

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15312 of 2015

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Rupak Kumar, son of late Braj Bhushan Mishra, resident of Jagdishpur baghnagari,
P.S.- Sakra, Dist- Muzaffarpur.

.... Petitioner

Versus

1. State Bank of India through the Chairman, State Bank of India, Corporate Centre, Madam Cama Road, Nariman Point, Mumbai- 400021.
2. The Chief General Manager, State Bank of India, Local Head Office, West Gandhi Maidan, Patna-800001.
3. The General Manager (Network-I), State Bank of India, Local Head Office, West Gandhi Maidan, Patna-800001.
4. The Deputy General Manager & Appellate Authority, State Bank of India, Administrative Office, J C Road, Patna- 800001.
5. The Regional Manager & Disciplinary Authority, Region-I, State Bank of India, Regional Business Office, J C Road, Patna- 800001.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Yugal Kishore, Sr. Advocate
Mr. Bipin Krishna Singh, Advocate
For the Respondent-Bank: Mr. Chitranjan Sinha, Sr. Advocate
Mr. Sanjiv Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-04-2017

In the present writ application the petitioner has
challenged the order dated 23.02.2015 passed in Reference No. 124
of 2013 whereby the Presiding Officer of the Central Government



Industrial Tribunal (for short 'Tribunal') has declined to grant any relief to the petitioner and has found the punishment of removal of the petitioner proportionate to the nature of misconduct.

2. The facts of the case are not in dispute.

3. The petitioner was appointed as messenger in the sub-ordinate cadre of the State Bank of India on 03.05.2000 and promoted as Assistant in the clerical cadre on 08.11.2007. When he was posted as Assistant in Region-I, Administrative office, Patna, a complaint was received by the respondent-Bank that he had concealed his higher qualification at the time of his appointment in the subordinate cadre and pursuant to such complaint an investigation was made by the respondent-bank through its Assistant General Manager (Vigilance) on 28.06.2008 to find out the truth. On investigation, it surfaced that the petitioner was appointed on the basis of School Leaving Certificate dated 16.09.1996 issued from the High School, Bharwari, District-Muzaffarpur wherein it was shown that he was studying in Class-IX. In his job application form dated 04.04.2000, he mentioned his education qualification as VIII pass. He got his appointment as messenger by concealing the fact that he was matriculate at the time of such appointment and had passed matriculation examination conducted in the year 1992, which fact was also confirmed by the



Bihar School Examination Board, Patna vide its letter no.7405 dated 03.07.2008. Further, on investigation, it also revealed that at the time of his getting promotion in clerical cadre, he produced another matriculation certificate of the year 2002 showing matric pass from the High School, Bansbigha, Dhanarua, thereby, again, concealing the said fact of passing matriculation examination in 1992.

4. After investigation, the Disciplinary Authority vide his memorandum dated 19.09.2008 sought for an explanation from the petitioner as to why a disciplinary proceeding be not initiated against him for the aforesaid misconduct. The petitioner, vide his representation dated 06.10.2008 submitted explanation denying the charges.

5. Being not satisfied with the explanation submitted by the petitioner, the Disciplinary Authority decided to initiate disciplinary action against the petitioner and vide his memorandum dated 14.05.2009 asked for show cause explanation for the following charges:-

“(i) At the time of appointment in the Bank, you submitted a School Leaving Certificate dated 19/09/1996 from High School, Bharwari (Distt. Muzaffarpur) of studying in Class-IX, despite the fact that you already passed Matriculation Examination from



Bihar School Examination Board, Patna, in 1992, thereby concealing the fact.

(ii) You produced subsequently Certificate of Passing Matriculation Examination in 2002 from High School, Bansbigha, Dhanarua, thereby concealing again the fact of passing Matriculation Examination in 1992”.

6. The petitioner vide his reply dated 21.05.2009 accepted the guilt but requested the Disciplinary Authority to forgive him from the charges.

7. After perusing the relevant records and explanation submitted by the petitioner, the Disciplinary Authority proposed to impose punishment of bringing down one stage lower in the scale of pay upon the petitioner and, accordingly, issued show cause notice vide memorandum dated 29.05.2009 as to why proposed punishment be not imposed upon him. It was explicitly laid down in the said memorandum that no reminder letter would be issued in this regard and that if nothing was said in the matter by the petitioner within the stipulated period of ten days, then, it would be presumed that the petitioner had nothing to say in the matter and further action would be taken.

8. Though, it is the case of the petitioner that pursuant to the aforesaid show cause notice, he appeared personally



before the Disciplinary Authority accepted the punishment proposed in memorandum dated 29.05.2009 whereafter, the Disciplinary Authority issued order for imposition of penalty of bringing down one stage lower in the scale of pay on the petitioner and a copy of the said order was received by him on 15.06.2009.

