

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.307 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 3944 of 2008

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Ram Bilas Vishwakarma S/o Late Haribansh Vishwakarma R/o Hare Ram Mandir
Road, Mohalla Durgapur, P.O. Durgapur, P.S. Katihar, District Katihar.

.... Appellant/s

Versus

1. Chairman Cum Managing Director, Central Bank of India, having office at Chandramukhi. Nariman Point. Mumbai-400021, Maharashtra.
2. Appellate Authority designated Shri P. Padamabhan Dr. GM. to be served through Zonal Manager, Patna Zonal Office, Block B, 2nd Floor, Maurya Lok Complex, Dakbanglow Road, Patna, P.S. Kotwali, Patna.
3. Disciplinary Authority designated Shri C.P. Pathak, Chief Manager, Central Bank of India, Patna Zonal Office, Block B, 2nd Floor, Maurya Loke Complex, Dakbanglow Road, Patna, P.S. Kotwali, Patna at present posted as Principal, CBOTC, Bhopal to be served through Zonal Manager, Patna Zonal Office, Block B, 2nd Floor, Maurya Loke Complex, Dakbanglow Road, Patna, P.S. Kotwali, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bindhyachal Singh, Advocate
Mr. Ram Binod Singh, Advocate

For the Respondent/s : Mr. Ajay Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 05-05-2016

I.A.No. 1360 of 2015

This interlocutory application has been filed for

condonation of delay of 67 days in preferring the present appeal.

In view of the reasons assigned in this application and submission made in support thereof, the delay in preferring the appeal is condoned.

IA No. 1360 of 2015 stands disposed of.

L.P.A. No. 307 of 2015

The order dated 31.07.2014 passed by the learned Single Bench in CWJC No. 3944 of 2008 is the subject matter of the present Letters Patent Appeal. The learned Single Bench has not interfered with the order of punishment imposed by the disciplinary authority on 09.08.2007 which was affirmed by the appellate authority by order dated 29.09.2007.

While working at Katihar Branch of Central Bank of India as Assistant Manager, the appellant was served with charge-memo dated 15.09.2005. The charges are as under:-

“(1) Shri Vishwakarma, who is also Secretary of a Co-operative Society named Central Bank Karmachari Credit Co-op Society Ltd., along with other officer bearer of the said co-op society misused the Central Bank’s name to encash its reputation and goodwill for the benefit of the co-op. society which is highly detrimental to the interest of the bank.

(2) He, in connivance with Sri K K Lal, B M Souria cheated the bank by raising loans from two different branches (i.e. Katihar and Soria) on the same securities (6” MMDCS of B/O Rly. Colony Katihar. He, thus, acted fraudulently with malafide intention.

(3) He influenced bank's officials for sanctioning of CC limit Rs. 5 lacs for his son. The loan was sanctioned without proper appraisal and the limit was arrived on the basis of unrealistic figures without verifying the actual ones.

(4) He abused his position of Secretary in the said co-operative society and availed huge amount of loans against the norms of the co-op. society to gain pecuniary benefit.

(5) He brought disrespect to the bank."

On the basis of the statement of charges, an enquiry officer was appointed to enquire into the correctness of the charges levelled against the appellant. The enquiry officer gave his report on 29th April, 2006. The enquiry officer found charge nos. 3 and 4 as not proved, while charge nos. 1, 2 and 5 stands proved. The disciplinary authority communicated the report of the enquiry officer on 18.05.2006. On receipt of the reply of the appellant, the appellant was served with disagreement note on 26.06.2006 communicating the disagreement with charge nos. 3 and 4. Another opportunity was given to the appellant to file his response which was filed vide Annexure-17 on 30.6.2006.

After considering the reply, the disciplinary authority passed the order of punishment on 09.08.2007 imposing punishment of dismissal which ordinarily be a disqualification for future employment in respect of charge nos. 1, 2, 3 and 5, whereas punishment of compulsory retirement in terms of Regulation 4(h) of



Central Bank of India Officers Employees (Discipline and Appeal) Regulations, 1976 was imposed in respect of charge no. 4. The consolidated punishment awarded was dismissal which ordinarily be a disqualification for future employment. The punishing authority, after dismissing the response of the appellant against each of the charges, inter alia, had given the following findings:-

“I have gone through the findings of the Inquiring Authority and submission made by Mr. Vishwakarma on the findings carefully. I have also analyzed briefs submitted by both the parties and examined the enquiry proceedings critically on the basis of evidences produced during the course of enquiry. I find that the Inquiring Authority has held Charge No. 1, 2 and 5 as “Proved” Charge No.3 & 4 as Not Proved. While I concur in general, with the findings of Inquiring Authority in holding charges against Mr. Vishswamarka as Proved and Not Proved, there are certain points which forced me to disagree with the rationale and conclusion in holding charges no. 3 & 4 as not Proved. The findings of proving charges no. 3 & 4 have been sent to Mr. Vishwakarma for his submission. The reply/submission submitted by Mr. Vishwakarma in respect of Charge No. 3 & 4 are not tenable and repeated which were delivered during enquiry proceedings.”

