IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.817 of 2002

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Amarendra Kumar Dutta Anuj, son of Shri Bhuneshwar Dutta, resident of village- Bhaluahi, P.S. Marouna, District- Supaul.

... ... Petitioner/s

Versus

1. The State Bank of India, through the Chief General Manager, Local Head Office, J.C. Road, Patna.
2. The Deputy General Manager, State Bank of India, Zonal Office, Muzaffarpur.
3. The Assistant General Manager-cum-Disciplinary Authority, Region -IV, Zonal Office, Muzaffarpur.
4. The Chief Manager, State Bank of India, Madhubani.

...... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Asim Jha

For the Respondent/s : Mr. S.K.Sinha

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 28-11-2018

Heard the parties.

2. This writ petition filed under Article 226 of Constitution of India for issuance of writ of certiorari for quashing the order dated 30th April, 2001 (Annexure-13) passed by Assistant General Manager Cum Disciplinary Authority, Muzaffarpur State Bank of India by which punishment of discharge has been inflicted on petitioner as well as order dated 11.10.2001 passed by respondent No. 2 Deputy General Manager Appellate Authority State Bank of India, Zonal Office, Muzaffarpur (Annexure-15) by which appeal preferred by petitioner has been dismissed.

3. Briefly stated the facts of the case is that petitioner joined the defence services as Air Craft Man in 1978 but prematurely retired with life pension due to accident. Petitioner was appointed as Clerk Cum Cashier in 1982 and was posted at State Bank of India, Fishery in the District of Giridih and was transferred to State Bank of India, Jhanjharpur Branch in the year 1989.

4. Petitioner was put under suspension on 17th May 1994 for his various acts of omission and commission and on 02.06.1994 FIR was lodged against petitioner by the Branch Manager SBI, Jhanjharpur. Petitioner was deputed on 26.10.1994 in Vigilance Department for interrogation with respect to same charge for which FIR was lodged. As FIR was already lodged for same occurrence petitioner declined to reply to the query of vigilance as same would prejudice his defence in criminal case.

5. Petitioner was put under suspension on 17.05.1994 and was entitled for full salary and allowance as per departmental rules circular dated 26.10.1983 but same was not paid to him.

6. The Disciplinary Authority decided to initiate departmental proceeding against petitioner. Disciplinary

Authority (respondent No. 3) issued charge sheet dated 02.08.1995 in respect of four article of charges.

7. Although charge sheet was issued to petitioner on 28.02.1995 the Disciplinary Authority issued another charge sheet on 24.02.1997 in respect of two more charges. Petitioner submitted his reply to the above six charges but Disciplinary Authority did not find the explanation and reply of petitioner to be satisfactory and appointed Inquiry Officer to inquire against the charges as framed against petitioner.

8. The four charges framed against petitioner in charge sheet dated 02.08.1995 are as follows:-

> (i) While you were posted at Jhanjharpur Branch you got withdrawal for Rs. 700/- negotiated as D.D. No. S/13 on 03.05.93 at the Branch without keeping sufficient balance in your S.B. Account No. 10359 or 11547 maintained with Nirmali Branch. But as sufficient fund was not there in your account, the instrument had to be returned unpaid to the Jhanjharpur Branch on 08.12.94 by Nirmali Branch under remarks "Insufficient Fund".
>
> (ii) Again on 15.06.93, you got another cheque no. 494808 for Rs. 2500/- purchased as DD No. S/23 at the

Branch without keeping sufficient balance in your account no. 10359 maintained with Nirmali Branch. As you did not have sufficient fund in your S.B. A/c No. 10359 the cheque pertaining to D.D. had to be returned unpaid to Jhanjharpur Branch on 12.03.94 by Nirmali Branch under remarks "Fund Insufficient" consequently the amount of returned D.D. was recovered from S.B. A/c No. Staff/116 with interest of Rs. 438/- on 17.03.94 when you deposited Rs. 3000/- in you account with the Branch for the purpose.

