IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.408 of 2016

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Diwakar Kumar Son of Late Shiv Shankar Prasad, At & P.O.- Keshari Nagar, P.S.- Patliputra, District- Patna- 800024

.... Petitioner

Versus

1. The Punjab National Bank through its Chairman Cum Managing Director, H.O. 7, Bhikaji Cama Place Africa Avenue, New Delhi- 1100067
2. The Deputy General Manager, Circle Head/disciplinary Authority, Punjab National Bank, Circle Office, Chanakya Towers, R-Block, Patna- 800001
3. The General Manager (PAD) Appellate Authority, Punjab National Bank, Personnel Administration Division, HO, New Delhi
4. The Executive Director, Reviewing Authority, Punjab National Bank, Personnel Administration Division, HO, New Delhi

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Madhuresh Prasad, Adv.
Mr. Chaitanya Suaroop, Adv.
Mr. Abhay Shankar, Adv.

For the Respondent/s : Mr. Prashant Vedasen, Adv.
Mr. Subhash Chandra Bose, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-03-2017

Heard Mr. Madhuresh Prasad, learned counsel appearing for the petitioner and Mr. Prashant Vedasen, learned counsel appearing for Punjab National Bank.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission itself.

The petitioner has questioned the order dated 27.8.2013 passed by the Deputy General Manager, Circle Head cum Disciplinary Authority, Punjab National Bank, Circle Office, Patna, whereby and whereunder the petitioner's pay has been reduced by three stages in the time scale of pay upto 30.6.2014 i.e. the date of his superannuation with further stipulation that the petitioner shall not earn increments on his pay during the period of reduction and such reduction would have the effect of postponing future increments. The order of the Disciplinary Authority has been confirmed by the appellate authority as well as in review vide order passed on 11.6.2014 and 13.12.2014 and which orders are impugned at Annexures 5, 6 and 7 respectively to the writ petition.

The matter relates to the period when the petitioner a Scale I Officer with the respondent Bank, was posted in the Currency Chest Office of the R.B.I. located within the premises of Punjab National Bank, Exhibition Road Branch, in the town and district of Patna. The matter relates to the deposit that took place on 6.7.2007 by the Branch Office of the Bank to the Currency Chest of R.B.I. and the allegation against the petitioner as found from the charge memo present at Annexure 1 is that there was discrepancy found in denomination of notes deposited by the Branch Office in the Currency Chest.

The charge memo frames two charges against the petitioner. While Charge No.1 charges the petitioner of variation in denomination wise availability of piece of notes which could have been deposited in the Currency Chest but was not deposited, Charge No.2 which is conformingly a sub charge of Charge No.1, mentions that the pieces of notes available for deposit in Currency Chest was not deposited and those not available was deposited.

The petitioner denied the charges vide Annexure 2 and clarified that as a Currency Chest Officer he had no role to play in deposit of the notes by the Branch in the Currency Chest. The stand of the petitioner is that whatever was deposited by the Branch, was received by him as the Currency Chest Officer. The enquiry was held and the report is present at Annexure 3. The Enquiry Officer has found that there was no sufficient material to drive home the charges and thus, has exonerated the petitioner of all the charges. A Disagreement Note followed vide Annexure 4 which has been duly replied by the petitioner and which has resulted in punishment order passed on 27.8.2013 impugned at Annexure 5. Surprisingly while the Disciplinary Authority has concurred with the view of the Enquiry Officer in so far as Charge No.2 is concerned, he has upheld Charge No.1 as proved, in difference of the opinion of the Enquiry Officer and which opinion of the Disciplinary Authority has been confirmed by the appellate authority vide Annexure 6, who has also rejected the review petition vide Annexure 7. Feeling aggrieved the petitioner is before this Court.

Mr. Madhuresh Prasad has appeared for the petitioner to submit that the charges are vague and apart from the fact that the allegations so set up in the charge memo did not relate to the functioning of the petitioner as a Currency Chest Officer, even if the same is taken on its face value, no issue of misconduct is made out. He submits that the charge is vague and is incapable of being subject matter of a proceeding, inasmuch as it does not pin point any specific issue of misconduct. He submits that whatsoever amount in whatsoever denomination was deposited by the Branch, is their concern and responsibility and certainly not the duty assigned to the petitioner as a Currency Chest Supervisor who simply has to receive whatever is deposited by the Branch. He submits that if there was any discrepancy on the denomination of notes, it is the person concerned posted at the Branch who is answerable and not the petitioner. He submits that it is not the case of the respondents that there is any discrepancy in the denomination of notes deposited by the Branch and received by the petitioner and the denomination which has been deposited by the petitioner with the R.B.I.

