IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8381 of 2014

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1. Manoj Kumar Pandey son of late Ramjit Pandey resident of village - Nagri, Police Station - Charpokhari, District - Bhojpur (Ara)

.... Petitioner/s

Versus

1. The State Bank of India through the Chairman State Bank of India, Corporate Centre, Madam Cama Road, Nariman Point, Mumbai
2. The Chief General Manager, State Bank of India, Local Head Office, West Gandhi Maidan, Patna
3. The Deputy General Manager (B & O) Cum Appellate Authority State Bank of India Zonal Office, J.C. Road, Patna
4. The Regional Manager - cum - Disciplinary Authority - cum - Appointing Authority, Region - II, Administrative Office, State Bank of India, J.C. Road, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Aditya Narayan Singh, advocate

For the Respondent/s : Mr. Kaushlendra Kumar Sinha, advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 24-08-2017

Heard both sides.

2. The petitioner, by filing this writ petition, has challenged the order dated 18.06.2013, as contained in memo No. 175 (Annexure-12) issued by the Regional Manager, Region-II, Patna by which the petitioner has been removed from service with superannuation benefits. The petitioner has further challenged the order dated 18.10.2013 contained in letter DGM (B&O)/P/DPS/ 04 (Annexure-14) passed by the appellate authority whereby the appellate authority confirmed the order of removal of the petitioner from service by dismissing his appeal.

3. The relevant facts which got bearing in this case are that the petitioner applied for appointment on the clerical post in the State Bank of India on 14.08.2009, in pursuance of advertisement issued on 31.07.2009. The

petitioner filled up the form and appeared in written test on 22.11.2009. After written test and subsequent interview the final result was published in the month of October, 2010. The petitioner was appointed in the State Bank of India as Assistant on 15.12.2010 and he was posted at Danapur branch. On being transferred from Danapur the petitioner joined the administrative office of Region-II, State Bank of India, Patna on 30.12.2011. The petitioner received letter dated 19.05.2012, on the basis of complaint received from Central Bank of India, informing the State Bank of India that the petitioner left the service of Central Bank of India without being relieved from Central Bank of India and while the petitioner was posted at Narayanpur Bhauli branch, Bagaha, West Champaran he was involved in a fraud of Rs. 1.79 crores in borrowal account during the period March, 2010 to September, 2010 and the Central Bank of India has lodged case in the Central Bureau of Investigation. It is alleged that petitioner at the time of joining in the State Bank of India concealed this fact and gave false affidavit declaring that after retirement from Indian Air Force the petitioner did not serve or get employment anywhere except the State Bank of India whereas he has already availed the benefit of ex- service man, while joining in the Central Bank of India, and thereby he was ineligible for the same benefit again. The petitioner submitted his explanation on 30.05.2012 pleading his innocence. The petitioner stated that he hurriedly submitted affidavit as per format given by the State Bank of India officials and he did not go through the entire contents carefully. He did not conceal anything deliberately. If any fact is concealed that is unintentional. The petitioner was served with articles of charge containing four charges. The enquiry officer found three charges proved. The disciplinary authority served second show cause notice and thereafter dismissed the petitioner from service. It is also very relevant to state here that petitioner prior to appointment in State

Bank of India got service in Central Bank of India after coming out successfully from the written test and interview. He joined Central Bank of India on 15.12.2009. Admittedly, prior to joining of the petitioner in State Bank of India, i.e., on 15.12.2010, although the petitioner has submitted resignation in terms of the contract, but his employer, Central Bank of India, did not give him N.O.C. to join in the State Bank of India and petitioner after concealing this fact joined in the State Bank of India.

