IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10057 of 2015

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Ajay Kumar Sinha, son of late Babu Ram Singh, resident of Flat No. 104A, Sri Apartment, Mohalla- Anandpuri, P.S.- S.K.Puri, District- Patna.

.... Petitioner

Versus

1. The State Bank of India through the Chief General Manager, Human Resources, Corporate Centre, State Bank of India, Mumbai.
2. Chief General Manager, Small and Medium Enterprises Business Corporate Centre, State Bank of India, Mumbai.
3. Chief General Manager, Rural Business Corporate Centre, State Bank of India, Mumbai.
4. Chief General Manager and Appellate Authority, local head office, West Gandhi Maidan, Patna.
5. Deputy General Manager-cum-Disciplinary Authority, local head office, West Gandhi Maidan, Patna.
6. Deputy General Manager (Vigilance), State Bank of India, local head office, West Gandhi Maidan, Patna.
7. Chief Manager-cum-Enquiry Officer, Domestic Enquiry Department, State Bank of India, local head office, West Gandhi Maidan, Patna.
8. The Manager-cum-Presenting Officer (Vigilance), State Bank of India, local head office, West Gandhi Maidan, Patna.
9. Assistant General Manger, Small and Medium Enterprises City Credit Centre, local head office, West Gandhi Maidan, Patna. .... Respondents

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Appearance :

For the Petitioner/s : Mr. Rama Kant Sharma, Sr. Advocate
Mr. Lakshmi Kant Sharma, Advocate

For the Respondent/s : Mr. Kaushlendra Kr. Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

C.A.V. JUDGMENT

Date: 01 -03-2017

Heard counsel for the petitioner and learned counsel appearing for the Bank.

2. The petitioner is a former officer of State Bank of India. In the year 2011, he was posted as Deputy Manager, Small and Medium Enterprises, City Credit Centre, Patna (hereinafter referred to as “the SMECCC”), State Bank of India, Main Branch, Patna. He

seeks quashing of the orders passed by the Disciplinary Authority, appellate Authority as well as Reviewing Authority, whereby a punishment of removal was awarded to him under Rule 67 (i) of the SBI Officers Service Rules.

3. The short, facts of the case is, that the petitioner was departmentally proceeded for the following charges:

> "While posted as Credit Officer at SMECCC, Patna from October 2008 to 15.01.2011, you failed to discharge your duties with utmost devotion, diligence, honesty and integrity and acted in a manner unbecoming of an officer and highly prejudicial to the Bank's interest in violation of Rule 50(4) of State Bank of India Officers Service Rules."

4. The statement of allegations on which the charge is based is also quoted herein below for easy reference:

> "During your incumbency as Credit Officer, SMECCC, Patna from October 2008 to 15.01.2011, the under-noted irregularities have allegedly been committed by you:
>
> (i) On 25.11.2010, you had received PMEGP loan application of Shri Umesh Kumar. You did not process the proposal for sanction till 15.01.2011. Thus you violated the extant guidelines of Bank to abide by the proscribed turn around time for sanction/rejection as per SMECCC process manual.

(ii) You did not conduct PSS of the proposed unit, nor did you send any communication to the applicant regarding any shortcoming, if noticed, in loan application.

(iii) You demanded an illegal gratification from Shri Umesh Kumar, the applicant, for processing the sanction of loan for Rs.25.00 lacs.

(iv) Your above act has tarnished the image of the Bank."

5. The petitioner filed his show-cause reply denying the charges levelled against him. The Inquiry Officer, on conclusion of the inquiry, returned finding of guilt. The petitioner was issued second show-cause notice along with copy of inquiry report for his comments. The petitioner submitted his explanation, again denying the charges and refuting the findings of the inquiry report. Not being satisfied with the explanation of the petitioner, the General Manager and appointing authority awarded penalty of removal from service vide order, dated 07.01.2013. The petitioner preferred an appeal, which too was rejected by the Appellate Authority vide his order, dated 25.02.2014. A review application filed by the petitioner was also rejected and hence, this writ application.

6. The petitioner has assailed the impugned proceeding as well as the order of punishment on more than one ground. He submits that the loan application had never come to his table for

processing. He submits that he was a Credit Officer and he dealt with general proposal and did not deal with the loan proposal falling under SMECCC category. The loan application of Umesh Kumar, which was under SMECCC category, never came to his table for processing. The seizure list at page 266 would also prove his point that the loan document of Umesh Kumar was not seized from his table, almirah or desk. He next submits that he was acquitted in the criminal trial on merit and as such, the allegation of having accepted bribe is untrue and is proved false. Further-more, three out of four documents relied upon by the respondents were not made available to him and in support of his submission, the petitioner has relied upon Annexure-9 'A' at page 85. Besides this, he has been deprived of adequate opportunity to defend his case, as neither copy of the complaint petition filed by Umesh Kumar nor copy of the domestic inquiry, were handed over to him. The loan application of Umesh Kumar was twice earlier rejected and the file was lying with Shri M. L. Shukla and the processing of the same never got delayed because of him.

