

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10990 of 2007

=====

Lallan Ram, son of Din Dayal Ram, resident of Mohalla Naga Road, Shivpuri, P.S. Raxaul, District, East Champaran (Motihari).

.... Petitioner

Versus

1. Central Bank of India, Scheduled Bank, having its Head Office at Chander-Mukhi, 16th Floor, Nariman Point, Bombay-1, through its Chairman,
2. Central Bank of India, Regional Office, Daluatal, Motihari-845401, through its Regional Manager,
3. Branoli Manager, Central Bank of India, Resaul Branch, Raxaul, Motihari
4. Regional Manager, C.B.I., Regional Office, Bauuatal, Motihari-845401

.... Respondents

=====

Appearance :

For the Petitioner : Mr. R. N. Mukhopadhaya,
Md. Nazir Ansari, Advocates

For the respondents : Mr. Prasant Vedasen,
Mr. S. C. Bose, Advocates

=====

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

C.A.V. JUDGMENT

Date: 20-01-2016

I have heard the parties and perused the records of this case.

This writ petition has been filed *inter alia* for grant of following reliefs:-

“1. (A) A writ in the nature of a certiorari or any other appropriate writ/writs, order/orders direction quashing the order as contained in Letter No. Regional 2K. D.A. 34 dated 18.7.2000, whereby and whereunder the service of the petitioner has been terminated and is contained in annexure-5 to the writ application.

(B). A writ in the nature of certiorari or any other appropriate writ/writs, order/orders, direction quashing the order dated 20.6.2007 passed by the Appellate authority in his official order ZO/HRD/DAD/2007-08/386 as contained in annexure-7 to the writ application.

(C). A writ in the nature of a mandamus or any other appropriate writ/writs, order/orders direction commanding the Respondents not to give effect to the orders as contained in annexure/5 and 7.

(D). To any other relief/reliefs to which the petitioner may be found to be entitled to.”

The petitioner was appointed as Peon/Daftari in the Central Bank of India, Adhampur Branch, Muzaffarpur in the year 1970. He was served with a charge-sheet on 16.05.75 which has been appended as Annexure 8 series to the supplementary affidavit filed on behalf of the petitioner. The inquiry was held and the inquiry officer found three charges out of five to be proved. Two charges could not be proved. The inquiry report dated 07.07.1977 has also been appended as Annexure 8/1 to the supplementary affidavit. The enquiry officer recommended vide the aforesaid inquiry report for his dismissal from bank service with immediate effect. Vide Annexure 8/2 dated 23.07.1977, the punishment of dismissal was awarded to the petitioner under Para 19.6(a) of the Bipartite Settlement. The appeal preferred by the petitioner was also dismissed vide Annexure 8/3 dated 24.04.1978. However, industrial dispute was raised by the petitioner under Section 10 of the Industrial Dispute Act, 1947. The dispute was referred to the Industrial Tribunal. The Tribunal pronounced the Award in favour of the petitioner. The reference was answered in following terms:

“The action of the management of Central Bank of India in relation to their Adampur Branch in terminating the services of Shri Lalan Ram, Peon with effect from 23.7.77 is not justified. Consequently, the concerned workman is entitled to be

re-instate in service w.e.f. 23.7.77 and he will be entitled to all the back wages and other emoluments with effect from the date.

That is my award.”

A copy of the Award has been appended as Annexure 1.

It is apparent from the Award that no serious challenge to the inquiry report was made by the petitioner but the reference has been answered in his favour on the ground that inquiry officer himself has passed the order of dismissal though he was not authorized to do and, as such, the termination of the service of the petitioner with effect from 23.07.1977 was bad. The petitioner was directed to be reinstated with effect from 23.07.1977 and it was also held that he would be entitled for back wages or other emoluments with effect from that date. The Central Bank assailed the Award pronounced by the Tribunal by filing C.W.J.C. No.977 of 1983 (R) before the Ranchi Bench of this Court which was dismissed vide Annexure 2 dated 08.02.1988. The order passed by the learned Single Judge was again put to challenge by filing L.P.A. No.34 of 1988 (R) which was dismissed by the Division Bench vide Annexure 3 dated 09.01.1990. The decision of the Division Bench was challenged before the Apex Court by filing Civil Appeal No.418/93. The aforesaid appeal was also dismissed on 09.10.1996.

