

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6417 of 2014

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1. Vibha Kumari W/o late Kaushal Kishore Chaudhary
2. Suman Saurabh S/o late Kaushal Kishore Chaudhary
3. Vibhanshu Kaushal Chaudhary S/o late Kaushal Kishore Chaudhary All are residents of Mohalla- Mithanpura Shankar Path, Muzaffarpur Town, P.S. Mithanpura, District- Muzaffarpur. Petitioner/s

Versus

1. Allahabad Bank through the Chairman- Cum- Managing Director, Allahabad Bank, Head Office-2, Netaji Subhash Road, Kolkata- 700001.
2. The General Manager, Allahabad Bank, Head Office, 2 Netaji Subhash Road, Kolkata- 700001.
3. The Deputy General Manager- Cum- Appellate Authority, Allahabad Bank, Head Office, 2- Netaji Subhash Road, Kolkata- 700001.
4. The Assistant General Manager- Cum- Disciplinary Authority, Allahabad Bank, Zonal Office, Muzaffarpur- 248002.
5. The Senior Manager- Cum- Enquiry Officer, Allahabad Bank, Zonal Office, Muzaffarpur- 248002.
6. The Senior Manager- Cum- Presenting Officer, Allahabad Bank, Zonal Office, Muzaffarpur- 248002. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. advocate
Mr. Chandra Mauli Chaurasia
Ms. Surya Nilambari

For the Respondent/s : M/s. Sanjay Singh Thakur & Smriti Singh

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 14-11-2017

Heard both sides.

2. Kaushal Kishore Choudhary, the original petitioner, died during the pendency of this writ petition and his legal heirs, wife and sons, are substituted.

3. The petitioners, in this writ petition, seek quashing the order contained in D.A. order No. ZO/Muz/VIG/2012-13/117 dated 25.09.2012 (Annexure-9) passed by the disciplinary authority by which the original petitioner was compulsorily retired from service. The petitioners further seek quashing of the order HO/PA/DC/DGM/Appeal/13-657 dated 03.09.2013 (Annexure-10) passed by the appellate authority whereby appeal of original petitioner against the



order of the disciplinary authority was dismissed.

4. The brief facts is that while the petitioner was posted as Assistant Manager at Laukahi branch of the Allahabad Bank, the Assistant General Manager-cum- disciplinary authority, Zonal Office, Allahabad Bank, Muzaaffarpur issued show cause notice on 20.08.2010, alleging therein 28 charges, alleged to have been committed by the original petitioner, while he was posted at Pakauli branch, Allahabad Bank, working as second line officer during the period 10.10.2008 to 17.11.2009 and later on as branch manager of the same branch since 18.11.2009 to 10.05.2010 and again functioning as second line officer since 11.05.2010 to 22.05.2010. The petitioner was asked to give reply as to why disciplinary action be not taken against him for the irregularities committed by the original petitioner. The original petitioner filed his show cause on 30.09.2010 before the disciplinary authority explaining the entire facts with regard to all the 28 charges leveled against him but the disciplinary authority did not accept the reply of the original petitioner and he was put under suspension vide order dated 22.02.2011. The Chief Manager, Zonal Office, Allahabad Bank, Muzaaffarpur also lodged Bidupur P.S. case No. 41 of 2011 on 05.03.2011 under Section 406, 409, 420, 120B/34 of the IPC against Kaushal Kishore Choudhary, original petitioner, and five other accused persons, who were loanees of Pakauli branch of Allahabad Bank. The Assistant General Manager-cum- disciplinary authority issued memo of charges on 25.02.2011 and altogether 15 charges were framed against Kaushal Kishore Choudhary asking him to submit his written statement before the enquiry officer (Annexure-4). Kaushal Kishore Choudhary wrote letter requesting the enquiry officer to supply him those relevant documents on which charges have been framed on 03.08.2011 but no document was given to him. The enquiry officer allowed the original petitioner to inspect the documents on 23.02.2012 just



before the start of departmental proceeding. The original petitioner, in absence of the required documents, submitted his written statement in his defence on 25.09.2011. The disciplinary authority at the same time appointed Bharat Bhushan Prasad, Sr. Manager, as the enquiry officer and Devendra Nath, Senior Manager, as presenting officer. The departmental enquiry began on 17.02.2012. The original petitioner denied all the charges leveled against him in the memo of charge sheet and consequently the enquiry officer directed the presenting officer to get the management documents verified by the original petitioner and obtain certificate of inspection from him before regular hearing of the departmental proceeding. The departmental proceeding held on day to day basis from 23.02.2012. During the course of hearing of departmental proceeding on 23.02.2012 the presenting officer submitted list of 52 documents along with certificate of the original petitioner regarding his verification of the original documents but copies of those documents were not supplied to him till the conclusion of the departmental proceeding. The enquiry officer only directed the original petitioner on 23.02.2012 itself to verify and inspect the documents submitted by the presenting officer and the verification certificate was obtained from him on the same date, i.e. 23.02.2012. Thereafter, enquiry report was submitted finding Kaushal Kumar Choudhary guilty and punishment of compulsory retirement was inflicted on him. The petitioner presented appeal before the appellate authority. The appellate authority also dismissed the appeal without assigning any reason.