The other issue raised by Mr. Madhuresh Prasad is that although there is a sweeping allegation made in the charge sheet regarding large scale variation in the denomination wise availability of piece of notes but there is nothing specific in the charge memo which the petitioner could have offered any answer. He submits that it is appreciating the vagueness of the charge and lack of materials that the Enquiry Officer has exonerated the petitioner from the allegations and which has also been partially accepted by the Disciplinary Authority only to commit an illegality in differing with the finding of the Enquiry Officer so far as Charge No.1 is concerned even when there is no material to drive home the same.

Learned counsel has referred to the posting order which is a part of the reply at Annexure 2 present at running Page-53 to submit that the petitioner was posted in the Currency Chest since 7.2.2006 vide office order No. 57 of 2006 and which is further confirmed from the charge memo at Annexure 1. He next refers to the finding of the Enquiry Officer at Annexure 3 to submit that the allegation rests on Annexure 108 so led by the department and which is tabulation of denomination wise details of cash receipt and payment made by the Branch on 6.7.2007. He submits that the Enquiry Officer has taken note of the vagueness of tabulation chart which did not contain any details in respect of several vouchers. The Enquiry Officer has found that Annexure 108 relied upon by the respondents, was incomplete and thus had held Charge No.1 not proved and so is the finding in respect of Charge No.2.

Learned counsel has relied upon the judgment of the Supreme Court reported in (2007)1 SCC 338 (**Govt. of A.P. & ors. v. A. Venkata Raidu**) and in reference to paragraph 9 of the judgment he submits that a vague charge sheet cannot be a foundation for a proceeding. He submits that in the circumstances the order of the Disciplinary Authority is perverse for it does not rest on any material. It is further the submission of Mr. Madhuresh Prasad that even though a vague charge as regarding variation in denomination has been levelled against the petitioner, there is no dispute on the amount received by the petitioner as a Currency Chest Officer from the branch and deposited with the R.B.I.

The argument of Mr. Prashant Vedasen, learned counsel for the Bank to contest the argument of Mr. Prasad is practically a reiteration of the allegations made in the charge memo as repeated in the counter affidavit. The sum and substance of the argument of Mr. Vedasen, learned counsel for the Bank, is that the petitioner has failed to discharge his obligation as a Currency Chest Officer in view of large scale variation so reported in the denomination of notes deposited.

I have heard learned counsel for the parties and have perused the records and in my opinion, the writ petition is fit to be allowed on both the issues so raised by the learned counsel for the petitioner.

The charge sheet is as vague as it can be and practically the two charges are overlapping. The Disciplinary Authority has concurred with the finding of the Enquiry Officer in so far as Charge

No.2 is concerned. The punishment in question thus is only on the basis of the allegations at Charge No.1. It is to be seen thus whether any misconduct can be attributed on the petitioner in so far as Charge No.1 is concerned, if he has been exonerated from charge no.2 which reads as follows:

> "i. After denomination wise tabulation of the entire Receipt and Payment vouchers of the branch of the date 06.07.2007 a large variation was observed in denomination wise availability of pieces of notes which could have been deposited in the Currency Chest vis-à-vis the number of pieces of notes said to have been deposited in the Currency Chest on that day.
>
> 2. On the basis of scrutiny and tabulation of vouchers of aforesaid date following irregularities have been observed:
>
> i. The pieces of notes available for deposit in currency chest were not deposited.
>
> ii. The pieces of notes not available for deposit in currency chest are stated to have been deposited.
>
> This situation indicates that merely accounting vouchers have been passed without depositing the stated amount physically in the chest."

Two things are reflective of the charge memo which are that:

(a) the respondents have admitted that the petitioner was working as a Currency Chest Officer located within the Branch office of the Bank at Exhibition Road, Patna but nonetheless, is an extension counter of the R.B.I.; and

(b) the allegation that there was a large variation observed in denomination wise availability of pieces of notes which could have been deposited in the Currency Chest vis-à-vis the number of pieces of notes said to have been deposited in the Currency Chest gives no specific details as to which denomination of notes and in what number, was available for deposit but not deposited and the denomination which was deposited.

Now while Mr. Vedasen has strenuously argued that it is the part of the duty of the petitioner to deposit currency notes but this submission of learned counsel runs counter to the duty chart attached to the post of Currency Chest Officer, the details of which is present at running page-53, which inter alia merely obliges him to receive cash from the Branch as per R.B.I. Guidelines alongwith other duties. Meaning thereby, it was not the duty of the petitioner as a Currency Chest Officer to deposit cash for the branch rather the duty of the petitioner as the Currency Chest officer of the R.B.I. was to receive cash from the banks which also included his parent branch of P.N.B. but certainly he had nothing to do with the amount deposited by the branch office with the Currency Chest of the R.B.I..

