalla- Bagdulhan, P.O.- Hajipur, P.S.- Hajipur Town, District- Vaishali

.... Petitioner/s

Versus

1. The Uttar Bihar Gramin Bank, through its Chairman, Head Office Kalambagh Chowk, Muzaffarpur
2. The Board of Directors, through the Chairman, Uttar Bihar Gramin Bank, Kalambagh Chowk, Muzaffarpur
3. The Chairman, Uttar Bihar Gramin Bank, Kalambagh Chowk, Muzaffarpur

.... Respondent/s

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Appearance:
For the Petitioner/s : Mr. ABHINAV SRIVASTAVA, Advocate
For the Respondent/s : Mr. PRABHAKAR JHA, Advocate
Mr. Shankar Kumar Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 22-09-2016

Heard Mr. Abhinav Srivastava, learned counsel appearing for the petitioner and Mr. Prabhakar Jha, learned counsel for the Bank.

With the consent of the parties the writ petition has been heard and is being disposed of at the stage of admission itself.

The petitioner is aggrieved by the order dated 13.1.2012 whereby the appeal filed by the petitioner has been rejected by the Board of Directors of the Uttar Bihar Gramin Bank (hereinafter referred to as the 'Bank') as communicated under the signature of the General Manager thus confirming the dismissal order dated 23.10.2010 passed by the disciplinary authority-cum-Chairman of the

Bank impugned at Annexure-8 to the writ petition which also accompanies the administrative order passed pursuant thereto. Copies of the order passed by the disciplinary authority and the appellate authority are impugned at Annexure-8 and 12 to the writ petition.

The petitioner at the relevant time held the post of Branch Manager and of the four charges set up, charge nos. 1 and 2 relate to his posting at Chamarhara Branch and charge nos. 3 and 4 relate to his tenure at Raghopur Branch. The memorandum of charges dated 24.9.2009, a copy of which is annexed at Annexure-2 charges the petitioner on the following counts:-

(a) Shortage of Rs. 30,000/- found during the course of inspection by the audit team held on 18.5.2009;

(b) Unauthorized absence for the period 21.5.2009 to 01.6.1999 without obtaining permission / sanction of leave;

(c) Premature payment as against MMDC Account No. 1431 without authorization as well as of fraudulent withdrawal of the amount from the account; and

(d) Fraudulent withdrawal of Rs. 10,000/- by forging the signature of the account holder of KCC Account No. 49.

The petitioner filed his reply refuting the allegations, a copy of which is present at Annexure-3. An enquiry was held, the report of which is present at Annexure-5 holding the charges proved and which has led to passing of the order of penalty impugned at Annexure-8 and

12 respectively. The petitioner feeling aggrieved is before this Court.

Mr. Abhinav Srivastava, learned counsel appearing for the petitioner has submitted that the findings of the Enquiry Officer as well as its acceptance by the disciplinary authority are a perversity for there is no evidence connecting the petitioner with the alleged charge. While discussing the charge individually Mr. Srivastava has explained charge no. 1 regarding shortage of Rs. 30,000/- by submitting that Assistant Lakhindra Sah has admitted to the lapse and had also deposited the amount on 18.5.2009. Insofar as the allegation of unauthorized absence is concerned, it is submitted that it was duly informed by a written application, however, no such application is on record. Responding to charge no. 3, he submits that there is no allegation made by the complainant against the petitioner and in absence of which the charges have been wrongly upheld against the petitioner. The same explanation is also given for charge no. 4 referring to absence of evidence. In sum and substance the argument of Mr. Srivastava is that the findings are based on no evidence and he relies upon a judgment of the Supreme Court reported in **AIR 1964 SC 364 (Union of India vs. H.C. Goel)** in support of his submission.

The argument of Mr. Srivastava is contested by Mr. Prabhakar Jha who has also produced the file of the proceedings in support of the findings and to submit that in view of such gross financial default in the two branches of which the petitioner happened to be the Branch In-Charge, he cannot escape the punishment and has to own the responsibility. It is submitted that the allegation of shortage of fund was confirmed during the inspection and a mere acceptance of the guilt by the Assistant would not absolve the petitioner of the charge as he was the Branch Manager and the same would be the answer to the charge relating to fraudulent withdrawals. He submits that there are sufficient evidence on the record of the proceedings to drive home the charges.

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

Of the four charges levelled against the petitioner three are on account of financial irregularities. Though much stress has been put by Mr. Srivastava as to the delay in institution of proceedings but in my opinion if there be a financial lapse in dealing with public money, then a mere delay, cannot condone the lapse. It is under the orders of this Court that the records of the proceedings have been produced and which reflects a really gory picture insofar as the petitioner is concerned. A series of complaints are made against the financial handling of the petitioner which finds place in the proceedings. It is on the repeated complaints of the account holder Lalti Devi as regarding the fraudulent withdrawal from her account with specific allegation against this petitioner that the bank administration ultimately rose from slumber. I am rather surprised that even though such financial irregularities were complained of against the petitioner, yet the Bank Administration took no recourse and it is only when the account holder threatened the management of taking recourse to court remedy that they have woken from the slumber to draw the proceedings. In fact the petitioner intends to take refuge in the delayed action taken by the bank administration to act on the complaint of the account holder to question the proceedings. In my opinion there is absolutely no delay in initiation of the proceedings rather the delay is explained in the proceedings itself.

The argument of Mr. Srivastava regarding absence of evidence and that the required documents were not supplied to the petitioner in advance, cannot condone the conduct of the petitioner in the enquiry where the Enquiry Officer gave sufficient opportunity to the petitioner to refute the allegations but he did neither choose to contest the same nor did he make any prayer for supply of any documents.

In view of the undisputed position where the petitioner himself has not chosen to contest the proceedings, he cannot question the proceedings either on the issue of non-supply of documents which were never asked by the petitioner or on denial of opportunity.

As I have said the records of the proceedings are before this Court and the complaints made by the Account holders which are foundation for charge nos. 3 and 4 are sufficient confirmation of the misdeeds committed by the petitioner in withdrawing money from the holders account without authority of law. The charge is very serious and there is no explanation to the default. In fact even the bank administration are at fault in taking delayed action against the petitioner despite persistent complaints of the account holders.

The officers/staff of a bank are repositories of public trust and stand accountable for even a slightest breach in the official discharge having financial implications. Withdrawing money from the account of a customer without his knowledge, is the worst form of breach and uncondonable.

For the reasons and discussions aforementioned, I find no infirmity either in the enquiry report or in the orders impugned warranting interference.

The writ petition is dismissed accordingly.

(Jyoti Saran, J)

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