5. Sri Chitranjan Sinha, the learned senior counsel for the petitioners, submits that along with memo of charges some documents were attached and original petitioner was allowed to inspect the aforesaid documents but no document was given to the original petitioner for preparing his defence. It is



submitted that during the course of hearing of departmental proceeding the presenting officer produced 52 documents, Exhibit- 1 to Exhibit -52, and directed the charged officer/ the original petitioner to inspect the documents but no document was given to him for proper inspection and no sufficient time was allowed to the charged officer to present his defence. Rule 10 (a) and (b) of Allahabad Bank Officer Employees' (Discipline and Appeal) Regulation, 1976 (hereinafter referred to as Allahabad Bank Officer Employees' Regulation, 1976) clearly mandates the enquiry authority as to how the enquiry shall be conducted. Rule 10(b) (i) says that the enquiry officer shall direct the charged officer to inspect the documents within five days of the order or within such further time not exceeding five days as the inquiring authority may allow the documents listed but the enquiry officer only directed the charged officer to inspect the voluminous documents, Exhibit-1 to Exhibit-52, which were produced after initiation of the departmental proceeding and he was coerced to give certificate of inspection. The enquiry officer is obliged to give five days time or even further time for inspecting the entire documents by the charged officer but no proper time was given to him and, therefore, the order passed by the enquiry officer is in violation of Rule 10 (b) of the Allahabad Bank Officer Employees' Regulation, 1976 and, hence, the enquiry report is vitiated and the order of punishment passed on the basis of such enquiry report is also vitiated on account of violation of principles of natural justice.

6. The learned senior counsel further submits that original petitioner presented appeal before the appellate authority and he had taken entire grounds including the ground that no sufficient opportunity was given to the petitioner to inspect the records, presented during hearing of the departmental proceeding, and the enquiry report was prepared in violation of Rule 10(b) of the



Allahabad Bank Officer Employees' Regulation, 1976 but the appellate authority did not at all consider the memo of appeal filed by the original petitioner and dismissed the appeal in limine. The appellate authority being a quasi judicial authority is legally bound to consider the grounds taken by the original petitioner and, therefore, the order of the appellate authority, without assigning any reason, is bad as from the order it does not reflect that the appellate authority has considered any ground taken by the charged officer. A division bench of this court in the case of *Madan Mohan Roy v. the State of Bihar & Ors* reported in **2013(4) PLJR 398** held that documents on which the department proposes to prove the charges should be given to the charged officer for allowing him to prepare defence. If the proceedee is not allowed to inspect the documents and proper time is not given that amounts to violation of principles of natural justice and the order of punishment on such enquiry report is vitiated.

7. On the contrary, Sri Sanjay Singh Thakur, the learned counsel for the Allahabad Bank, has submitted that charged officer, the original petitioner, was given sufficient opportunity to examine all the documents produced by the presenting officer during the course of departmental enquiry. The original petitioner gave certificate of inspection of all the documents and did not ask for time. For the first time he annexed a letter asking for documents but the respondents did not receive the letter of original petitioner requesting for supply of documents. The learned counsel further submits that judicial review under Article 226 of the Constitution of India is open only on the ground of malafide, arbitrariness and perversity and the order of disciplinary authority cannot be subject matter of review once it is found that the administrative authority followed the due process of law. This court cannot sit in appeal over the findings of the disciplinary authority and appellate authority. The learned counsel for the



Allahabad Bank placed reliance on the judgement of Apex Court reported in **(2007) 7 SCC 236 (Bank of India & Ors v. T. Jogaram)**. The learned counsel for the respondents further submits that the order of punishment does not require any interference on any ground even on the point of quantum of punishment and placed reliance on the judgement of Supreme Court reported in **(2005) 10 SCC 84 (Damoh Panna Sagar Rural Regional Bank & Anr. v. Munna Lal Jain)**.

8. Having considered the submission of both sides and on going through the records, the sole question arises for consideration as to whether the original petitioner was given proper opportunity and sufficient time to inspect the records during the course of departmental proceeding?

