

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 974 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 3117 of 2008

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Prabhu Nath Ram Son of Sri Lalan Ram Resident of Village - Jalalpur, P.S.
Dhansoi, District - Buxar

.... Appellant/s

Versus

1. The Disciplinary Authority - Cum - Chairman, Bhojpur - Rohtas Gramin Bank,
Head Office South Ramna Road, Ara
2. The Senior Manager, Bhojpur - Rohtas Gramin Bank, Head Office South
Ramna Road, Ara
3. The Enquiry officer - cum - Senior Manager, Bhojpur - Rohtas Gramin Bank,
Branch - Kochas
4. The Madhya Bihar Gramin Bank through its Chairman, Head Office, At Meena
Plaza, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Birju Prasad, Advocate.
Mr. Ravi Kumar, Advocate.
Mr. Ashok Kumar, Advocate.
Mr. Amresh, Advocate.
Mr. K.M. Prasad, Advocate.
For the Respondent/s : Mr. Suresh Prasad Singh, Advocate.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)
Date: 16-11-2016

Heard learned counsel for the parties.

2. The challenge in the present intra-Court appeal is to the order dated 01.05.2014 by which C.W.J.C. No. 3117 of 2008, filed by the appellant has been dismissed.

3. The appellant was a Clerk-cum-Cashier under the Bhojpur-Rohtas Gramin Bank, Dinara (hereinafter referred to as the 'Bank') when, under the order of the Chairman of the Bank dated 12.02.1998, he was put under suspension for alleged financial irregularities. On 03.07.1999, chargesheet was issued and departmental enquiry constituted. Due to such irregularities, Akbarpur P.S. Case No. 23 of 1999 dated 16.02.1999, was also instituted against him. Pursuant to the enquiry, a report was submitted dated 14.08.2001 and the suspension order was revoked by order dated 03.04.2002. Based on the enquiry report, show cause was issued to the appellant on 02.06.2004. The appellant submitted his reply to the second show cause on 20.07.2004 to the Disciplinary Authority, who by order dated 08.09.2004, passed order imposing penalty on the appellant by which he was dismissed from service of the Bank without it being a bar to future employment. It was further ordered that the suspension period would not be considered as spent on duty and for the said period, besides subsistence allowance, nothing would be payable. The said order was made without prejudice to the appropriate action being taken by the Bank upon decision in the criminal case. The appeal filed was also



dismissed by the Board of Directors in its meeting dated 30.03.2005 which was communicated to the appellant under letter dated 25.07.2005. Being aggrieved by the Appellate order upholding the punishment awarded to him by the Disciplinary Authority, the appellant moved this Court in C.W.J.C. No. 3117 of 2008 and dismissal of the writ petition on 01.05.2014, by the learned Single Bench, has given rise to the present Letters Patent Appeal.

4. Learned counsel for the appellant submitted that no enquiry, as contemplated in law, was conducted and report was submitted holding the charges proved against the appellant only on the basis of his admission of the charges, which is illegal. It was further submitted that in view of the so called admission by the appellant, all the charges having been explained in the appeal filed by the appellant, non consideration of the same has also vitiated the orders impugned in the writ petition. Learned counsel submitted that in view of the law settled by the Courts, such order of dismissal cannot be sustained. It was also submitted that the confession was in view of the assurance given by the Enquiry Officer, Presenting Officer and the concerned Branch Manager that if he admitted to his guilt, they would save him from punishment and, thus, the confession became meaningless and the Enquiry Report as well as the punishment order based on the same stands vitiated. Learned counsel further submitted that the documents



asked by him were also not provided to him, which is sufficient to vitiate the enquiry report and the punishment order. For such proposition he has referred to a decisions of the Hon'ble Supreme Court in the case of **Jagdish Prasad v. State of M.B.** reported as **AIR 1961 SC 1070**; **B.C. Chaturvedi v. Union of India** reported as **(1995) 6 SCC 749**; **Roop Singh Negi v. Punjab National Bank** reported as **(2009) 2 SCC 570** and **Union of India vs. S.K. Kapoor** reported as **2011(2) PLJR 101 (SC)**.