9. The said submission of the petitioner is vehemently disputed by the respondent-Bank. According to the Bank, the petitioner neither submitted any written explanation to the show cause notice nor he appeared in person before the Disciplinary Authority. It is the case of the Bank that the Disciplinary Authority did not pass any final order after issuance of the notice on proposed punishment. The specific stand of the Bank is that the then Disciplinary Authority retired on 31st July, 2009 before concluding the departmental proceeding and when the matter was placed before the new incumbent, he felt nature of charges to be quite serious. He was of the view that as per clause 12(a) of the Bipartite Settlement dated 10.04.2002, a detailed inquiry was required to be held before imposing any punishment, which was not done till then. Accordingly, the Disciplinary Authority vide memorandum dated 22.01.2010 withdrew the memorandum dated 29.05.2009 i.e. show cause notice on the proposed punishment and ordered for holding a proper departmental inquiry.



10. In view of the aforesaid dispute on facts, this Court vide its order dated 11.04.2017 in order to satisfy itself directed the learned counsel for the State Bank of India to produce the original record of the departmental proceeding initiated against the petitioner. Pursuant to the order dated 11th April, 2017, the learned counsel for the Bank produced the original record of the departmental proceeding of the petitioner on 18th April, 2017. Upon examination of the original record, I found that no final order had been passed by the Disciplinary Authority pursuant to the show cause notice dated 29.05.2009. It is also evident that the Disciplinary Authority vide memorandum dated 22.01.2010 withdrew the aforesaid show cause notice dated 29.05.2009.

11. Being aggrieved by the decision of the Disciplinary Authority to hold proper inquiry vide memorandum dated 22.01.2010, the petitioner approached this Court vide C.W.J.C. No.4390 of 2010, which was disposed of on 25.03.2010 whereby the Enquiry Officer was directed to consider the submission of the petitioner and pass appropriate order in accordance with law as early as possible. In compliance of the aforesaid order of this Court, the Enquiry Officer disposed of the representation of the petitioner on 22nd June, 2010 and rejected the plea of the petitioner by a reasoned order.



12. The petitioner, being aggrieved by the order of the Enquiry Officer again filed a writ petition before this Court vide C.W.J.C. No.12045 of 2010, which was disposed of vide order dated 29.07.2010 whereby the petitioner was given liberty to raise the submission raised in the writ petition before the Chief General Manager of the Bank and the Chief General Manager was directed to decide the matter.

13. Being aggrieved by the said order dated 29.07.2010, the respondent-Bank preferred intra-court appeal vide L.P.A. No.1354 of 2010 before this Court, which was allowed on 04.04.2011 by a Division Bench in favour of the respondent-Bank. The relevant extract of the order dated 04.04.2011 passed in L.P.A. No. 1354 of 2010 is as under:-

“We are of the view that disciplinary proceeding has to be conducted according to the Rules and the prescribed procedure. It invariably lays down the hierarchy of authorities for the purpose. In such a situation, the learned single Judge has erred in creating a new authority in the matter which is inconsistent with the Rules and the prescribed procedure. We disagree with the approach of the learned writ court. Furthermore, law is well settled that the disciplinary authority is always entitled to recall a part or whole of the disciplinary



proceeding and commence afresh. The impugned action of the appellant recalling the second show-cause notice is, therefore, fit to be upheld.

In the result, this appeal is allowed. We disagree with order of the learned single Judge. In the circumstances of the case, there shall be no order as to costs”.

(emphasis mine)

14. Being aggrieved by the order dated 04.04.2011 passed in L.P.A. No. 1354 of 2010, the petitioner filed a Civil Review petition vide Civil Review No.159 of 2011 on the following terms:-

“We do not find any error in the order under review. In the facts and circumstances of the case, this review application is disposed of without any prejudice to the petitioner to challenge the disciplinary proceeding as well as order of punishment before appropriate forum. Furthermore, if the petitioner is aggrieved by order of this court on merits, he can always take recourse to appeal”.

15. While Civil Review application of the petitioner was pending before this Court, the proceeding initiated against him continued. The Enquiry Officer submitted his report dated 03.11.2011 finding both charges having been proved. The



Disciplinary Authority vide memorandum dated 14.11.2011 asked for second show cause reply from the petitioner after enclosing the inquiry report. The petitioner submitted his second show cause reply on 05.12.2011. After examining the record of the departmental proceeding including the second show cause reply of the petitioner, the Disciplinary Authority found both charges proved and considering the gravity of the proved charges, tentatively came to the conclusion that ends of justice would be served if punishment of removal from service with superannuation benefits is imposed upon the petitioner.

