

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3363 of 2014

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Arun Kumar Ojha, son of Late Syam Nandan Ojha, Resident of East Bahadurpur, Rajendra Nagar, P.S.- Bahadurpur, District- Patna, Presently posted As Assistant Manager, Reserve Bank of India, Patna.

.... Petitioner/s

Versus

1. The Governor, Reserve Bank of India, Shahid Bhagat Singh Marg, Mumbai.
2. The Deputy Governor, R.B.I., Central Office, Shahid Bhagat Singh Marg, Mumbai.
3. The Regional Director, Reserve Bank of India, Patna.
4. The Chief General Manager, Reserve Bank of India, Patna.
5. The Deputy Chief General Manager, R.B.I., Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uma Shankar Tiwary, Advocate

For the Respondent/s : Mr. Chittaranjan Sinha, Sr. Advocate with
Mr. Kaushal Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 14-12-2016

Heard Mr. Uma Shankar Tiwary, learned counsel appearing for the petitioner and Mr. Chittaranjan Sinha, learned senior counsel appearing for the Reserve Bank of India along with Mr. Kaushal Kumar Jha, learned Advocate for the Reserve Bank of India.

The petitioner is aggrieved by the order of penalty passed by the Disciplinary Authority –cum- General Manager, Reserve Bank of India whereby the increment due to the petitioner in six months next, since the passing of the order, has been withheld. The order, however, would not be affecting the future increments, although the effect of the punishment would have a consequential effect on the increment falling due in the meantime.



The order is impugned at Annexure-11 to the writ petition. The order passed by the Disciplinary Authority in exercise of power vested in him under Regulation 47(1) (c) read along side the Regulation 47(1) (b) of the Reserve Bank of India Staff Regulation, 1948 (hereinafter referred to as the 'Staff Regulation') has been confirmed by the Regional Director in his order dated 21.6.2013 impugned at Annexure-13 when the appeal of the petitioner has been rejected. The petitioner filed an application for review of the order on appeal which also has been rejected by the order dated 29.7.2013 impugned at Annexure-14.

The facts of the case leading to the impugned orders is that the petitioner, an officer of the Reserve Bank of India, was served with a show cause on 17.11.2011 for addressing a gathering of the members of the workers' organisation at the gate of the office complex of the Reserve Bank of India on 5.9.2011 which, according to the respondents, was in violation of Regulation 35 of the 'Staff Regulation'. The petitioner contested the charge by filing his reply on 13.12.2011 present at Annexure-5 denying any violation of Regulation 35 of the 'Staff Regulation'. Not being satisfied that the allegation led to initiation of a formal disciplinary proceeding vide Annexure-6 and service of charge-sheet vide Annexure-C to the supplementary counter affidavit.

The Enquiry Officer after holding enquiry, submitted



his report vide Annexure-8 exonerating the petitioner not finding sufficient evidence to uphold the charge that the Charge-sheet Officer had addressed a gathering consisting of only the members of workers' organization of the Reserve Bank of India or that the petitioner was in any way connected with the workers' organization.

The Disciplinary Authority in disagreement to the Enquiry Officer's report served a show cause on the petitioner vide Annexure-9 which was replied by the petitioner on 26.11.2012. The petitioner was served with the show cause against the proposed punishment vide Annexure-B and to which he has filed his reply on 23.1.2013 vide Annexure-10. The Disciplinary Authority not being satisfied with the reply has imposed the punishment impugned at Annexure-11 which has also been confirmed by the Appellate Authority vide Annexure-13 and even the review application of the petitioner has been rejected vide Annexure-14. The petitioner feeling aggrieved is before this Court.

There is no dispute on facts regarding the address by the petitioner to the gathering. The dispute is that:

- (a) Whether the address to the gathering was political?
- (b) Whether the gathering was held after due permission?
- (c) Whether the gathering was of the joint forum of officers association and workers organisation or of



the workers exclusively?

- (d) Whether there was a violation of Regulation 35 or 35A of the 'Staff Regulation'?
- (e) Whether the orders impugned are supported with reasons?

It is not in dispute that the petitioner belongs to the officer cadre and is the President of the National Organisation of Reserve Bank Officers' Association (hereinafter referred to as the 'NORBO'). According to the petitioner, due permission was sought from the head office for holding the gathering of the Joint Forum of the members of 'NORBO' and All India Reserve Bank Workers Organisation (hereinafter referred to as the 'AIRBWO') and which did not have a political character. It is thus to be seen whether the address by the petitioner to the gathering which, according to him, consisted of members of 'NORBO' as well as workers organisation of the Reserve Bank of India, was in violation of Regulation 35 or 35A of the 'Staff Regulation' because whereas the charge-sheet at Annexure-C charges him of addressing the workers at the lunch time on 5.9.2011 which, according to the Disciplinary Authority, was a violation of Regulation 35 of the 'Staff Regulation', the punishment imposed is for alleged violation of Regulation-35A as explained in paragraph 6 of the counter affidavit.