4. Mr. Aditya Narayan Singh, the learned counsel for the petitioner, while assailing the order of disciplinary authority and the appellate authority, submits that both the orders suffer from illegality and are not sustainable. The enquiry officer has although held that the presenting officer did not produce any document evidencing the petitioner's appointment in Central Bank of India on the basis of quota of ex-service man but at the same time held that on perusal of other documents it transpired that petitioner had joined Central Bank of India at the age of 42 and at this age no person can join a bank unless he or she is Ex-servicemen. It is submitted that in the advertisement it has been written that if Ex-servicemen candidates who have already secured employment under the Central Government in group C & D will be permitted the benefit of age relaxation as prescribed for Ex-servicemen for securing another employment in a higher grade or cadre in group C and F of Central Government. However, such candidates will not be eligible for the benefit of reservation for Ex-servicemen in Central Government job. It has nowhere been stated by the Central Bank of India or State Bank of India that the petitioner was found eligible under the Ex-servicemen quota. Save and except age relaxation given to the petitioner, the Central Bank of India or State Bank of India did not appoint the petitioner in Ex-servicemen category. The learned counsel for the petitioner further submits that with regard to allegation of

submitting false affidavit the petitioner has already submitted that due to inadvertence the petitioner put his signature on the typed proforma of affidavit given by the bank officials at the time of his joining. Earlier the bank did not take affidavit from the successful candidates. The petitioner being Ex-servicemen candidate was never instructed about the facts in advance and at the time of joining all the Ex-servicemen candidates were handed over typed piece of papers and instructed to get the contents typed on Rs. 100/- non judicial stamp paper and got the same notarized after putting his/ her signature. It is submitted that with regard to involvement of the petitioner in borrowal accounts, the charge has not been proved and, therefore, the order of dismissal, on the face of it, is not in accordance with law. The petitioner would not get other employment at this juncture of his life although he has served successfully and diligently twenty years in Indian Air Force. The learned counsel for the petitioner heavily placed reliance on the judgements of the Supreme Court in the case of Secretary, ***Department of Home Secretary, A.P. & ors. V. B. Chinnam Naidu*** reported in ***(2005) 2 SCC 746*** and in the case of ***Commissioner of Police & Ors. V. Sandeep Kumar*** reported in ***(2011) 4 SCC 644*** and submitted that in both cases the candidates failed to mention about their criminal antecedents and the Supreme Court, on the facts and in the circumstances of the case, held that suppression was not of material one and termination of the petitioners from service was illegal on the ground of suppression of those facts.

5. The respondents- State Bank of India filed counter affidavit. The respondents submitted that there was specific stipulation in the advertisement that on concealment of material facts service can be terminated even after appointment. The petitioner intentionally concealed the facts of employment in the Central Bank of India at the time of his appointment in the State Bank of India

and he submitted false affidavit declaring that after retirement from the Indian Air Force the petitioner did not secure any employment prior to the State Bank of India whereas he had already availed the benefit of reservation of Ex-servicemen while joining the service in the Central Bank of India and thereby making himself ineligible for the same benefit again and while posted at Narayanpur branch of the Central Bank of India the petitioner was involved in fraud of Rs. 1.79 crores in borrowal accounts during the month of March, 2010 to September, 2010 and for that FIR has also been lodged with the Central Bureau of Investigation by the Central Bank of India. It is further submitted that in the advertisement, inviting application for the appointment on the post of clerk, the bank has inserted the provisions in which there was a provision for appointment of Ex-servicemen. Clause 16 of the advertisement very categorically stated that candidate should not furnish any particulars that are false, tampered or should not suppress any material information while filling online the application form. Clause 17 of the advertisement says that the applicant, while applying online for the post, should ensure that he or she fulfills the eligibility criteria and other norms mentioned in the advertisement. A candidate shall ensure that the particulars furnished by him/her are correct in all respects and in case it is detected at any stage of recruitment that the candidate does not fulfill the eligibility norms and/ or that he or she has furnished any incorrect/ false information or has suppressed any material facts his/ her candidature will stand cancelled. It is further submitted that petitioner in his affidavit submitted before the bank did not disclose about his service in the Central Bank of India although in the letter, informing the petitioner about his recruitment in the clerical cadre, it was stated that in the event of his appointment in the bank he would be required to give a letter of release from his past/ present employer (Annexure-F). The A.G.M. (Admin) of the State