However, during the pendency of the aforesaid appeal



before the Supreme Court, the petitioner received a letter dated 25.06.1993 appended as Annexure 8 series with the supplementary affidavit filed by the petitioner advising him to report to Central Bank of India, Regional Office, Balua Tal, Motihari, East Champaran for further orders on or before 25th July, 1993. It has been stated in the letter that the same was being issued in the background that the petitioner was charge-sheeted and dismissed from service but the labour court has quashed the order of dismissal and the High Court has also upheld that and had ordered for reinstatement in bank's service and further that the Bank, thereafter, had filed appeal before the Apex Court which is pending for final decision and, as such, anything done would be subject to the final result of the appeal pending before the Supreme Court. The petitioner claims to have reported on 27.06.1993 and he was reinstated and paid arrears of salary from 23.07.1977 upto 08.07.1993. However, he was again served with a memo dated 02.06.1999 holding that since the findings of the disciplinary enquiry in the matter of the charge-sheet dated 15.05.1975 has not been challenged by the petitioner, it is essential in order to meet the end of justice to have a fresh look to the findings and to pass appropriate order in the matter. It was further explained in the aforesaid memo, which has been



appended as Annexure 8 series to the supplementary affidavit, that the said charge-sheet has been adopted by the undersigned which would be deemed to have been issued by undersigned under Clause 19.5 of Bipartite Settlement amended up-to-date and the appropriate order would be communicated to him in due course. Thereafter, vide Annexure 10 dated 05.05.2000, as contained in Annexure 10, a notice was served upon the petitioner for proposed punishment of dismissal from service. The petitioner filed a reply vide Annexure 11. However, order of dismissal was passed vide the impugned order dated 18.07.2000, as contained in Annexure 5, dismissing him from service. The petitioner approached this Court against the order of dismissal by filing C.W.J.C. No.11423 of 2000 which was disposed of vide Annexure 6 dated 19.10.2006 by a Single Judge Bench of this Court granting liberty to assail the dismissal order by preferring statutory appeal. The appeal preferred by the petitioner was also dismissed vide Annexure 7 dated 20.06.2007. Hence this writ petition has been filed.

Learned counsel for the petitioner assails the second round of disciplinary proceeding chiefly on the following grounds:-

- (i) By initiating second round of proceeding, the

Management of the Bank took up a stale matter which could not have been done by them specially in view of the decisions of this Court as well as the Apex Court.

(ii) There is no provision under the Bipartite Settlement for adoption of charge and the earlier enquiry report specially when no enquiry officer was nominated for the said purpose.

(iii) The said misconduct does not come under the purview of gross misconduct as per the Bipartite Settlement as the petitioner has not done any act prejudicial to the interest of the Bank and/or willful damage or attempt to cause damage to the property of the Bank or any of its customers.

It is urged on behalf of the petitioner that the Award pronounced by the Tribunal, in clear terms, has held that the order of dismissal is unlawful and direction has been given to reinstate the petitioner with consequential benefits, i.e., back wages. The Tribunal did not grant any liberty to the disciplinary authority of Central Bank of India to move afresh and pass necessary order in view of the recommendation of the inquiry officer regarding dismissal of the petitioner. However, even then, if the management of the Bank was under impression that a fresh order of dismissal could have been passed on the basis of recommendation of the inquiry officer, which could not be