16. Accordingly, the Disciplinary Authority vide memorandum dated 26.02.2013 directed the petitioner to submit show cause reply on the said proposed punishment either through personal hearing or through written submission within seven days of receipt of the notice. The petitioner submitted his reply on the proposed punishment and also availed of the opportunity of personal hearing before the Disciplinary Authority on the point of proposed punishment.

17. After due consideration of the submissions made on 04.03.2013 the Disciplinary Authority confirmed the tentative order of punishment and vide memorandum dated 20.03.2013 and passed the final order imposing the punishment of removal from



service with superannuation benefit and without disqualification from future employment in terms of paragraph 6(b) of the Bipartite Settlement dated 10.04.2002.

18. Being aggrieved by the order of punishment dated 20.03.2013, the petitioner preferred an appeal on 02.05.2013, which was rejected by the Appellate Authority on 29.06.2013 by a reasoned order.

19. Thereafter, at the instance of the petitioner a dispute was raised before the Central Government, who after failure of conciliation vide order dated 21.05.2013 and corrigendum order dated 31.10.2013 referred the dispute for adjudication to the Central Government Administrative Industrial Tribunal (for short 'the Tribunal'), Dhanbad specifying the point of dispute as under:-

“Whether the action of the management of State Bank of India to propose the punishment of Sh. Rupak Kumar was proportionate? If not, what relief the workman concerned is entitled for”?

20. After aforesaid reference, the Tribunal issued notices to the parties.

21. After hearing the parties, the Tribunal passed the impugned order dated 23.02.2015 in favour of the respondent-Bank and against the petitioner. The said award was published on 15th



April, 2015 by the Central Government as per Section 17 of the Industrial Disputes Act, 1947.

22. Being aggrieved by the aforesaid award passed in Reference Case No. 124 of 2013, the petitioner has filed the present writ petition challenging the award as well as order of punishment passed by the Disciplinary Authority.

23. The contention of the petitioner is that the learned Presiding Officer of the Tribunal failed to appreciate the fact that actually it was the second round of disciplinary proceedings on the same set of charges against the petitioner where the first round had already culminated in imposition of certain penalty.

24. Mr. Yugal Kishore, learned Senior Advocate appearing for the petitioner submitted that the punishment of removal of the petitioner was the second order of punishment and the same was inflicted upon him after the first punishment order had not only been communicated but also was given effect to. He submitted that the tribunal failed to appreciate that Article 20 of the Constitution of India no person can be punished twice for the same charges. He submitted that in the year 2001, the petitioner sought permission to appear at matriculation examination conducted by the Bihar School Examination Board from the Assistant General



Manager of the respondent-Bank, which was duly granted to him and, thereafter, the petitioner had appeared and passed the matriculation examination whereafter promotion was granted to him in clerical cadre. He submitted that the Bank has a policy for promotion of subordinate cadre employees to clerical cadre after being successful in the written examination and interview for the said promotion. He contended that the action of the management of the State Bank of India whereby the petitioner has been removed from service was not proportionate to the charges and the learned Presiding Officer of the Tribunal failed to appreciate this vital issue while deciding the case.

25. On the other hand, Mr. Chitranjan Sinha, learned Senior Advocate appearing for the respondent-Bank submitted that the Presiding Officer of the Tribunal has appreciated the facts and the law involved in the case correctly and the award passed by him does not suffer from any illegality. He contended that it is a gross case in which serious charges were levelled against the petitioner. The petitioner did not contest those charges and accepted the guilt in the disciplinary proceeding. He contended that it is not a case of double jeopardy and the submission regarding the action of the Bank being violative of Article 20(2) of the Constitution of India is wholly misplaced. He contended that as a matter of fact the first



punishment order was never communicated to the petitioner. He contended that when the first Disciplinary Authority retired, the successor Disciplinary Authority examined the whole record and decided to withdraw the earlier memorandum whereby proposed order of punishment was communicated to the petitioner. He contended that the said issue was already agitated by the petitioner earlier before this Court and, hence, the petitioner is debarred from raising the issue once again before this Court in the present proceeding.

26. I have heard learned Senior Advocates appearing on behalf of the parties and carefully perused the record including the impugned order passed by the presiding officer of the Tribunal.

27. So far as the issue raised by the petitioner regarding recalling the punishment order passed by the first Disciplinary Authority is concerned, since I had occasion to look into the original record of the disciplinary proceeding, I am satisfied that the final order of punishment was by the Disciplinary Authority pursuant to show cause notice dated 29.05.2009 was never communicated to the petitioner. Furthermore, as the petitioner cannot raise the issue, the Division Bench in L.P.A. No. 1354 of 2010 clearly held that the Disciplinary Authority was always entitled to recall a part or whole of the disciplinary proceeding and



commence afresh. Thus, the petitioner cannot be allowed to agitate his grievance before this Court regarding impugned action of recalling the second show cause notice by the respondent-Bank. For the same reason, I am of the view that when no punishment order was ever communicated to the petitioner pursuant to the second show cause notice dated 29.05.2009 on the proposed punishment, there is no question of execution of first order of punishment.