Bank of India vide letter No. 412 dated 15.12.2010 disclosed the various terms and conditions stipulated therein and informed the petitioner that he has been appointed in the bank. According to clause (r)(s)(t) of the aforesaid letter the petitioner was obliged to sign the declaration of his fidelity and secrecy and all other letters of undertaking etc. as prescribed by the bank. If the petitioner had served anywhere, he has to furnish a discharge/ clearance certificate from the previous employer before the joining the service of the bank. It is also stated that in the event of any information, declarations, certificate, testimonial being found incorrect or false the appointment shall be deemed to be invalid ab initio and the candidate shall render himself liable for appropriate action including departmental action, removal/ dismissal from service. It is submitted that petitioner has admittedly concealed the relevant facts of employment in Central Bank of India and he suppressed material information and, therefore, the disciplinary authority has rightly found the suppression as gross misconduct on the part of the petitioner and dismissed him from service. The learned counsel for the bank has placed reliance on the order of this court passed in CWJC No. 11758 of 2011 (Prabha Shankar Kumar v. the State Bank of India & ors) decided on 01.05.2011 and also on the judgements of the Supreme Court in the case of **Delhi Administration & Ors. V. Sushil Kumar** reported in **(1996) 11 SCC 605**; in the case of **Kendriya Vidyalaya Sangathan & Ors. V. Ram Ratan Yadav** reported in **(2003) 3 SCC 437**; in the case of **The Secretary, A.P. Social Welfare Residential Educational Institutions v. Sri Pindiga Sridhar & Ors** reported in **2007 (3) Supreme** as well as in case of **R. Radhakrishnan v. The Director General of Police & Ors.** reported in **2007 (7) Supreme 331**.

6. On the basis of rival contentions of both sides the sole question arises for consideration whether the petitioner has suppressed material facts in the

form filled up for the appointment in the State Bank of India and in the affidavit submitted by him at the time of his appointment and on such suppression whether the petitioner is liable to be terminated from service or making him unfit for continuance in service?

7. In order to appreciate the rival contention of the parties it would be relevant to reproduce the relevant clauses of the advertisement, which are as follows:-

> "Note (i) Candidate still serving in defence and desirous of applying in the ex-serviceman category should submit a certificate from the competent authority to the effect that he would be released/ retired on or before 31.08.2010.
>
> (ii) Ex-servicemen candidates who have already secured employment under the Central Government in Group-C and D will be permitted the benefit of age relaxation as prescribed for Ex servicemen for securing another employment in a higher grade or cadre in Group C/D under the Central Government. However, such candidates will not be eligible for the benefits of reservation for Ex-servicemen.
>
> (iii) The Territorial Army Personnel will however be treated as Ex-servicemen w. e. f. 15.11.1988.
>
> (iv) An ex-serviceman who has once joined a Government job on the civil side after availing of the benefits given to him as an Ex-serviceman for his reemployment, his Ex-serviceman status for the purpose of reemployment in job ceases".

8. Clause 16 and 17 of the advertisement stipulates that the candidates are warned that they should furnish correct particulars and if any information is found false their candidature even after appointment shall be liable to be

cancelled.

9. From perusal of the form filled up by the petitioner it appears that petitioner has categorically stated that his previous employer is Indian Air Force but at the time of appointment the petitioner filed affidavit (Annexure-D) stating that "*I am aware that the ex-servicemen candidates who have already secured employment in Government/ Public Sector undertakings after availing benefit of reservation of ex-servicemen will not be eligible for the benefit of ex-servicemen once again.*

> *I am also aware that when an ex-servicemen who has once joined a Government/ Public Sector undertaking job on the civil side, after availing benefits to him as an ex-serviceman, his ex-serviceman status for the purpose of re-employment in job ceases.*
>
> *I have not secured any employment in any Government/Public Sector undertaking either before or after the date of interview held in respect of the recruitment of clerk in State Bank of India (2009-10) and that I am eligible to the reservation/ quota for ex-servicemen in the recruitment being done by the State Bank of India".*

