

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1001 of 2015

In

Civil Writ Jurisdiction Case No. 8916 of 2008

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Uma Shankar Jha son of Late Jai Chandra Jha Resident of village -
Rajeshwari Niwas, Laxmi Sagar (Sadhugachhi), Darbhanga, P.S. + District-
Darbhanga.

.... Appellant/s

Versus

1. The Punjab National Bank Through The Chief Managing Director , H.O.-
Bhikhaji Kama Place, South African Avenue, New Delhi.
2. The Zonal Manager, PNB Integrated Zonal Office, Muzaffarpur.
3. The Regional Manager, PNB, Regional Office, Darbhanga Region,
Darbhanga.
4. The Enquiry Conducting Office- cum-Manager PNB, Branch Office,
Warisnagar, Samastipur.
5. The Branch Manager, PNB, Branch Office-Kulharia, District-
Madhubani.

.... Respondent/s

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Appearance :

For the Appellant : Mr. Ajay Kumar Sinha
Mr. Dinesh Choudhary

For the Respondents : Mr. Manish Kumar

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR
DATTA**

and

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

8 13-12-2016

I.A. No.4917 of 2015

The interlocutory application has been filed for
condoning the delay of 16 days in filing the appeal.

In the facts and circumstances of the case and upon
hearing the learned counsels for the appellant and the respondent
Bank, the delay in filing the appeal is condoned.

I.A. No.4917 of 2015 is, accordingly, disposed of.



Heard learned counsel for the appellant and learned counsel for the respondent- Punjab National Bank.

The appeal is directed against the order dated 15.01.2015 passed in C.W.J.C. No.8916 of 2008 by a learned single Judge of this Court, by which the writ petition was dismissed holding that the disciplinary authority passed correct order which has been affirmed by the Appellate Authority and as such, this Court does not feel inclined to interfere with the order of punishment.

The facts of the case are noted in the order of the learned single Judge and need not be gone into in detail. The enquiry officer found as many as 11 charges out of 13 charges proved against the appellant. On the basis of those charges, the second show cause notice was issued in which the disciplinary authority further held that two of the charges and part of a third charge was not proved, but directed the petitioner to show cause holding that he was guilty of charges in terms of clause 5(j) of the Bipartite Settlement dated 10th April, 2002 and proposed the punishment for removal from service with superannuation benefits and without disqualification for future employment in terms of para 6 (b) of the Bipartite Settlement, giving him further opportunity of personal hearing against the proposed punishment.



Thereafter, the said order of punishment in terms of second show cause was passed and the same was affirmed by the Appellate Authority who after hearing the appellant and perusing the record clearly noted that the Enquiry Officer has found charge No. 1 (item No.01 to 8, 10,11, 21, 23 and 24), Charge No.2 (Item Nos.1 to 4, 6,7,11,12), Charge No.3, Charge No.4 (Item Nos. 2 and 3) and Charge Nos. 5 to 13 as proved, whereas Charge No.1 (Item No.09, 14, 15 and 19) and Charge No.2 (Item No.5) have been observed as partly proved. He further noted that the disciplinary authority while passing his final order showed his concurrence in respect to findings of the enquiry officer relating to charge Nos. 1, 2, 4 to 7, 9 to 13 and in respect to charge No.3 and 11 up to the extent mentioned therein. Accordingly, the appellate authority did not interfere with the order of the disciplinary authority for the punishment given and rejected the appeal.

Before the learned single Judge also various submissions have been made which are reiterated by learned counsel for the appellant. It is sought to be shown that the disciplinary authority has issued the second show cause stating that Charge Nos.1 and 2 were proved whereas charge No.1 and 2 itself were under different heads some of which had been found to be not proved.



It is also the stand of learned counsel for the appellant that the writ petitioner-appellant had sought for photo copies of a large number of documents for the purpose of his defence which were not supplied to him and thus there has been violation of the principle of natural justice in the disciplinary proceedings.

The main thrust of the submissions of learned counsel for the appellant is two fold. It is submitted that even on the findings it is not shown that any loss was caused to the Bank by the action of the writ petitioner-appellant or even to any of the customers of the Bank and thus the disciplinary authority and the appellate authority were not justified in holding that the case of the appellant came under the head of gross misconduct, under clause 5 (j) of gross misconduct, rather according to learned counsel for the appellant it would come under clause 7 (c) and (d) of the Bipartite Settlement dated 10.04.2002. It is urged that under clause 5 (j), the gross misconduct means doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss, whereas under clause 7 (c) and (d) of the Bipartite Settlement it would be omission or neglect of work, negligence in performing duties, or breach of any rule or business of the bank or instruction for running of any Department. It is, thus, submitted that no loss having been caused



to the Bank and all that has been found is that the appellant had not followed the rules and instructions with regard to different entries, hence, it would be a case of minor misconduct, for which the punishment only of warning, censure or adverse remark, stoppage of increments for six months as provided could have been inflicted.

The other leg of argument of learned counsel for the appellant is that even if it is held that the action of the appellant comes under clause 5 (j) of the Bipartite Settlement then the punishment provided therein is given in clause 6 under which as many as nine type of punishments could be imposed and only the first four of them under clause 6 (d) involves the termination of the services of the employee whereas the other five provided for much lesser punishment like bringing down to lower stage in the pay scale up to the maximum of two stages, or have increment stopped with/without cumulative effect or have special pay withdrawn or warned or censured, or have an adverse remark entered against him.

It is submitted that since the omission of the appellant did not cause any loss to the bank or the customer, there was no justification for entering the punishment under clause 6 (b) for removal from service and the other punishments under clause (e)



to (i) would have been sufficient in the present matter.