5. Learned counsel for the Bank, on the other hand, while opposing the appeal, submitted that the appellant having accepted the charges before the enquiry officer, law does not require a formal holding of enquiry by calling upon witnesses and hearing the parties and, thus, the punishment imposed based on such Enquiry Report cannot be said to be bad in law. It is stated that in case of admission of guilt, it is always open for the Disciplinary Authority not to hold enquiry whereas, in the present case, the enquiry was conducted in which the appellant, in writing, accepted the charges and, thus, the Enquiry Report having rightly returned a finding of charges being proved, there is no scope left for taking a u-turn by the appellant before the Appellant Authority. For such proposition he has relied upon a Division Bench judgment of the Madras High Court in the case of **Bank of Baroda Employees Union Vs. Bank of Baroda, Rep. by its Asst.**



General Manager & Anr. (Writ Appeal No. 382 of 2008) decided on 13.06.2008 and reported as **(2008) 0 Supreme (Mad) 1750**. He also relied upon a decision of the Division Bench judgment of the Punjab and Haryana High Court in the case of **Kulwinder Singh Dhaliwal Vs. State of Punjab & Anr.** (CWP. No. 8691 of 2008) decided on 27.11.2013 and reported as **(2013) 0 Supreme (P & H) 988**, for the proposition that even confession recorded in the criminal offence can be used in the departmental proceeding.

6. Having considered the rival contentions, we do not find any merit in the present appeal. The charge against the appellant was basically of misappropriation of Bank money and forging of documents. Though, the appellant had denied his involvement in the first show cause but in the enquiry, he had accepted the charges and, thus, the Enquiry Report submitted, holding the charges proved, cannot render such report vitiated in the eyes of law. A copy of the written acceptance of the charges by the appellant has been produced before us by learned counsel for the Bank. Perusal of the same shows that besides it being in the self writing of the appellant, the same is quite detailed and after accepting the charge also gives explanation as to why he had committed such irregularities. The same does not in any manner indicate that the acceptance was a mere formality and rather, to the contrary, it has given reasons and explanation as to under what circumstances he committed



those irregularities. Thus, the stand taken by the appellant of the confession being induced cannot be inferred from the document itself. In the case of **Jagdish Prasad** (supra), the Hon'ble Supreme Court had held that reasonable opportunity of showing cause was not given to the delinquent as chargesheet against him was on the basis of the statements made by him in enquiry held against other Government servants and punishment order of removal from service was without holding fresh enquiry whereas in the present case, the acceptance of the charges have been made by the appellant in the enquiry of the same case. In the case of **B.C. Chaturvedi** (supra), it was held that the High Court/Tribunal in exercise of judicial power cannot normally interfere with the punishment imposed by the disciplinary/appellate authority, except where it shocks the judicial conscience, in which case it can mould the relief either by directing the authority to reconsider the punishment/penalty imposed or in exceptional cases by itself imposing an appropriate punishment, recording cogent reasons. The present is not such a case and further, in the same judgment the Hon'ble Supreme Court while discussing the scope of judicial review in the departmental proceeding has held as under:

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court.



When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case."

7. Similarly, in the case of **Roop Singh Negi** (supra), the Hon'ble Supreme Court was dealing with the manner in which the documentary evidence was to be proved. The present is a case where the delinquent has himself admitted the charge and has in fact tried to give explanation for committing such irregularities. Thus, the said judgment does not apply in the facts and circumstances of the present case. In the case of **S.K. Kapoor** (supra), the Hon'ble Supreme Court



had only reiterated the principle of natural justice, that if any material is to be relied upon in the departmental proceeding, a copy of the same must be supplied in advance to the chargesheeted employee so that he may have chance to rebut the same. In the present case, the relevant details of the charges against the appellant were provided to him and he has given in writing his acceptance of the charges and has explained the same, which leaves no doubt of the fact that he was fully aware of the details and, thus, there is no similarity of the said case before the Hon'ble Supreme Court and the present case. Further, the decision relied upon by the learned counsel for the Bank supports the stand taken on its behalf, especially in the case of **Kulwinder Singh Dhaliwal** (supra) where the writ petition had been dismissed holding that the Enquiry Officer has not collected any material from outside sources nor any illegality or irregularity in the procedure adopted by the Enquiry Officer has been pointed out and further that the view of the Enquiry Officer, which was accepted, cannot be interfered with in exercise of power of judicial review. We are also in agreement with the view taken by the Court in the said case. The Court in exercise of power of judicial review examines the decision making process and not the decision itself.

8. We may also note the fact that though the order of the Appellate Authority is dated 01.05.2014, the writ petition has been filed

only in the year 2008, which is quite belated.

9. In view thereof, we do not find any error in the order passed, either by the authorities or the learned Single Bench, which may warrant interference in the present Letters Patent Appeal, which accordingly, stands dismissed.

(Ahsanuddin Amanullah, J)

Hemant Gupta, ACJ *I agree*

(Hemant Gupta, ACJ)

P. Kumar

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