

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4855 of 2016

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1. Aman Kumar, S/o Triveni Prasad, resident of Village- Kamarganj, P.S.- Sultanganj, District- Bhagalpur presently Office Assistant (Remove from Service) Uttar Bihar Gramin Bank, Regional Office, Madhepura, Bihar.

.... Petitioner/s

Versus

1. The Chairman, Uttar Bihar Gramin Bank, Muzaffarpur.
2. The General Manager, Uttar Bihar Gramin Bank, Muzaffarpur.
3. The Regional Manager, Uttar Bihar Gramin Bank, Madhepura.
4. The Inquiring Authority-cum-Regional Manager (Officer Scale-III), Gopalganj.
5. The Disciplinary Authority-cum-Chairman, Uttar Bihar Gramin Bank, Muzaffarpur.
6. The Appellate Authority-cum-Chairman, Uttar Bihar Gramin Bank, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Adv. Mr. Ram Binod Singh, Adv.
For the Respondent/s	:	Mr. Prabhakar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 24-08-2017

Heard Mr. Bindhyachal Singh, learned counsel for the petitioner and Mr. Prabhakar Jha learned counsel for the respondents.

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

The petitioner prays for issuance of a writ in the nature of certiorari for quashing of the order dated 4.5.2015 passed by the disciplinary authority whereby the petitioner has been visited with a punishment of removal from service in exercise of power vested under the provisions of Uttar Bihar Gramin Bank (Officers and



Employees Service) Regulation, 2010 (hereinafter referred to as ‘the Regulations’) impugned at Annexure 9. The petitioner also questions the appellate order dated 13.8.2015 whereby the appeal of the petitioner has been rejected impugned at Annexure-13.

The facts are in a very narrow compass and briefly stated is that the petitioner while working as an Office Assistant, Main Branch, Madhepura was served with the show cause notice asking reply on certain allegations leveled against him relating to creation of fake account and illegal transfer of money by using the password belonging to the officers of a different branch which was duly replied by the petitioner vide Annexure-1 but not being satisfied that he was served with a memorandum of charges dated 17.12.2013 containing 7 articles of charges together with the statement of imputation of misconduct in support of each article of charge, a copy of which is placed at Annexure-2. Surprisingly, the charge sheet even though leveling rather serious charge on the petitioner on his integrity made no reference to any evidence, either oral or documentary, on which it is sought to be established. The petitioner filed his reply to the chargesheet vide his statement of defence at Annexure-3 and also filed application for supply of relevant documents before the Enquiry Officer who was pleased to reject the prayer and uphold charge No.1 to 6 while exonerating the petitioner of the charge No.7. A copy of the



enquiry report dated 24.12.2014 is present at Annexure-5. The petitioner being served with the enquiry report filed his explanation before the disciplinary authority on 2.2.2015 vide Annexure-6 but the disciplinary authority not being satisfied, served him with the order of proposed punishment on 25.3.2015 present at Annexure-7. The petitioner filed his reply to the proposed penalty vide Annexure-8 but has been visited with the order of penalty of removal from service passed on 4.5.2015 impugned at Annexure-9 to the writ petition which has been also confirmed in appeal when it was dismissed by the appellate authority on 13.8.2015 impugned at Annexure-13 to the writ petition. The petitioner feeling aggrieved is before this court.

Mr. Bindhyachal Singh learned counsel for the petitioner has taken this court through the sequence of events to submit that while charge Nos.1 to 5 even though appearing very serious, is founded on mere suspicion inasmuch as no evidence was led by the Bank to establish such charge, in so far as the charge No.6 is concerned, learned counsel has referred to the letter of the Branch Manager present at running page 106 of the writ proceedings to submit that Ranjeet Kumar the Scale II Officer, himself has accepted the lapse which was subsequently corrected. He submits that in so far as charge No.7 is concerned, it was not held proved. He submits that although the petitioner was charged with misusing the password of two Branch



Manager Chandra Shekhar Azad of Kurhan Branch as well as Office Assistant of the said Branch Jawahar Lal Sah but no evidence was led to establish either the misuse by the petitioner of the password belonging to these persons nor any evidence was led either on fake accounts or the transfers allegedly done by the petitioner. According to learned counsel, it is merely on suspicion that the charges have been set up and the Enquiry Officer has arrived at his conclusion by adopting the process of elimination because according to him, since Jawahar Lal Sah was on leave during the period and Chandra Shekhar Azad was working at the Kurhan Branch hence the default having occurred at the Madhepura Branch, it is the petitioner, who would have to bear responsibility for the misconduct.

Learned counsel has referred to the letter of the Jawahar Lal Sah at Annexure-16 to submit that whereas Jawahar Lal Sah has himself accepted attending the Branch on 19.7.2013 and 20.7.2013, the finding of the Enquiry Officer is contrary to this position. He submits that whereas these two officers i.e. Chandra Shekhar Azad Branch Manager and Jawahar Lal Sah, the Office Assistant of the Kurhan Branch, were let off on mere show cause notice, the petitioner has been visited with the extreme penalty on mere conjectures without any evidence supporting the charge.

The arguments of Mr. Singh has been contested by Mr.



Prabhakar Jha learned counsel for the Bank again placing heavy reliance on the seriousness of the charge. According to Mr. Jha since the misuse of the password as well as the illegal transaction had taken place at the Madhepura Branch and it was established that this petitioner had full knowledge about the password of Branch Manager of the Kurhan Branch, Chandra Sekhar Azad as well as its office assistant Jawahar Lal Sah, it was established that the illegality had been committed by them.

It is following the orders of this Court that the records of the disciplinary proceedings was kept handy by Mr. Jha and in reference thereto he reiterated that it is the seriousness of the charge as well as the place of occurrence which fully confirmed the petitioner's participation in the matter, which is the foundation for the punishment.