effectively challenged by the petitioner, then they could have immediately resorted to such action and after granting the petitioner the liberty to show cause could have passed the necessary order. But even that was not done. The Bank challenged the Award by filing C.W.J.C. No.977 of 1983 (R) which was also dismissed vide Annexure 2 dated 08.02.1998. The Bank was unable to seek or obtain any liberty from the learned Single Judge also for taking a fresh decision on the basis of the inquiry report. However, even if the Management of the Bank, after dismissal of the writ petition, still was of the opinion that fresh order could have been drawn on the basis of the findings of the existing enquiry report, they could have proceeded with it but they chose not to take such action rather they put the decision of the learned Single Judge to challenge by preferring L.P.A. No.34 of 1988 (R) which was also dismissed on 09.01.1990 by a Division Bench of Ranchi Bench of this Court. The petitioner again failed to obtain any liberty to proceed afresh from the aforesaid stage. Even if such liberty was not granted and the Management of the Bank was of the opinion that they could well have moved afresh from the aforesaid stage but it did not choose to do so and preferred Civil Appeal No.418/93 before the Apex Court. During the pendency of the aforesaid appeal before the Supreme Court, the Management



of the Bank sent a letter to the petitioner on 25.06.1993 (Annexure 9) advising him to report before the Central Bank of India, Regional Office, Balua Tal, Motihari, East Champaran for the needful, however, the petitioner was reminded that such action would be subject to the result of the final decision which would be taken by the Supreme Court which would bind the petitioner. The petitioner was eventually reinstated and given back wages. Thereafter, the appeal was also dismissed vide Annexure 4 on 09.10.1996. Nothing was done for about 3 years thereafter and eventually the memo as contained in Annexure 9 was served upon him communicating a decision that since the inquiry report was not challenged or quashed, the matter would be proceeded afresh and the charge-sheet and the inquiry report would be deemed to have been issued under Clause 19.5 of the Bipartite Settlement and the order passed accordingly would be communicated to the petitioner. Thereafter, the impugned order dated 18.07.2000 was passed dismissing the petitioner from service. It has been contended that obviously even after the dismissal of the appeal filed before the Apex Court the Management of the Bank did not do anything for 3 years but has proceeded again with the stale matter which was set at rest as such liberty was not granted either by the Tribunal or any of the Courts



and after about 23-24 years of the earlier order of dismissal which was set aside by the Tribunal and the courts, again an order of dismissal has been passed on self-same charges. It is contended that no inquiry officer was appointed or even if appointed, there was no communication to that extent to the petitioner, who could have adopted the inquiry report but it appears that the disciplinary authority itself has adopted the earlier charges and inquiry report and has proceeded to pass the order impugned. It is contended that the earlier charges could not be deemed to have been framed under the amended provision of Bipartite Settlement. It is also contended that the charges do not show towards gross misconduct under the fresh amended Bipartite Settlement and, as such, the order of dismissal was incorrect.

Counter affidavit and reply to the supplementary affidavit filed on behalf of the petitioner have been filed on behalf of the respondent Bank. Learned counsel for the Bank has stated that the petitioner could not effectively challenge the inquiry report. In fact, it has been stated in the Award itself that there was no challenge to the inquiry report which goes to show that the charges against the petitioner were proved. The petitioner's effort to challenge the same at the belated stage before the Tribunal was not allowed by it and, as such, the charges remained proved as it



were. The dismissal was set aside by the Tribunal only on technical ground that the inquiry officer himself has acted as a disciplinary authority and has passed the impugned order of the dismissal which has been upheld by this Court as well as the Apex Court also. However, there would not be any impediment in proceeding afresh in view of the charge-sheet of 1975 which admittedly stood proved during the enquiry. Learned counsel has placed reliance upon a decision of the Apex Court in support of the aforesaid submission rendered in **Anand Narain Shukla v. State of Madhya Pradesh [A.I.R. 1979 S.C. 1923]**. Per contra, learned counsel for the petitioner places reliance upon a decision dated 02.07.2012 of a Division Bench of the Delhi High Court rendered in **W.P.(C) Nos.8171/2008 & 8423/2008 (Union of India & Ors. Versus Yateendra Singh Jafa)** to impress upon this Court that there is a clear cut delay in initiating the second round of proceeding and since the delay is uncounted for, it would definitely vitiate the disciplinary proceeding.