28. Mr. Chitranjan Sinha, learned Senior Advocate for the respondent-Bank has rightly contended that in absence of any order of punishment pursuant to the memorandum dated 29.05.2009, there is no question of double jeopardy or the action of Bank being violative of Article 20(2) of the Constitution of India.

29. I am also of the view that had the petitioner disclosed himself as matriculate at the time of his appointment, he would have been debarred from getting such appointment on the ground of educational qualification as educational qualification of the messenger was 8th pass and not 10th class pass. Further, the petitioner got promotional benefit by appearing in the matriculation examination for the second time by suppressing his earlier matriculation certificate. Since the petitioner had not disclosed that he was a matriculate even if I accept the submission of the petitioner that he appeared in subsequent matriculation examination



after taking permission from the competent authority of the Bank, the same would be of no help to the petitioner as the authorities were not aware of the fraud played by the petitioner. In the opinion of this Court looking at the serious nature of the charges if the disciplinary authority awarded the punishment of removal from service with superannuation benefits and without disqualification from future employment to the petitioner, it cannot be said that the punishment imposed was not commensurate to the charges or disproportionate to the charges alleged.

30. I am also of the view that the Tribunal while passing the impugned award has correctly appreciated the law and facts involved in the present case.

31. Moreover, the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India is only of a supervisory nature. This Court cannot sit in appeal over the findings recorded by the Tribunal. The question of sufficiency or adequacy of evidence can not be opened before this Court. Further, this Court cannot go into the merits of the dispute.

32. It is well settled that the writ of certiorari may be issued to control the improper exercise of power by inferior Courts or Tribunal or other or quasi judicial body on certain well established grounds. It is not the case of the petitioner that the



Tribunal lacked jurisdiction or that the order passed by it is perverse.

33. Dealing with the limitations of the powers of the writ court under Article 226 of the Constitution with regard to the review of findings of fact, on a petition for the issue of writ of certiorari, the Supreme Court succinctly stated the law in **Syed Yakoob vs. K.S. Radhakrishnan & Ors. [AIR 1964 SC 477]** in the following words:-

“The jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no



evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court”.

34. The landmark judgment of the Supreme Court in **Syed Yakoob** (supra) still holds good. In **M/S Pepsico India Holding Pvt. Ltd. vs. Krishna Kant Pandey [2015(4) SCC 277]**, while discussing the scope of Article 226 of the Constitution of India, the Supreme Court held as under:-

“In case of finding of facts, the court should not interfere in exercise of its jurisdiction under Article 227 of the Constitution. Reference may be made to the observations of this Court in **Bathutmal Raichand Oswal v. Laxmibai R. Tarta (1975) 1 SCC 858 where this Court observed that the High Court could not in the guise of exercising its jurisdiction under Article 227 convert itself**



into a court of appeal when the legislature has not conferred a right of appeal. The High Court was not competent to correct errors of facts by examining the evidence and reappreciating. Speaking for the Court, Bhagwati, J. as the learned Chief Justice then was, observed at AIR p. 1301 of the Report as follows: (SCC p. 864, para 7)

‘7. The special civil application preferred by the appellant was admittedly an application under Article 227 and it is, therefore, material only to consider the scope and ambit of the jurisdiction of the High Court under that article. Did the High Court have jurisdiction in an application under Article 227 to disturb the findings of fact reached by the District Court? It is well settled by the decision of this Court in Waryam Singh v. Amarnath (AIR 1954 SC 215) (AIR p. 217, para 14) that the

“power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee (AIR 1951 Cal 193), to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors”.



This statement of law was quoted with approval in the subsequent decision of this Court in Nagendra Nath Bora v. Commr. of Hills Division (AIR 1958 SC 398) and it was pointed out by Sinha, J., as he then was, speaking on behalf of the court in that case: (AIR P. 413, para 30)

“30. ... It is, thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the power under Article 226 of the Constitution. Under Article 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority”.”

35. Keeping in mind the limited nature of writ jurisdiction, when I look to the facts of the present application, I find that there is no error of law, which is apparent on the face of record. The findings of fact recorded by the Tribunal are based on admissible and material evidence.

36. In that view of the matter, I am of the considered



opinion that if after giving adequate opportunity to the petitioner, the Disciplinary Authority of the respondent-Bank awarded the punishment of removal from service with superannuation benefits, no fault can be found either with the order of the Disciplinary Authority or with the order of the Appellate Authority or with the order of the Tribunal.

37. For the reasons recorded, hereinabove, the writ application, being devoid of any merit, is dismissed.

38. There shall be no order as to costs.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.04.2017
Transmission Date	NA

