IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1744 of 2012

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Abu Nasar Ansari S/O Late Abu Zaffar Ansari R/O Village- Surajpur, P.S.- Partapganj, District- Supaul, At Present Clerk-Cum-Cashier, Area Office, Kosi Kshetriya Gramin Bank, Supaul (Now Uttar Bihar Gramin Bank, Supaul)

.... Petitioner

Versus

1. Uttar Bihar Gramin Bank, Head Office, Muzaffarpur, through its Chairman
2. Chairman, Uttar Bihar Gramin Bank, H.O., Muzaffarpur
3. The General Manager-Cum-Disciplinary Authority, Kosi Kshetriya Gramin Bank, Purnea, Now Uttar Bihar Gramin Bank, Muzaffarpur
4. Sri R.K. Arora, S/O Name Not Known to the Petitioner, Appellate Authority, Uttar Bihar Gramin Bank, Head Office, Kalambagh Chouk, Muzaffarpur, Bihar

.... Respondents

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Appearance:

For the Petitioner: Mr. Tara Nath Jha, Advocate.
For the Respondents-Bank: Mr. Prashant Vedsen, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
Date: 16-01-2018

Heard Mr. Tara Nath Jha, learned counsel for the petitioner, and Mr. Prashant Vedsen, learned counsel representing the respondent Bank and its authorities.

2. Petitioner in the present case is aggrieved by the order dated 27.03.2008 (Annexure-13 to the Writ Application) passed by the Disciplinary Authority the General Manager, Koshi Kshetriya Gramin Bank, Purnea (respondent no. 3) as also the Appellate Order dated 09.11.2011 as contained in Annexure-16 to the Writ Application by which the Chairman-cum-Appellate Authority of the Uttar Bihar Gramin Bank has rejected the Appeal preferred by the petitioner against the order of the Disciplinary Authority.

3. A perusal of the order dated 27.03.2008 passed by the

Disciplinary Authority would show that there were altogether 15 charges against the petitioner, who was a Clerk-cum-Cashier at Sohandarhat Branch under Araria district of Koshi Kshetriya Gramin Bank. The charges were that of financial irregularities including fraud and embezzlement of Bank's money. A departmental proceeding was initiated against the petitioner after placing him under suspension; the Enquiry Officer concluded the enquiry proceeding on 22.07.2005 wherein the petitioner participated on all the dates of sitting along with his defence representative.

4. After conclusion of the departmental enquiry, the petitioner was served with a show-cause / second show-cause and was called upon to appear in person for a personal hearing on 05.04.2006. The petitioner approached this Court earlier vide CWJC No. 4290/2006 (Abu Nasar Ansari Vs. Koshi Kshetriya Gramin Bank & Ors.) and raised a grievance over the manner in which the departmental enquiry was being conducted without paying him the salary as required under Regulation 45(2)(h) of Koshi Kshetriya Gramin Bank Officers and Employees Service Regulations (Revised), 2001. The said Writ Application was heard and disposed of on 05.04.2006 (Annexure-8). The Bank authorities were directed not to dispose of disciplinary proceeding pursuant to the second show cause notice until they consider and deal with the request of the petitioner

for payment of full salary in terms of the aforesaid provision of the Regulation. The petitioner was also granted liberty to raise in his second show cause reply the other submissions that he was not given reasonable opportunity before issuance of the second show cause notice.

5. It further appears that while the petitioner submitted letter dated 17.04.2006 requesting the Disciplinary Authority to conduct a *de novo* enquiry, the Disciplinary Authority passed an order dated 24.05.2006 as contained in Annexure-10 to the Writ Application by which the petitioner was dismissed from Bank's service and it was ordered that he would not get any pay for the suspension period. The petitioner challenged the order of dismissal in CWJC No. 7557/2006 on two grounds – firstly that the proceeding against him was initiated under the amended service regulation which was revised in 2001 only, according to him, the proceeding should have been conducted under the old rules; secondly that the petitioner was not supplied with the documents which were required by him and, therefore, he was not given liberty to file a reply to the show cause notice. This Court vide its order dated 13.11.2007 disposed of the said Writ Application rejecting the first contention of the petitioner but holding that "It would appear from the entire Writ Application, Counter Affidavit and the reply that the petitioner was in fact not in a position to file a reply

to the second show cause notice and he also did not get an opportunity to raise the issues that he had raised in the earlier Writ Petition before this Court."

6. In view of the above finding of the Writ Court, the petitioner was given one month's time after receipt / production of a copy of the order to file a reply to the second show cause notice and to bring before the authorities all facts and issues which he wishes to raise before them subject to what had been held in the order. The authorities concerned were directed to pass a speaking order in respect of the issues raised by the petitioner. In the meantime, the order of dismissal was stayed by this Court.

7. After the order dated 13.11.2007 was passed in CWJC No. 7557/2006, the petitioner filed a reply to the show cause notice as contained in Annexure-12 to the Writ Application. He agitated his grievance that he was not given an opportunity to inspect the records and documents despite several reminders which caused difficulty in replying to the charge sheet. He also pointed out certain discrepancies in the conduct of the enquiry proceeding and submitted that the Enquiry Officer ignored the documents submitted during the enquiry and behaved with him like the management's representative. He, thus, alleged complete violation of the principles of natural justice.