In my opinion, the very initiation of the present proceedings against the petitioner lacks foundation for he was being charged with a default, which did not form part of his duty as a Currency Chest Officer. It is not in dispute that all Officers who are posted in the Currency Chest which is an extended counter of the R.B.I. are within the regulatory control of R.B.I. until their posting in the Currency Chest. It is also not in dispute that while the deposit of any amount in the Currency Chest is the duty of the branch office concerned, the person posted at the Currency Chest of the R.B.I. has only the duty to receive. Considering the allegation in this background it is manifest that the petitioner had no role to play in deposit so made in the Currency Chest by the branch office of P.N.B.

The second issue which draws the contest in favour of the petitioner is the vagueness of the charge. The allegation forming charge no.1 in the charge memo at Annexure 1 imputes large variation in denomination wise availability of pieces of notes which could have been deposited vis-à-vis the denomination said to have been deposited. The variation is not explained with any specific instances. As I have already observed it is not explained what denomination could have deposited and what actually was deposited. It is also not mentioned who made the deposit rather the charge presumes that the deposit must have been made by the petitioner. Obviously a vague allegation could only be sweepingly rejected and which has exactly been done by the petitioner and not confronted by the department. It is by now well settled that the proceeding cannot be founded on vague charges and until a delinquent is confronted with specific items of default constituting misconduct, it cannot end in a penalty. Obviously, where charge itself is vague and does not refer to material particulars constituting misconduct as regarding denomination wise details, it can never be driven home. The Enquiry Officer has considered this aspect of the matter and his finding at Annexure 3 at running page-131 itself is sufficient to draw the issue in favour of the petitioner because this finding has not been contested by the bank rather the Disciplinary Authority himself has concurred on this finding while recording his opinion in respect of Charge No.2. As contended by Mr. Madhuresh Prasad, the foundation for tabulation is Annexure 108 which is tabulation denomination wise details of cash receipt and payments of the date 6.7.2007. The finding of the Enquiry Officer on this issue would be relevant for the purpose and reads as under:

> " On carefully analysis of annexure-108, it is found that for many vouchers of receipt and payment it is mentioned that
> "denomination details not available". Again on the footnote Sl.No.2 of annexure 108/7 where in it is mentioned that "including Rs.16.13 lacs on account of cash deposited on behalf of BO: Exhibition Rd, Patna, for which details are not available". Which shows that in reality for all the vouchers denominations were not

> tabulated properly. Hence the charge cannot be proved on basis of annexure-108, which is incomplete and no other documents are submitted in support of the charge.
>
> As such charge is not proved against CO.
>
> Hence charge is not proved."

It is rather peculiar that while the Disciplinary Authority relies on this very Annexure 108 to uphold Charge No.1 against the petitioner, the same document Annexure 108 is referred to for dropping Charge No.2. In other words, the opinion of the Disciplinary Authority to uphold Charge No.1 runs counter to his very opinion in respect of Charge No.2 which is in reference to Annexure 108 which reads as under:

> " On perusal of annexure 108 submitted by investigating Officer it is observed that denomination details are not available for many receipt and payment vouchers. Further on perusal of DE-9, the credit cash voucher with denomination details in back side of the same and the entry existing in currency chest book (DE-2/6 and 2/7) of the date 6.7.2007 it is found that Rs.830,00,000 were deposited by the branch to currency chest. As per office order the CO was cash officer of currency chest only and he is responsible for the cash in currency chest but not for the cash of the branch. So what amount was deposited in currency chest from branch vide DE-9 as cash officer he accepted and considered for chest cash and he was suppose to not responsible for what amount was available for deposit from the branch."

Once the disciplinary authority has accepted that the petitioner was responsible only for receipt of the cash and not what was deposited by the branch, then the very foundation for the charge stands removed and the edifice built thereon necessarily has to fall. The proceeding in question is neither sustainable on merits in absence of materials supporting the charge nor sustainable in view of vagueness of the charge sheet.

In result, the order of punishment dated 27.8.2013 passed by the Deputy General Manager, Circle Head cum Disciplinary Authority, Punjab National Bank, Circle Office, Patna, impugned at Annexure 5, togther with the order passed by the appellate authority dated 11.6.2014 as well as order of review dated 13.12.2014, impugned at Annexures 6 and 7, cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed together with consequential reliefs.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.04.2017
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