

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17920 of 2008

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Gopal Krishna Prasad aged about 61 year's son of Late Bisheshwar Prasad,
Resident of 301 – Yuvraj Mansion, East Boring Canal Road, Police Station –
Budha Colony, Town and District Patna.

.... Petitioner

Versus

1. The Central Bank of India through its Chairperson & Managing Director,
Central Bank of India, Chander Mukhi, Nariman Point, Mumbai-400 021.
2. The Assistant General Manager (H K.), Central Bank of India, Chander Mukhi,
Nariman Point, Mumbai- 400 021.
3. The Zonal Manager, Central Bank of India, Zonal Office, Block-B, 2nd Floor,
Muryalok Complex, Dak Bungalow Road, Patna-800001.
4. Chief Manager (PRS), Patna Zonal Office, Block-B, 2nd Floor, Muryalok
Complex Dak Bungalow Road, Patna-800001.
5. The Regional Manager, Central Bank of India, Regional Office, Block-B, 2nd
Floor, Muryalok Complex, Dak Bungalow Road, Patna-800001.
6. The Regional Manager, Central Bank of India, Regional Office Ranchi.
7. The Regional Manager, Central Bank of India, Regional Office, Gaya.

.... Respondents

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Appearance :

For the Petitioner : Mr. Ratan Prasad Sinha, Advocate.

For the Respondents : Mr. Bimlendu Mishra, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 16-02-2017

Heard Shri Ratan Pd. Sinha, learned counsel for the
petitioner and Shri Bimlendu Mishra for Central Bank of India.

2. The petitioner filed this writ petition seeking
quashing of the Letter No. PRO/HRD/07-08/672 dated 07.08.2007 by
which an amount of Rs. 299633.70/- was ordered to be recovered
from the OD account of the petitioner on the basis of the order as
contained in Letter No. Z.O./HRD/2007-08/1514 dated 31.07.2007
contained in Annexure-2. The petitioner also seeks quashing of order
as contained in Annexure 6 and 7 respectively by which Rs.



314403.70/- was ordered to be recovered.

3. The facts which are admitted and relevant for disposal of this writ petition are that the petitioner was posted as Senior Manager, Central Bank of India at Biharsharif Branch. The petitioner was transferred from Biharsharif Branch to Ramgarh Branch on 04.06.2002. The petitioner was called upon to show cause vide Memo No. RO/OPR/02-03/775 dated 02.09.2002 to explain the facts enumerated in the aforesaid letter about irregularities and excess payment made by him towards the office expenses and others. The petitioner received the aforesaid letter admittedly on 11.09.2002. The petitioner informed the concerned authority to give him time to file representation but on 13.09.2002 as contained in Annexure-6 an order was passed to recover Rs. 314403.70/- from the salary of the petitioner. The petitioner represented that without his show cause, the order of recovery was made. On such, the order of recovery was kept in abeyance vide order dated 28.12.2002 as contained in Annexure-11. Thereafter, the petitioner filed detailed representation on 04.11.2003. The bank officials vide order dated 07.05.2004 as contained in Ref. No. RO/PRS/04-05/127 after considering the representation of the petitioner ordered for recovery of Rs. 314403.70/-. The petitioner after having come to know about the order as contained in Annexure-13 dated 07.05.2004 for recovery of



Rs. 314403.70/- represented to the Regional Manager, Central Bank of India, Regional Office, Ranchi on 17.07.2004 and after receipt of the aforesaid letter of the petitioner, the bank did not recover any amount from the salary account of the petitioner by which it appears that the bank took compassionate and humanitarian ground that the petitioner was getting Rs. 6000/- per month out of Rs. 21000/- gross salary. When the petitioner retired and his gratuity was paid in OD account, Rs. 299633.70/- was deducted at one time out of Rs. 402288/- of gratuity amount paid to the petitioner through Cheque No. 134040.

4. Learned counsel for the petitioner submits that the petitioner filed his show cause on 04.11.2003 and the order of recovery was stayed vide Reference No. RO/PRS/ESTT/2002-2003/1997 dated 28.12.2002. Of course, thereafter the order for recovery was made after consideration of representation of the petitioner, but the order is bad as no reason has been given on the representation of the petitioner and no order was communicated to the petitioner.

5. Shri Bimlendu Mishra, learned counsel for the Central Bank of India has submitted that the order as contained in Annexure-13 was served on the petitioner and the petitioner did not object or raised any illegality in his representation dated 17.07.2004



as contained in Annexure-14 and the petitioner simply requests to waive or vacate this punishment order on humanitarian and compassionate ground.

6. The bank authority did not deduct 50 percent of salary towards the nominal account merely on compassionate and humanitarian ground. When the petitioner retired and got his gratuity, the amount lying due against the petitioner was deducted. The petitioner has already acquiesced the order of recovery made on 07.05.2004 and he did not prefer any appeal against the order. There is a provision under Rule 17 of the Central Bank of India Officers' Employees Conduct Regulations, 1976 that the officer may appeal against the order imposing upon him any punishment under Rule 4. The appeal shall lie to the appellate authority and the appeal should be preferred within 45 days from the date of the order of the recovery.

7. The only question arises as to whether the order of recovery is bad or illegal. Admittedly, the petitioner was called upon to show cause on 02.09.2002 itself vide order as contained in Reference No. RO/PRS/02-03/775 Annexure-4 to explain the irregularities committed by him, while he was posted as Senior Branch Manager of the Central Bank of India at Biharsharif. The petitioner received the letter on 11.09.2002. The order of recovery



was made on 13.09.2002, but on the request of the petitioner the order of recovery passed on 13.09.2002 was kept in abeyance. The petitioner on 04.11.2003 represented the entire facts but the authority vide order dated 07.05.2004 as contained in Reference No. RO/RRS/04-05/127 ordered for recovery of Rs. 314403.70/-. The petitioner did not prefer any appeal against this order.