(iii) You also got 47 "A/c Payee Cheques" aggregating Rs. 51,100/- favouring sundry parties, having got endorsed in your favour, purchased at the Branch and got the proceeds thereof credited in your current A/c No. P/280 at the Branch in an irregular manner and for your personal gain. Details in annexure-"A".

(iv) While you were deputed to Vigilance Department, Local Head Office, Patna for interrogation on 26.10.94, you refused to reply to the queries during the course of interrogation by the Vigilance Deptt.

9. The 2nd charge sheet dated 24.02.97 the following

two charges were framed against petitioner:-

(i) While functioning as paying cashier you have made payment of the undernoted S.B. withdrawals without obtaining the payees 2nd signature on the reverse of the respective withdrawal forms and the payments were made to unauthorized persons without adhering to the process of identifying the bonafide payee. It is alleged that the entire amount has been fraudulently withdrawn. Thus, you dereliction of duty has resulted in perpetration of fraud which has put the Bank to financial loss to the tune of Rs. 20,000/- on this score:

Sl. No.	Name of A/c holder	A/c No.	Date of withdrawal	Amount,	Remarks
1.	Miss Manju Kumari	016/4080	29.07.93	Rs. 10,000/-	------
2.	-do-	016/4080	16.08.93	Rs. 10,000/-	-----
				Rs. 20,000/-	

(ii) While working in Savings Bank Section an account bearing No. 13023 was opened on 03.11.93 at the Jhanjharpur branch in the name of Shri Pradeep Kumar Sharma. A cheque leaf bearing no. 283382 was used to defraud the Bank to the extent of Rs. 85,000/- which was sent for collection as S/c to Madhubani Branch on 18.01.1994. The proceeds of the said S/c was credited in the said account on 10.03.1994. An amount of Rs. 44,000/- and Rs. 40,000/- were withdrawn on 12.03.1994 and 17.03.94 respectively from the account. It also transpired that the account was opened in the fake name. The formalities for opening of the account as well tokens for both the above mentioned withdrawals were issued by you. You also entered the said impugned cheque no. 283382 in the “S” Day Book. It is alleged that you have facilitated in opening of the account by influencing Shri Brahmanand Jha holder of account no. 11923 to introduce. Shri Sharma at the time of opening of the account alleged connivance in perpetration of a fraud of Rs. 85,000/- and the Bank has sustained loss to the tune of Rs. 84,000/- on this score.

10. It has been submitted on behalf of counsel for the petitioner that the bank has filed a money suit against said Pradeep Kumar Sharma in connection with said cheque with interest and at the same time petitioner has also been proceeded for perpetuating fraud with allegation of opening the bank account in fake name. It has been argued that if the bank account was fake the bank could not have filed money suit No. 1 of 1996 for Rs. 1,29,936/-

11. Petitioner on receipt of article of charges dated 02.08.1995 and 24.02.1997 declined to submit his explanation

as for the same charges FIR has been lodged against petitioner, however, he participated in the enquiry proceeding.

12. The Enquiry Officer submitted enquiry report dated 30.06.1999 in which the Enquiry Officer against the memo of charge dated 02.08.1995 found petitioner not guilty against charge No. 1 and 3 whereas charge No. 2 was found to be partly proved and charge No. 4 non-reply of the query of vigilance the petitioner was found guilty. As far as memo of Charge dated 24.02.1997 is concerned. The Enquiry Officer found both the charges as partially proved. The Disciplinary Authority issued a 2nd show cause notice to petitioner on 30.08.2000 differing from the finding of Enquiry Officer and assigning his reason for not agreeing with the finding with respect to charge Nos. 1 to 3 of memo of charge dated 02.08.1995 and also with respect to memo of charge dated 24.02.1997. The Disciplinary Authority held that all the charges are proved and petitioner was asked to submit his reply within 15 days.

13. Petitioner submitted his reply on 25.10.2000 and stated that petitioner was innocent and none of the charges stands proved against petitioner. Disciplinary Authority issued show cause dated 15.02.2001 against proposed punishment of discharge from service with superannuation benefit and

petitioner was directed to appear in person for hearing on 28.02.2001 and petitioner submitted his reply on 28.02.2001.