The appeal against the order of punishment was dismissed vide the order Annexure-20 on 29th September, 2007.

The learned Single Bench has not found any procedural irregularity or violation of the principles of natural justice in the disciplinary proceedings. Consequently, the learned Single Judge

dismissed the writ petition.

Still aggrieved, this appeal is filed before this Court.

Learned counsel for the appellant has vehemently argued that the disciplinary authority has not considered the explanation submitted by the appellant while imposing the punishment which vitiates the order of punishment. It is also argued that the findings on charge no. 2 are perverse. The enquiry officer has recorded contradictory findings inasmuch as it has recorded that the appellant fraudulently indulged in availing demand loan against the same securities. However the intention was not malafide as the proceeds was immediately (on the same day) deposited at B/O Katihar in O/D A/C 2657 from where the securities were taken for renewal. Thus, it is argued that the findings on charge no. 2 are perverse and not tenable. He relies upon the judgment of the Hon'ble Supreme Court in the case of **Bhagat Ram vs. State of Himachal Pradesh & Ors. [(1983) 2 SCC 442]**.

It is also argued that the appellant was not served with another notice before imposing the punishment which vitiates the disciplinary proceedings. Reliance is placed on the judgment of the Apex Court in the case of **Lav Nigam vrs. Chairman & MD. ITI Ltd. & Another [2006) 9 SCC 440]**.



We have heard learned counsel for the parties and found no merit in the present appeal. In respect of the first argument that the explanation was not considered it is suffice to say that the enquiry officer has passed a detailed order considering the defence of the appellant. The appellant had adequate opportunity to lead evidence before the enquiry officer and the enquiry officer which the enquiry officer has considered in detail. The same plea as was raised before the enquiry officer was raised as defence in reply to show cause notice as defence. Therefore, the punishing authority was not required to repeat the defence and reasoning of rejecting such defence again by the learned disciplinary authority. The disciplinary authority was aware of the defence and has also taken note of the defence by passing the order of removal. Therefore, the argument that the explanation of the appellant was not taken into consideration while imposing the punishment is not made out.

In so far as the second argument on charge no.3, we find that such argument is not tenable. The charge against the appellant was that in connivance with some others he cheated the bank by raising loans from two different branches on the same securities and thus acted fraudulently with malafide intention. The enquiry officer has found that the action of the appellant was fraudulent but not with



malafide intention. Therefore, it cannot be said to be contradictory findings which can be said to be perverse. The disciplinary authority has imposed punishment in respect of each charge of dismissal which is ordinarily be a disqualification except charge no. 4, which is of compulsory retirement. Therefore, though there is no perversity in the findings recorded but even if there is some irregularity, punishment on the other charges is also to the effect that the appellant is of dismissal with bar from future employment. Therefore, we do not find that any case for interference is made out in exercise of writ jurisdiction.

In fact, the Constitution has undergone change after 42nd amendment, when Article 311(2) was amended and the requirement to serve second show cause in respect of punishment was omitted. Such provisions have been examined by the Constitution Bench in *ECIL v. B. Karunakar, (1993) 4 SCC 727*, where the provision before and amendment has been discussed. The relevant extract reads as under:-

“24. Since the Government of India Act, 1935 till the Forty-second Amendment of the Constitution, the Government servant had always the right to receive the report of the enquiry officer/authority and to represent against the findings recorded in it when the enquiry officer/authority was not the disciplinary authority. This right was however, exercisable by him at the second stage of the disciplinary proceedings viz., when he was served with a notice to show cause against the proposed penalty. The issuance of the notice to show cause against the penalty necessarily required the furnishing of a copy of the enquiry officer’s report since, as held by the Courts, the right to show



cause against the penalty also implied the right to represent against the findings on the charges. This was considered to be an essential part of the ‘reasonable opportunity’ incorporated earlier in Section 240(3) of the GOI Act and later in Article 311(2) of the Constitution as originally enacted.....

25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment.

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33. Questions (vi) and (vii) may be considered together. As has been discussed earlier, although the furnishing of the enquiry officer’s report to the delinquent employee is a part of the reasonable opportunity available to him to defend himself against the charges, before the Forty-second Amendment of the Constitution, the stage at which the said opportunity became available to the employee had stood deferred till the second notice requiring him to show cause against the penalty, was issued to him. The right to prove his innocence to the disciplinary authority was to be exercised by the employee along with his right to show cause as to why no penalty or lesser penalty should be awarded. The proposition of law that the two rights were independent of each other and in fact belonged to two different stages in the inquiry came into sharp focus only after the Forty-second Amendment of the Constitution which abolished the second stage of the inquiry, viz., the inquiry into the nature of punishment”.

Thus, after the 42nd amendment, the requirement is to supply copy of the inquiry report as part of the principles of natural justice. The requirement of serving second notice proposing punishment has been done away with in 42nd amendment. The requirement of the statutory rules and that of Article 311 of the Constitution is to serve a second show cause notice to communicate the adverse materials during the course of enquiry. There is no requirement of communicating the punishment while sending copy of the enquiry report to the delinquent.

In view thereof, we do not find any merit in this appeal. The appeal is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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