9. Admittedly, the original petitioner was served with memo of charges (Annexure-4) on 20.05.2011 and altogether 11 documents (vide Annexure-3 to the memo of charges) were handed over to him at the time of initiation of departmental proceeding. From perusal of the enquiry report (Annexure-7) it appears that hearing of enquiry was fixed on 17.02.2012 at zonal office, Muzaffarpur. The charged officer was advised to go through the charge sheet and inspect the contents thereof. The charged officer denied the allegation. The presenting officer was directed to supply the copy of management listed documents and get them inspected by the charged officer but the documents were allowed to be inspected on 23.02.2012 by the charged officer. On 23.02.2012 the presenting officer was asked as to whether the documents presented on 23.02.2012 were final. The presenting officer stated that he will be submitting additional list of documents during the regular hearing. The charged officer stated that he has no objection to this and on the same date the regular hearing of the departmental proceeding was started. Admittedly, from perusal of the enquiry report it appears that only 11 documents were presented along with memo of



charges but the presenting officer produced as many as 52 documents, which were exhibited as Exhibit-1 to Exhibit-52, and the same were produced during the course of hearing of the departmental proceeding.

10. The learned senior counsel for the petitioners pointed out that charged officer was not given sufficient opportunity to inspect all those documents, which were produced and marked as Exhibit-1 to Exhibit-52, during the hearing of departmental proceeding, and the same is in violation of Rule 10(b) of the Allahabad Bank Officers Employees' Regulation, 1976 but the learned counsel for the respondents contended that the charged officer did not object and that means that the charged officer has satisfactorily inspected the documents produced during the course of hearing and, thus, it cannot be said that the charged officer was not given sufficient opportunity.

11. It is very essential to reproduce Rule 10 of Allahabad Bank Regulations, 1976 which is as follows:-

“10(a) The inquiring authority shall, where the officer employee does not admit all or any of the articles of charge, furnish to such officer employee a list of documents by which, and a list of witnesses by whom, the articles of charge are propose to be proved.

(b) The inquiring authority shall also record an order that the officer employee may for the purpose of preparing defence-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow the documents listed:

(ii) submit a list of documents and witnesses that he wants for the inquiry:

(iii) be supplied with copies of statements of witnesses, if any, recorded earlier and the enquiring authority shall furnish such copies not later than three days before the commencement of the examination of the witnesses by the inquiring authority:

(iv) gave notice within ten days of the order of within such further time not exceeding ten days as the inquiring authority may allow for the discovery or production of the documents referred to in item (ii).

Note: relevancy of the documents and the examination of the witnesses referred to in item (ii) shall be given by the



officer employee concerned”.

12. From bare perusal of Rule 10(b) it is evident that the enquiry authority shall record an order that charged employee may for the purpose of preparing his defence inspect within five days of the order or within such further time not exceeding five days as the inquiry authority may allow the documents listed to be inspected. On perusal of the report of the enquiry officer (Annexure-7, page-1 &2) it is evident that the enquiry officer asked the presenting officer to inspect the documents and the charged officer on the same date inspected the documents but at the same time the presenting officer disclosed that more documents and statement of witnesses are to be produced during the course of hearing of the departmental proceeding. Only 11 documents were annexed with the memo of charges but the presenting officer exhibited 52 documents but it does not appear from the report of the enquiry officer that the charged officer was given sufficient time to inspect those documents brought during the course of enquiry and sufficient time was given to the charged officer as mandated under rule 10(b) of the Allahabad Bank Officer Employees' Regulation, 1976. Therefore, on the face of it, it appears that original petitioner was not given sufficient opportunity to prepare his defence and inspect the documents and the enquiry officer did not give time to the charged officer as mandated under Rule 10(b) of the Allahabad Bank Officer Employees' Regulation, 1976 to inspect the documents.

13. Thus, I find that on the basis of such enquiry report the order of the disciplinary authority is bad as the same is passed in violation of principles of natural justice and the enquiry was held in fraction and in violation of procedure laid down for conducting the enquiry. Admittedly, the High Court, in judicial



review under Article 226 of the Constitution of India, is not required to look into the findings of the disciplinary authority or the appellate authority unless it is found that the order of the disciplinary authority or the appellate authority suffers from arbitrariness, perversity or is passed in violation of procedure meant for holding the departmental enquiry.

14. In the present case, I find that the enquiry officer did not provide sufficient opportunity for inspecting the documents to the charged officer. The original petitioner in his reply to the show cause notice stated before the disciplinary authority about the violation of procedure for departmental enquiry but the disciplinary authority did not take into consideration the same. The appellate authority also summarily rejected the appeal without any reason and thus both the orders are liable to be set aside.

15. Thus, this writ petition is allowed and the order dated 25.09.2012 (Annexure-9) and order dated 03.09.2013 (Annexure-10) are set aside.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
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