While it is the argument of Mr. Tiwary, learned counsel



appearing for the petitioner that there was nothing political in addressing the gathering by the petitioner for inviting a punishment under Regulation 35 of the 'Staff Regulation', the argument is contested by Mr. Sinha, learned senior counsel appearing for the Reserve Bank of India on grounds that since admittedly the petitioner had addressed the gathering of the workers, it was a political gathering held not only in violation of Regulation 35 but Regulation 35-A as well.

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

I have already observed that there is no dispute on facts. It is admitted that the petitioner had addressed the gathering on 5.9.2011 which, according to the petitioner, was on a call made by the joint forum but as per the respondents, it was a call by a workers organization. Annexure-1 to the writ petition is an intimation given by the All India Reserve Bank Workers' Organisation and which specifically mentions that the call is by a joint front of All India Reserve Bank Workers Organisation and National Organisation of the Reserve Bank Officers. Annexure-2 to the writ petition is a letter of the Assistant General Manager (Personnel) addressed to the Incharge Chief General Manager of the Reserve Bank of India and in which it is admitted that the workers' organisation had been granted oral permission to hold meeting during the luncheon hours



and in which the petitioner amongst others had addressed the gathering. These two documents on record are by itself sufficient indication of the fact that the demonstration at the gate of the office was following oral permission granted by the headquarter as admitted by the Assistant General Manager at Annexure-2. On the other hand Annexure-1 is indicative of the fact that the meeting was on a call made by the joint front. In view of these two documents present at Annexures 1 and 2 certainly the gathering held on 5.9.2011 could not have been termed as political gathering for it was held after due intimation and due permission.

The second issue is whether the petitioner could have addressed the gathering. Whereas the letter of All India Reserve Bank Officers' Organisation present at Annexure-1 is indicative of the fact that the gathering was made on a call made by the joint forum, the charge-sheet at Annexure-C to the supplementary counter affidavit charges the petitioner under Regulation 35 of the 'Staff Regulation' which inter alia prohibits an employee from taking active part in politics or in any political demonstration or to stand in an election from Municipal Council, District Board or any Legislative body. Undisputedly the gathering held on 5.9.2011 was for espousing the cause of the workers and certainly not of political character. Thus the petitioner could not have been proceeded for violation of Regulation 35 and rightly the opinion the Enquiry



Officer drew in his favour.

Perhaps it is appreciating this difficulty that the respondents have tried to justify the impugned action in paragraph 6 of the counter affidavit by relying upon Regulation 35-A of the 'Staff Regulation' which inter alia prohibits an Officer from addressing gathering of workers. Unfortunately for the respondents, the charge framed against the petitioner present at Annexure-C to the supplementary counter affidavit does not charge him for the alleged violation of Regulation 35-A of the 'Staff Regulation' nor the punishment makes any reference thereto. The justification thus by the respondents to the impugned action by relying upon Regulation 35-A along side the Regulation 35 of the 'Staff Regulation' cannot come to the aid of the respondents for it would amount to enlarging the scope of the disciplinary proceeding by inclusion of a charge which did not form part of the charge-sheet. The petitioner certainly cannot be punished for a charge which was never levelled against him nor finds place in the charge-sheet. Even otherwise, in view of the fact that the gathering was on a call by joint forum as reflecting from Annexures-1 and 2, even on merits, the charge has no foundation.

Apart from the gross infirmities present in the proceedings noticed above, an additional factor which supports the case of the petitioner is that the orders put to challenge are bereft of



reasons. Although the Disciplinary Authority has chosen to differ with the Enquiry Officer but has not been able to either meet the reasons assigned by the Enquiry Officer to drop the proceedings or the explanation given by petitioner on the disagreement note and the proposed punishment. In my opinion a mere reiteration of the charge to differ with the opinion of the Enquiry Officer would not suffice the requirements.

In the circumstances discussed, where the gathering in question did not fall within the parameters of a political demonstration as conceived under Regulation 35 of the ‘Staff Regulation’ nor the gathering was of the workers organisation exclusively, the impugned punishment order passed against the petitioner vide Annexure-11 together with its affirmation vide Annexure-13 cannot be upheld and is accordingly quashed and set aside.

Issues taken note of are answered accordingly.

The writ petition is allowed. The consequences shall follow.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25-12-2016
Transmission Date	NA