8. After considering the reply to the show cause, the

Disciplinary Authority passed the order dated 27.03.2008 (Annexure-13) by which the petitioner has been held guilty with respect to the 12 charges out of the 15 levelled against him and a consolidated punishment of '**dismissal from Bank's service**' has been imposed upon the petitioner. The petitioner challenged the order dated 27.03.2008 passed by the respondent no. 3 by filing a Writ Petition being CWJC No. 9216 of 2008 before this Court. On 22.07.2011, the said Writ Application was disposed of as the Writ Court was of the view that the petitioner has an efficacious alternative remedy in the shape of an appeal which the petitioner has to avail. The Writ Application was disposed of directing the Appellate Authority to consider and dispose of the appeal on merit.

9. The petitioner preferred an appeal to the Chairman-cum-Appellate Authority of Uttar Bihar Gramin Bank and raised his grievances as regards the manner in which the departmental enquiry was conducted. One of the grounds taken by him was that he was not supplied with the papers and when the defence witnesses were coming and were giving statements in favour of the petitioner and against the management the presenting officer as well as the enquiry officer both used dilatory tactics and did not allow the witnesses who have been named in the Memo of Appeal to attend the proceeding by again and again cancelling the enquiry date continuously from 01.03.2005 to

27.06.2005. He submitted that after he made an application under the Right to Information Act, 2005 (RTI Act) requesting the PIO to supply the balancing certificate of the Branch of the month of April, 2001, H.O. letter no. RTI/209-10/01 dated 11.09.2009 made available an incomplete balancing certificate of HSS A/C as on 07.04.2001, which indicates that the balance as per GLB was not available whereas the balance as per Books / Ledger has been shown as Rs. 53,75,066.02. He pointed out that while letter no. RO/ARA/02/09-10 dated 11.02.2010 states that G/L balance of HSS as on 07.04.2001 is Rs. 53,62,348.02 which differs to one another but after intervention of CIC, Delhi they have provided G/L balance on 04.11.2010 which is contrary to the charge sheet. The petitioner further pointed out that he has been framed only to protect Mr. Raut, the then Branch Manager, as on the date of theft of ledger, i.e. 07.04.2001 to 09.04.2001 Mr. Raut was in full command of the Branch.

10. The Appellate Authority disposed of the appeal preferred by the petitioner vide his order as contained in letter dated 09.11.2011 which is Annexure-16 to the present Writ Application. The Appellate Authority held that the petitioner has added nothing new rather he has repeated his old stand in the appeal too. He upheld the punishment imposed by the Disciplinary Authority.

11. Learned counsel for the petitioner while assailing the

impugned orders submits that even though he has not specifically stated in his reply to the show cause that a copy of the enquiry report was not served upon him, in the supplementary affidavit filed before this Court it has been specifically stated. He further submits that after the direction of this Court issued on 10.01.2018, the Bank has filed a supplementary counter affidavit enclosing therewith a copy of the enquiry report. According to him, the second show cause notice issued to the petitioner contained the gist of the enquiry which the petitioner took as if those are the contents of the enquiry report and under a bona fide belief he submitted his reply to the second show cause but now when the enquiry report has been filed before this Court it appears that the Disciplinary Authority while issuing the show cause notice had not brought the entire finding of the enquiry officer to the notice of the petitioner and, therefore, non-supply of a copy of the enquiry report has definitely prejudiced the case of the petitioner inasmuch the petitioner had no opportunity to go through the complete inquiry report while submitting his reply to the disciplinary authority. Since he has been dismissed from service it has got a civil consequence on his life and family.

12. Learned counsel further submits that on perusal of the information which has come by virtue of the intervention of the CIC, Delhi it would appear that the difference in the balance as per ledger

and the balance as per the G/L which was prepared on the basis of vouchers and DTB remained that of only Rs. 6545.00; if this is so then the charges against the petitioner of defalcation would not survive. Learned counsel submits that in the appeal preferred before the Appellate Authority these facts were duly pleaded, a number of grounds were raised by the petitioner but perusal of the appellate order would show that save and except using some ornamental language for purpose of dismissal of appeal, the Appellate Authority has not gone through those grounds and has not taken care to deal with the submissions of the petitioners. The appellate order, according to the learned counsel for the petitioner, is nothing but an empty formality. Learned counsel submits that because the petitioner has been served with a punishment of dismissal from service, the Appellate Authority should have considered the issues raised by the petitioner in his appeal. He submits that the order passed by the Disciplinary Authority as well as the Appellate Authority are bad in law and suffers from violation of principles of natural justice, therefore, those are liable to be set aside by this Court. It is submitted that the criminal case is still pending and Mr. Raut, the then Branch Manager, is also an accused in the criminal case.