I have heard learned counsel for the parties and I have perused the records and I am rather surprised to hold that even though the petitioner was confronted with such serious charge but the callousness with which, the proceedings have been conducted by the Bank demonstrates a rather sorry state of affairs. The copy of the charge memo is on record at Annexure-2 and though it contains the article of charge as well as imputation of misconduct in support thereof but conspicuously the charges do not make any reference to any evidence,



either oral or documentary, on which the charges were sought to be established. It is not the seriousness of the allegation which decides the course of a disciplinary proceedings rather it is the material available to establish such charge which is the foundation for any conclusion in a disciplinary proceeding. Even if disciplinary proceedings are to be guided on the principles of preponderance of probability, there has to be some definite piece of evidence to connect a delinquent to the alleged charge but in so far as the present case is concerned, the allegations are founded on no evidence rather it is only since the alleged default occurred in the Madhepura Branch of the Bank and since the petitioner at the relevant time was posted as an office assistant in the Branch, which is the backbone for upholding the guilt. In my opinion, the charge memo served on the petitioner itself is defective in absence of reference of any evidence on which the department would seek to drive home the charges. Obviously, an allegation cannot be upheld or rejected merely on its imputation rather it requires to be connected with the delinquent with the aid of evidence either oral or documentary. It is surprising that the Bank is oblivious of the relevance of evidence in a disciplinary proceeding which is an integral part thereof and gives the support base to the allegation set up against the delinquent.

The records of the proceedings has been produced and do not



change the situation rather confirms the fact that no evidence was led by the Bank to drive home the charge. In other words, the allegations are based on no evidence. In this connection I am persuaded to refer to two judgments of the Supreme Court for the opinion expressed by the Supreme Court in somewhat similar situation would squarely cover the case in hand. The Constitution Bench judgment of the Supreme Court in the case of **Union of India vs. H.C. Goel** reported in **AIR 1964 SC 364** was in similar circumstances where an allegation was cast on the delinquent of trying to give bribe to the Deputy Director of Administration at his residence. The evidence against the delinquent H.C. Goel was that he tried to take out his wallet and show some papers which look like currency to Mr. Rajagopalan, the Deputy Director. On this solitary piece of evidence that a disciplinary proceeding was initiated resulting in his dismissal. The opinion of the Constitution Bench at paragraph 23 would bear a relevant consideration to the case in hand.

“23. That takes us to the merits of the respondent’s contention that the conclusion of the appellant that the third charge framed against the respondent had been proved, is based on no evidence. The learned Attorney-General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not.



This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that Charge No.3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence illegally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well founded, because, in our opinion, the finding which is implicit in the appellant's order dismissing the respondent that charge number 3 is proved against him is based on no evidence."

The judgment of the Supreme Court rendered in the case of **Kuldeep Singh Vs. Commissioner of Police & Ors.** reported in **(1999) 2 SCC 10** at paragraphs 6 to 8 again bears relevance to the contest.

I am persuaded to place on record paragraphs 6 to 8 of the judgment of the Supreme Court which runs as under:

"6. It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the enquiry officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court



interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

7. In *Nand Kishore Prasad v. State of Bihar*² it was held that the disciplinary proceedings before a domestic tribunal are of quasi-judicial character and, therefore, it is necessary that the Tribunal should arrive at its conclusions on the basis of some evidence, that is to say, such evidence which and that too, with some degree of definiteness, points to the guilt of the delinquent and does not leave the matter in a suspicious state as mere suspicion cannot take the place of proof even in domestic enquiries. If, therefore, there is no evidence to sustain the charges framed against the delinquent, he cannot be held to be guilty as in that event, the findings recorded by the enquiry officer would be perverse.

8. The findings recorded in a domestic enquiry can be characterised as perverse if it is shown that such findings are not supported by any evidence on record or are not based on the evidence adduced by the parties or no reasonable person could have come to those findings on the basis of that evidence. This principle was laid down by this Court in *State of A.P. v. Rama Rao*³ in which the question was whether the High Court under Article 226 could interfere with the findings recorded at the departmental enquiry. This decision was followed in *Central Bank of India Ltd. v. Prakash Chand Jain*⁴ and *Bharat Iron Works v. Bhagubhai Balubhai Patel*⁵. In *Rajinder Kumar Kindra v. Delhi Admn.*⁶ it was laid down that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man could come, the findings can be rejected as perverse. It was also laid down that where a quasi-judicial tribunal records findings based on no legal evidence and the findings are its mere ipse dixit or based on conjectures and surmises, the enquiry suffers from the additional infirmity of non-application of mind and stands vitiated.”



In view of the uncontested facts noted above where the very initiation of the disciplinary proceedings was resting on a charge memo which was defective in absence of any evidence being mentioned therein and which defect was not bothered to be cured by the disciplinary authority at any stage of the proceedings rather the illegality was perpetuated when the Enquiry Officer has proceeded to draw his conclusion on mere conjectures and surmises in absence of evidence being led by the Bank to support the charge, the finding of the Enquiry officer resting on no evidence is a perversity and its endorsement by the disciplinary authority as well as the appellate authority is a perpetuation of such illegality.

For the reasons so discussed, the entire proceedings initiated against the petitioner beginning the service of the charge memo at Annexure-5, order of proposed punishment at Annexure-7 issued by the disciplinary authority, the order of punishment of removal at Annexure-9 as well as the order of appellate authority at Annexure-13 are held illegal and are accordingly quashed and set aside.

The writ petition is allowed. The petitioner stands reinstated on his post with 50% back wages which should be paid to him within 3 months of receipt/production of a copy of this judgment.

Bibhash

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.09.2017
Transmission Date	NA

(Jyoti Saran, J)