8. Rule 4 of Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976 (hereinafter to be referred as 'Regulation' for the sake of brevity) says :-

PENALTIES :

The following are the penalties which may be imposed on an officer employee, for acts of misconduct or for any other good and sufficient reasons.

Minor penalties :

- a) Censure;*
- b) Withholding of increments of pay with or without cumulative effect;*
- c) Withholding of promotion;*
- d) Recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders;*
- e) Reduction to a lower stage in the time scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting the Officer's pension.*

Major penalties :

- f) Save as Provided for in (e) above reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the officer will earn increments of pay during the period of such reduction and*



whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;

g) reduction to a lower grade or post;
h) Compulsory retirement;
i) Removal from service which shall not be a disqualification for future employment.

j) Dismissal which shall ordinarily be a disqualification for future employment.

Explanation – *The following shall not amount to a penalty within the meaning of this regulation namely:-*

(i) withholding of one or more increments of an officer employee on account of his failure to pass a prescribed departmental test or examination in accordance with the terms of appointment to the post which he holds;

(ii) stoppage of pay of an officer employee at the efficiency bar in a time scale, on the ground of his unfitness to cross the bar;

(iii) non promotion, whether in an officiating capacity or otherwise, of an officer employee, to a higher grade or post for which he may be eligible for consideration but for which he is found unsuitable after consideration of his case;

(iv) reversion to a lower grade or post, of an officer employee officiating in higher grade or post, on the ground that he is considered, after trial, to be unsuitable for such higher grade or post, on administrative grounds, unconnected with his conduct;

(v) Reversion to his previous grade or post, of an officer employee appointed on probation to another grade or post, during or at the end of the period of probation, in accordance with the terms of his appointment or rules or orders governing such probation;

(vi) Reversion of an officer employees to his parent organization in case he had come on deputation;

(vii) termination of the service :-



(a) of an officer employee appointed on probation, during or at the end of the period of probation, in accordance with the terms of his appointment, or the rules or orders governing such probation;

(b) of an officer employee appointed in a temporary capacity otherwise e than under a contract or agreement, on the expiration of the period for which he was appointed, or earlier in accordance with the terms of his appointment;

(c) of an officer employee appointed under a contract or agreement, in accordance with the terms of such contract or agreement; and

(d) of an officer employee on abolition of post;

(viii) retirement of an officer employees on his attaining the age of superannuation in accordance with the rules and orders governing such superannuation;

(ix) termination of employment of a permanent officer employee by giving 3 months' notice or on payment of 3 months' pay and allowances in lieu of notice;

(x) termination of employment of an officer employee on medical grounds, if he is declared unfit to continue in bank's service by the Bank's medical officer.

9. From perusal of the provisions as contained in Rule 4 of the aforesaid regulations it appears that Annexure-13 as contained in Letter 127 dated 07.05.2004 was passed after consideration of the representation of the petitioner. The petitioner came to know about the aforesaid order of recovery order before 17.07.2004 and thereafter the petitioner represented to the Regional Manager on 17.07.2004 itself to waive and vacate the order of punishment. The



order was not ever vacated, but the authority on compassionate ground did not deduct the amount as ordered and after the retirement of the petitioner the entire amount was deducted in one installment.

10. Rule 17 of Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976 provides that any officer employees may appeal against the order of imposition of any penalties :-

APPEALS :

17. (i) An officer employee may appeal against an order imposing upon him any of the penalties specified in Regulation 4 or against the order of suspension referred to in Regulation 12. The appeal shall lie to the Appellate Authority.

(ii). An appeal shall be preferred within 45 days from the date of receipt of the order appealed against. The appeal shall be addressed to the Appellate Authority and submitted to the authority whose order is appealed against. The authority whose order is appealed against shall forward the appeal together with its comments and the records of the case to the Appellate Authority. The Appellate Authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders. The Appellate Authority may pass an order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case :

Provided that –

(i) If the enhanced penalty which the Appellate Authority proposed to impose a major penalty specified in Clauses (f), (g), (h), (i) and (j) of Regulation 4 and an enquiry as provided in Regulation 6 has not already been held in the case, the Appellate Authority shall direct that such an enquiry be held in accordance with the provision of Regulation 6 and thereafter consider the record of the enquiry and pass such orders as



it may deem proper.

(ii) If the Appellate Authority decides to enhance the punishment but an enquiry has already been held as provided in Regulation 6, the Appellate Authority shall give a show cause notice to the officer employee as to why the enhanced penalty should not be imposed upon him and shall pass final order after taking into account the representation, if any, submitted by the officer employee.

11. The petitioner did not prefer any appeal against the order dated 07.05.2004 and, therefore, it appears that the petitioner acquiesced the order and filed this writ petition only after his retirement i.e. more than 4½ years for setting aside the order for recovery of amount on the ground that the order is non-speaking. There is laches on the part of the petitioner to file this writ petition besides the fact that the petitioner did not even avail the alternative remedy of appeal as stated above.

13. Considering the facts aforesaid, I do not find any merit in this writ petition. Accordingly, the same is dismissed.

(Prabhat Kumar Jha, J.)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.03.2017
Transmission Date	