10. On perusal of the averments made by the petitioner in the application form filled up by him and the contents of the affidavit filed by the petitioner at the time of his appointment on the post of clerk in the State Bank of India, it is apparent that the petitioner has concealed this fact that he was appointed in the Central Bank of India on 11.12.2009 and joined the Central Bank of India on 15.12.2009. The petitioner resigned from the service of Central Bank of India on 18.11.2010 but he did not get the NOC from the Central Bank of India

besides the fact of lodging of a case of fraud in the borrowal accounts in the branch of Central Bank of India where the petitioner was posted, although this charge has not been proved by the enquiry officer. The enquiry officer has also stated that the petitioner in the form has mentioned that he remained in the service of Indian Air Force since 15.04.1988 to 30.04.2008 as Sergeant (Technical) but he did not disclose the facts in his affidavit that after retirement from Indian Air Force he joined the Central Bank of India.

11. Thus, it appears that petitioner has suppressed material facts and when a candidate suppresses material facts or gives false information he cannot claim any right for appointment or continuance in service and there cannot be any dispute with this proposition of law. The enquiry officer has also found that the petitioner committed gross misconduct only because he concealed the material facts with regard to his employment in any Public Sector bank before getting appointment in the State Bank of India. Admittedly, the petitioner remained in service of Central Bank of India for about one year and just before issuance of the appointment letter by the State Bank of India the petitioner, well conversant of the facts of his earlier appointment in the Central Bank of India leading to disqualification of his appointment in a Public Sector bank, got job in another Public Sector bank, and did not furnish correct information and submitted false affidavit.

12. In the case of **Secretary, Department of Home Secretary A.P. & Ors v. N. Chinnam Naidu** (supra), the facts of the case are quite different. In the aforesaid case the candidate was to fill up the form as to whether he has ever been convicted by a court of law or detained under any State/Central preventive detention laws for any offence whether such conviction sustained in court of appeal or set aside by the appellate court if appealed against. The answer was no.

Information was sought from the candidate in order to ascertain and verify the character and antecedents to judge his suitability to enter or continue in service. The information demanded was not explicit in terms and it was found that the petitioner did not suppress material facts. On such facts the order for refusal of appointment of the petitioner was found to be unsustainable.

13. In the case of **Commissioner of Police & Ors. V. Sandeep Kumar** (supra) the candidate concealed the fact of a criminal case registered against him under Section 325 of the IPC. His service was terminated on concealment of facts but the High Court set aside the order of termination on the ground that the case was of petty nature and such petty case does not make him unsuitable for appointment to the post of Constable and the Supreme Court held that the employer should take lenient view and condone such solitary incident of indiscretions at the young age.

14. In the case of *Prabha Shankar Kumar v. State Bank of India* (supra) a single bench of this court held that the petitioner withheld the important information and suppressed the material facts. The petitioner after being found fit was appointed on the post of Probationary Officer but he requested the respondent-bank to extend the date of his joining till certain dates but again he filed another petition for extending the period of his joining and informed the bank that a criminal case was also pending against him. On such information the authorities cancelled the appointment of Prabha Shankar Kumar on the ground of concealment of material facts and, accordingly, this court dismissed the writ petition.

15. In the case of **Delhi Administration v. Sushil Kumar** (supra) the Supreme Court held that on the ground of suppression of material facts the appointment of a candidate is liable to be cancelled. Similar view was taken by

the Supreme Court in the other judgements cited by the learned counsel for the respondents.

16. It appears from the discussions made above that the petitioner firstly concealed the fact of his employment in the Central Bank of India and secondly he filed false affidavit stating therein that he was aware that when an ex-servicemen who has once joined a Government/ Public Sector undertaking job on the civil side, after availing benefits of being an ex-serviceman, his ex-serviceman status for the purpose of re-employment in job ceases but by suppressing material facts of his getting benefit of ex-servicemen in getting job in Central Bank, he got job in S.B.I., although he was not entitled to get any benefit of ex-servicemen. On such suppression of material facts and false information the petitioner has rightly been dismissed from service. Thus, I do not find any good ground to interfere with impugned orders, terminating the petitioner from service, and the writ petition is, accordingly, dismissed.

(Prabhat Kumar Jha, J)

BKS/-

AFR/NAFR	NAFR
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