13. On the other hand, learned counsel representing the respondent Bank and it’s authorities submits that this petitioner while

working as Clerk-cum-Cashier at the Branch Office indulged in serious acts of omission and commission by way of defalcation. He submits that the departmental proceeding was conducted in accordance with law and the petitioner was given full opportunity to defend himself. It is submitted that the petitioner participated in the enquiry on each and every date and thereafter on conclusion of the enquiry, even though a copy of the enquiry report was not served upon him, the second show cause notice issued to the petitioner contained the summary or gist of the enquiry report and the petitioner never raised any issue out of it. The petitioner submitted his reply to the show second cause notice and only after considering his reply, the Disciplinary Authority passed the impugned order. He further submits that considering the position of the petitioner as a Cashier in Bank's service no leniency may be shown to him in the matter of award of punishment once the case of defalcation is proved in the disciplinary proceeding. Any leniency would only erode the public confidence in the banking system and that would affect in turn the economic activities on which the economy of the country survives. Learned counsel further submits that the Appellate Authority has considered the appeal preferred by the petitioner and has passed a reasoned and speaking order after giving an opportunity of hearing to the petitioner. He would, thus, submit that there is no illegality or infirmity in the impugned orders.

14. I have heard learned counsel for the parties and perused the records.

15. In my considered opinion, the appellate order as contained in Annexure-16 to the Writ Application needs to be interfered with for a well settled reason that the Appellate Authority has not considered the grounds raised by the petitioner in his Memo of Appeal as contained in Annexure-15 to the Writ Application. As has been taken note of here-in-above, the petitioner raised some specific issues such as that he was not supplied with the papers which will be evident from the proceeding book dated 26.11.2002 and 17.12.2003 and from the list submitted to the Presiding Officer on 02.09.2004. He also took a ground that the defence witnesses were coming and were giving statements in favour of the charged employee and against the management, therefore, the enquiry officer on the asking of the Presiding Officer continuously extended the date from 01.03.2005 to 27.06.2005. The petitioner pointed out the information which had transpired during the ongoing proceeding after the intervention of the CIC, New Delhi. It is a matter of record that these information which were made available to the petitioner during the year 2010-11 were brought for consideration in the appeal. According to him, those information were clinching and had a far reaching consequences. The

Appellate Authority has recorded that the petitioner was given sufficient opportunity by the Disciplinary Authority to submit his reply to the proposed penalty. He has further recorded that on observation of the papers of the entire departmental proceedings it is found that Sri Ansari was given reasonable opportunity to defend his case and after conducting proper enquiry in the light of the natural justice charges have been proved by the enquiry officer. The Appellate Authority was of the view that most of the points in his appeal are the same which have been already discussed / raised and produced during the enquiry proceeding but as per the petitioner fact remains that what were discussed in the enquiry report was not in the knowledge of the petitioner due to non-supply of the enquiry report and therefore the Appellate Authority was required to consider the point raised in appeal. At one stage, the Appellate Authority has recorded that the petitioner has added nothing new rather he has repeated his old stand in the appeal too.

16. The appellate order, in the opinion of this Court, cannot be said to be a well reasoned order because none of the ground raised by the petitioner in his appeal has been dealt with reference to the materials which may be available on the record and which the Appellate Authority had occasion to observe and look into. Only because the Appellate Authority says that he had carefully and

minutely examined the issues and facts in this matter, this court would not be satisfied with the appellate order because such careful and minute examination of the issues are not reflected in the order passed by the Appellate Authority. In the opinion of this Court, the fact that a copy of the enquiry report was not made available to the petitioner and only a gist of the same was entered in the second show cause notice which was served on the petitioner also requires a consideration in the totality of the facts and circumstances of this case to find out as to whether or not any prejudice has been caused to the petitioner due to non-supply of a copy of the enquiry report.

17. Learned counsel for the petitioner has raised this issue at this stage by filing a supplementary affidavit but this Court is willing to take note of it because in fact a copy of the enquiry report has been produced by the Bank only when the direction was issued by this Court on the last date.

18. In view of the opinion of this court that the Appellate Authority has not considered the grounds raised by the petitioner in his appeal and has passed the appellate order only by using some ornamental language, the appellate order dated 09.11.2011 (Annexure-16 to the Writ Application) is hereby set aside and the matter is remitted back to the Appellate Authority with a direction to consider the grounds raised by the petitioner in his Memo of Appeal

as contained in Annexure-15 to the Writ Application. Each and every issue raised by the petitioner to assail the Disciplinary Order (Annexure-13) should be considered and the Appellate Authority would be obliged to pass an order only after considering those grounds in the light of the materials available on the record. Since learned counsel for the petitioner has raised an issue that non-supply of the copy of the enquiry report has prejudiced the petitioner inasmuch as he has been dismissed form service, this aspect of the matter shall also be looked into and shall be considered by the Appellate Authority.

19. Let a fresh reasoned order after giving an opportunity of hearing to the petitioner be passed by the Appellate Authority within a period of three months from the date of receipt / production of a copy of this order.

20. The Writ Application is allowed to the extent indicated here-in-above.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	23.01.2018
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