It is also submitted by learned counsel that the appellant apprehends that the disciplinary authority has not applied his independent mind while imposing the punishment, rather he has acted upon the instructions of the Vigilance Department of the Bank.

So far as the apprehension expressed by learned counsel for the appellant with regard to the disciplinary authority acting upon the instructions of the Vigilance Department is concerned, nothing has been brought on the record to show that any such instructions had been issued by the Vigilance Department which have been followed by the disciplinary authority in the matter. A mere apprehension cannot be sufficient to question the order that has been passed which appears to be reasonable in the facts and circumstances of the case.

Learned counsel for the respondent-Bank, on the other hand, submits that the present matter is not of minor misconduct or mere misconduct, rather a clear finding has been recorded with regard to a very large number of charges over an extended period of time which goes to show that the petitioner is a habitual offender and accordingly, his action comes under the category of misconduct as defined under clause 5 (j) of the Bipartite



Settlement and the respondent Bank came to the conclusion that the appellant had violated the set of Guidelines of the Bank and acted in an unauthorized manner while debiting accounts of customers/different accounting heads in the bank and had derived benefit therefrom. Thus, the finding of gross misconduct is wholly justified.

Learned counsel for the respondent-Bank further submits that the punishment imposed must be disproportionate and shocking to the conscience of the Court in order to interfere with the same which is not so in the present matter, as the petitioner being a habitual offender was fit to be removed from service, rather the respondents have taken a lenient view with the appellant by not dismissing him from service but only removing him with superannuation benefits under the rules or regulations and without disqualifying him from future employment.

In this regard, learned counsel for the respondent relies upon a decision of the Supreme Court in the case of Union of India and others v. P. Gunasekaran: AIR 2015 S.C. 545, in paragraph Nos. 13, 14 and 19 of which it has been held as follows:-

“13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge



No.1 was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority.
- b. the enquiry is held according to the procedure prescribed in that behalf;
- c. there is violation of the principles of natural justice in conducting the proceedings;
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the findings;
- i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence
- (iv) go into the reliability of the evidence
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience.



14. In one of the earliest decisions in State of Andhra Pradesh and others v. S. Sree Rama Rao, many of the above principles have been discussed and it has been concluded thus:

“7... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant; it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with their duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.

19. Equally, it was not open to the High Court, in



exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that he respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is “moral uprightness; honesty.” It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values.”

We have perused the order of the learned single Judge and the materials on the record and considered the submissions of learned counsels for the parties. The writ court does not sit in appeal over the decision of the disciplinary authority or the appellate authority and in the present matter they have passed the order after following the due procedures as prescribed by the Rules and Regulations. There is no dispute that the petitioner was noticed at all stages and had participated in the proceedings before the enquiry officer and had been heard in the matter. The only grievance raised is that photo copies of a large number of documents as sought had not been supplied to the petitioner and



thus his defence was jeopardized.

In this regard, it is apparent from the materials on the record that the enquiry officer had written to the Branch Manager of the Bank for making the documents available but had been informed that those documents were not available in the Branch.

Learned counsel for the appellant is unable to show that the enquiry officer or the disciplinary authority has relied upon any of those documents which were not made available to the appellant. Thus, the mere fact of non-supply of a large number of documents sought by the appellant, which have not been relied upon by the disciplinary authority, would not make out a case of any prejudice to the petitioner-appellant. Moreover, this is a case where there have been a very large number of charges and practically all the charges have been found to be proved barring a few, where also the disciplinary authority acted in a fair manner by not accepting the report of the enquiry officer regarding certain charges having been found proved by him.

Since we are not sitting in appeal over the findings of the disciplinary authority or the appellate authority, we find nothing in their orders which is not based upon the materials on the record. No perversity could be pointed out by learned counsel for the appellant. Thus those findings stand on their own and in a



writ petition are not open to challenge.

We are also unable to agree with the submissions of learned counsel for the appellant that the charges did not amount to gross misconduct, rather according to us the charges fall under clause 5 (j) of the Bipartite Settlement itself which provides doing any act prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss. The entire submission of learned counsel for the appellant is that no loss either to the Bank or to the Customer has been caused as no complaint was made against the appellant. The records of the bank have to be maintained in an honest and fair manner, otherwise it is likely to involve the bank in serious loss, and actual loss alone is not the ingredient of clause 5 (i).

Apart from other findings recorded the appellant having got KCC issued in favour of his brother-in-law which, in fact, was utilized by him by transfer to his account, cannot be considered fair action on the part of a bank employee. There are other serious charges. Thus, the action of the petitioner falls squarely under clause 5 (j) of the Bipartite Settlement.

The next question is whether the punishment imposed is so disproportionate so as to shock the conscience of the Court. It is true that some of the punishment under clause 6 of the Bipartite



Settlement, particularly those under clause (e) to (i), barring part of sub-clause (f), really fall under the general service jurisprudence parlance as minor punishment. The question of punishment under clause (e) to (i) would therefore depend upon the nature of the gross misconduct. The case of the appellant does not fall under that category, as it has been rightly pointed out by learned counsel for the Bank that the appellant was a habitual offender in manipulating the entries in the records of the Bank. In the said circumstances, the application of clause 6 (b) of the Bipartite Settlement for imposing punishment does not appear to be so disproportionate so as to be shocking to the conscience of the Court.

Considering the fact that the benefit of past service has not been denied to the appellant and he has not been disqualified for future employment, we see no reason to interfere with the order of the learned single Judge.

The appeal is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Arun Kumar, J)

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