Upon consideration of the rival contention, this Court finds force in the submissions made on behalf of the petitioner. True it is that the Tribunal has held the order of dismissal to be erroneous on the ground that the authority who has passed the order did not have the authority to do so, However, it did not grant



any liberty to the Bank to take a fresh decision on the basis of the recommendation of the inquiry officer either and a direction was given for reinstatement of the petitioner and giving him back wages also as a consequence thereof. The Bank could have reinstated the petitioner immediately and could have proceeded to pass necessary order on the basis of the unchallenged inquiry report immediately but it did not do so. It had simply challenged the Award before a learned Single Judge Bench of this Court which was also dismissed vide Annexure 2. There also they failed to obtain any liberty for moving afresh on the basis of inquiry report. The Bank could well have challenged the Award also with protest and at the same time reinstating the petitioner without prejudicing his right before a competent authority and could have proceeded to initiate the proceeding afresh from the appropriate stage but for doing the same reinstatement of the petitioner was required as per the direction of the Tribunal but the same was not done. The appeal preferred against the order of learned Single Judge was dismissed and Civil Appeal No.418/93 was also dismissed in the year 1996 and during the pendency of which the petitioner was reinstated and granted the back wages also subject to the result of the appeal pending before the Apex Court. However, if the decision of the Apex Court would bind the



petitioner then it would also bind the Bank. Even thereafter, nothing was done for about three years and ultimately in the year 1999, a memo was issued that the charges of 1975 are being started and the inquiry report would be deemed to have been issued under the amended provision of Bipartite Settlement. They could have done or not in view of the amended provision that would be another matter to be decided but for that the Bank would have to cross the first barrier of inordinate and unexplained delay in proceeding afresh with the matter. Even after the reinstatement of the petitioner in the year 1993, they do not choose to proceed afresh in such manner immediately after passing of the Decision of the Apex Court in the year 1996 also they waited for another three years to do so.

Of course, in **Anand Narain Shukla (Supra)**, the Apex Court has held that even if the earlier order was quashed on a technical ground but on merit the second enquiry could be held. The order of reinstatement does not bring about any distinction in that regard. In that case, such action was taken shortly after the earlier order of reversion was quashed and the petitioner was reinstated on his original post of Office Superintendent. Shortly, thereafter, he was put under suspension and a fresh proceeding started on the basis of old charges. However, in the present case,



the Bank has taken about 19 years for doing that and there is no explanation as to why they have taken such action in the year 1999, which could have been taken by them immediately after pronouncement of the Award. If they were approaching the courts against the Award of the Tribunal then they could have proceeded against the petitioner also afresh or could have sought liberty of the courts for proceeding afresh which was also not been done by them. The appellate authority has also not considered the aforesaid aspect and has simply endorsed the view of the disciplinary authority.

Considering the aforementioned facts and circumstances, in my view, the uncounted and unjustified delay is a valid ground to vitiate the second round of disciplinary proceeding. Since the matter succeeds on this ground alone, other grounds are not required to be dealt with.

Accordingly, this writ petition succeeds. The impugned orders are quashed and set aside. Since this Court has been informed that the petitioner has already crossed the age of superannuation, there would be no question of reinstatement now but all the consequential benefits, which would accrue to him in view of succeeding in the writ petition, should be granted to him. The Bank authorities would be obliged to calculate the entire

amount of the wages/emoluments/salary and other benefits of the petitioner for the period he has remained ousted from the office in view of the order of dismissal and that should be paid to the petitioner within a period of six months.

(Dr. Ravi Ranjan, J)

Sanjay-II/-

U			
---	--	--	--