

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1141 of 2014

In

Civil Writ Jurisdiction Case No.3732 of 2008

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Awadhesh Paswan son of late Balgovind Paswan, resident of village- Bandeli
Khurd, P.S.- Kawakol, District- Nawadah

... .. Appellant

Versus

1. The Chairman Cum M.D., Central Bank of India, Chander Mukhi, Nariman Point, Mumbai
2. The Appellate Authority-cum-Asstt. General Manager, Central Bank of India, Zonal Office, Patna
3. The Regional Manager-cum-Disciplinary Authority, Central Bank of India, Regional Office, Chhinndwara
4. The Regional Manager, Central Bank of India, Regional Office, Saharsa

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Ujjwal Kumar Sinha Ms. Shilpi Keshri
For the Respondents	:	Mr. Ajay Kumar Sinha Mrs. Manju Jha

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 22-03-2018

Vide order dated 29.04.2014 learned Single Judge dismissed the writ application of the present appellant and refused to interfere with the order of punishment of dismissal passed by the Disciplinary Authority and affirmed by the Appellate Authority.

The appellant was a Clerk working in one of the branches of Central Bank of India in the State of Bihar. Five set of charges were drawn up against him for his misconduct. One of the major charges was that he had remained absent unauthorizedly from



November, 1995 to December, 2002 despite having suffered loss of pay of 696 days earlier. Other charges related to being drunk on duty, misbehaving and using uncivilized language and abuses upon the superior authorities. Charge was also drawn up with regard to certain financial irregularities like taking festival advance without adjusting the earlier advance as well as having made some bill purchases despite there not being sufficient fund in relation to those cheques which were used for the bill purchase.

Except for the first charge, rest of the charges stood proved. The Disciplinary Authority decided to issue punishment of dismissal. The Appellate Authority upheld the said decision. The appellant, therefore, decided to assail the orders by filing a writ under Article 226 of the Constitution of India.

The thrust of argument of learned counsel for the appellant is that the absence of the appellant was neither willful nor without intimation. There were certain compelling circumstances for which the appellant could not attend to his duty and he had been giving intimation to the Bank authorities from time to time. If that be so, then according to the counsel for the appellant, it was not a willful absence or without any information to the Bank.

Leave is not a matter of right. It is for the employer to decide when he can permit an employee to avail the facility of leave for



the period for which such leave is granted keeping in mind that over all functioning and efficiency or the working of the organization does not suffer. It is not that an employee can unilaterally decide to go on leave and merely because he sends intimation and gives reason for his prolonged absence, his absence becomes justified or approved.

The underlying principle with regard to grant of leave is that whenever leave is prayed for, the leave has to be authorised by the competent authority and no employee can avail leave unilaterally and send intimation as justification for such absence.

The employee may have ten thousand reasons not to attend to his duty but then it is also his duty to manage the call of duty and responsibility towards his employer as well as manage his call of duty towards his family or the household. An aberration once in a while could be understood as it could relate to situations beyond the control of an employee. But consistent and persistent prolonged absence despite clear warning to such employee by withholding salary for the period of absence, as long as 696 days, obviously has had no effect in the manner in which the appellant used to absent himself from duty at his leisure and will. He was a Clerk in a small branch of the Bank where every missing hand makes a difference to the smooth conduct of the business of the



Bank. Obviously, all told and in absence of any proper defence or explanation, except the intimation, the authorities came to a conclusion that these are cases of willful absence without justification and authorization by the competent authority and such employees, therefore, are neither good for the institution nor for the discipline or morale of the organisation as such. There are also instances where proper financial discipline has not been maintained by the appellant while dealing with branch and taking advantage of his position as a Clerk in the branch. This also does not indicate towards an employee as to his trustworthiness or his commitment towards financial discipline of the Bank in question.

Since nothing has been pointed out by way of infirmity in the process and procedure which had been adopted in conduct of the disciplinary enquiry, therefore, the learned Single Judge in the totality of the circumstances held that in absence of any violations of principle of natural justice the prolonged absence of 714 days is a gross misconduct and the punishment of dismissal cannot be said to be arbitrary or disproportionate.

Any prudent employee is required to know limits of taking such liberty. It is not that the Bank had not given sufficient indication in the past that such conduct of absence, according to the convenience of the employees, is not acceptable, especially



when the Bank has to deal with people and provide service day in and day out. A person, who has no commitment or devotion to duty, cannot be shown any leeway and indulgence by interfering with the order of dismissal by replacing with any other order since the counsel for the appellant is still insisting that the appellant is a poor person and his family will suffer after he having served the Bank for a reasonable length of time.

The reasonable length of time also has a chequered history, therefore, it seems that the appellant was never serious about working in a disciplined environment. He was a care free person who lived by his will rather than by the discipline required for working in a public sector Bank.

We are not inclined to interfere with the order of the learned Single Judge. The appeal is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

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