7. On the other hand, Mr. Kaushlendra Kumar Sinha, learned counsel appearing for the Bank justified the impugned actions against the petitioner. He refutes the submission of the petitioner that the loan application of Umesh Kumar was not placed before him for processing. In support of his submission, learned counsel has drawn

my attention to the prosecution documents produced against the captioned petitioner. By referring to this document, learned counsel submits that it is evident from the aforesaid document produced by the prosecution that the loan proposal was marked to this Officer. He next submits that the defence was given full opportunity to produce his documents. He refers to page 102 of the brief in support of his submission. He next submits that all the requisite documents were produced and the petitioner gave his go ahead signal for proceeding in the matter. Further-more, the proceeding was conducted in accordance with the rules and regulations of the State Bank of India and the petitioner was provided sufficient opportunity to place his case.

8. Learned counsel submits that the standard of proof in criminal proceeding and in departmental proceeding are different and as such, the petitioner cannot ask for exoneration in the departmental proceeding on ground that he had been acquitted in the criminal proceeding. In support of his submission, learned counsel has placed reliance upon the judgment passed in case of **Divisional Controller, Karnataka SRTC Vs. M.G. Vittal Rao**, reported in **(2012) 13 SCC 142**; and in the case of **Ajit Kumar Nag Vs. General Manager (PJ), Indian Oil Corporation Ltd., Haldia and others**, reported in **(2005) 7 SCC 764**.

9. I have heard the counsel for the parties. One of the

primal submissions of the petitioner is that the loan document was of SMECCC category, whereas he dealt with general proposal of loan. It is not in dispute that the loan of complainant fall under SMECCC category. In support of his submission, learned counsel submits that the loan document was seized from another table, thus he is being accused of not addressing the loan application, which never came to his notice. It is difficult for the Court to accept the submission of the petitioner in view of the specific assertion of the Bank that the said document was marked to the delinquent.

10. The petitioner had submitted that he had not been furnished necessary documents and as such non-supply of the same, would amount to denial of a reasonable opportunity to defend his case effectively. In support of his submission, learned counsel has relied upon a decision of the Hon'ble Apex Court in case of **State of Uttar Pradesh Vs. Saroj Kumar Sinha**, reported in **AIR 2010 SC 3131**.

11. There cannot be any dispute to the proposition of law that the copies of the documents, which form the foundation of charge-sheets against the delinquent, ought to be supplied to him to enable the delinquent to make an effective reply to the charges.

12. In the instant case, there are rival contentions with respect to supply of documents. Whereas it is the stand of the petitioner that necessary documents have not been supplied, the stand

of the Bank is otherwise, which asserts that all necessary documents have been supplied and only such documents, which were not relevant on germane to the case, were not supplied.

13. I find that the petitioner has not been able to satisfy the Court as to which of the documents not supplied was essential for adjudication of the matter, and how its non-supply had prejudiced his case. On the other hand, I find that the documents supplied by the Bank have been pasted at page 99 of the enquiry proceeding register, being Pex 1 to 5 and the defence documents sought by the delinquent and supplied by the Bank, have been pasted on EPR as Dex-1 to Dex-15, as such the submission of the petitioner that he has been prejudiced because of non-supply of the necessary documents, is devoid of merit and is rejected.

14. The petitioner has next argued that he has not been given adequate opportunity to represent his case. The Bank has countered the submission by asserting that as many as two show-cause were issued to him, but the petitioner took time in filing his show-cause. The Bank thereafter also sent a letter to him on 07.01.2013 to appear before it, however, he did not choose to do so. Thus, the petitioner cannot take advantage of his own laches, not to appear personally to make his submission. The plea of the petitioner as such has no merit.

15. The petitioner has lastly argued that he has been acquitted in the criminal proceeding and as such he would be entitled to exoneration in the departmental enquiry, as charges are identical. In support of his submission, learned counsel for the petitioner has relied upon the decision in case of **G.M. Tank Vs. State of Gujarat & others**, reported in **(2006) 5 SCC 446** and **M. Pal Anthony Vs. Bharat Gold Mines Limited and another**, reported in **(1999) 3 SCC 679**. However, counsel for the Bank refutes the submission of the petitioner that the charges are identical and submits that the yardstick in a departmental proceeding is different than in the criminal case. In support of his submissions, learned counsel for the Bank has relied upon decisions in case of **Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd. Haldia and Others**, reported in **(2005) 7 SCC 764**, para 11, and in case of **Divisional Controller, Karnataka SRTC Vs. M.G. Vittal Rao**, reported in **(2012) 13 SCC 142**.

16. I have perused the charges in the criminal case and the departmental proceeding. Though some of the charges in both criminal case and departmental proceeding are similar, but it cannot be said that all charges are identical, as such the decision relied upon by the petitioner would not come to his aid. However, the Court is of the view if the petitioner files a fresh representation before the learned

appellate authority, he/she would consider the matter afresh on the point of quantum of punishment and would dispose of the same within three months from the date of its receipt without being prejudiced that earlier the review application filed by the petitioner has been rejected.

17. With the aforesaid observation, this application stands disposed of.

(Samarendra Pratap Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	05.07.2016
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