14. The Disciplinary Authority by its order dated 30.04.2001 imposed punishment of discharge with superannuation benefit and the period of suspension would not be counted on duty and except subsistence allowance nothing will be paid to petitioner. It has been submitted on behalf of the petitioner that he was suspended on 07.10.1994 and remained for suspension for seven long years and contrary to Shashtri award, Desai award and the bank's own circular regarding payment of subsistence allowance petitioner was not paid full salary and allowances after one year of suspension. Petitioner on 12.07.2001 preferred appeal before the respondent No. 2 against the order passed by Disciplinary Authority imposing punishment of discharge but appellate authority dismissed the appeal by his order dated 11.10.2001.

15. A counter affidavit has been filed on behalf of respondents in which it has been stated that while working as Clerk Cum Cashier at Jhanjharpur Branch, petitioner was charge sheeted for allegedly withdrawing money from the bank by cheque without keeping sufficient balance for the same in his account at Nirmali Branch. The transaction is known as DD

Purchase and benefit of same is only given to bank employee. The other charge was that he deposited pre cheques issued in the name of different persons for payment towards insurance claims and were credited by the petitioner in his own bank account by endorsing the said cheques in his own favour. Petitioner was alleged of withdrawing Rs. 84,000/- as well as making payment to unauthorized persons while functioning as Cashier. It has been stated in counter affidavit that since Criminal Case was pending against petitioner as such in accordance with circular he was not entitled for full salary after one year of suspension order.

16. After departmental enquiry the Enquiry Officer submitted his enquiry report holding some of the charges as proved and some of the charges as partially proved and some of the charges as not proved. The Disciplinary Authority on consideration of the enquiry report and materials available on record differed with the findings of Enquiry Officer and found all the charges against petitioner to be proved and accordingly 2nd show cause notice was issued to petitioner giving reasons for differing with the findings of Enquiry Officer. Petitioner submitted his reply on 25.10.2000 and upon consideration of reply filed by petitioner the Disciplinary Authority further

issued a show cause dated 15.02.2001 in respect of proposed punishment of discharge against which petitioner submitted his reply dated 28.02.2001 and after due consideration and personal hearing, final order dated 30.04.2001 of punishment of discharge from service of bank was passed by the Disciplinary Authority. The appeal preferred by petitioner was dismissed by the appellate authority by his order dated 11.10.2001.

17. It has been contended on behalf of the petitioner that he was not granted the reasonable opportunity to defend himself and the relevant documents asked by petitioner to defend the charges framed against him were not supplied and as such there was violation of natural justice. It has been further submitted that the 2nd show cause issued by Disciplinary Authority differing with the findings of Enquiry Officer is based on conjectures and surmises and not on materials available on record. It has been submitted that conclusion of departmental authority are based on suspicion and it is well settled law that suspicion however grave it may be it is not substitute of proof.

18. Lastly, it has been submitted on behalf of the petitioner that the order passed by the Disciplinary Authority as affirmed by the appellate authority a penalty has been imposed on petitioner of discharge with superannuation benefit but same

is misleading as the minimum length of service required for grant of pension under the State Bank of India Employees Pension Fund Regulation, 2014, the employees is entitled to a pension under these regulations on retiring from the bank service.

(a) after having completed twenty years' pensionable service provided that he has attained the age of fifty years or if he is in the service of the bank on or after the 1st November, 1993, after having completed ten years pensionable service provided that he has attained the age of fifty eight years or if he is in the service of the bank on or after the 22nd May, 1998, after having completed ten years pensionable service provided that he has attained the age of sixty years;

19. Petitioner joined the service of the State Bank of India in 1982 and was discharged from service on 15th February 2001 as such he remained in the service of bank for nearly 19 years but in the impugned order the period during which petitioner remained under suspension has been directed to be not treated as on service and as a consequence of which petitioner will be deprive of retiring pension as he could not complete the minimum service required for grant of pension.

20. Without disturbing the order passed by the

Departmental Authorities the petitioner will be granted the benefit of punishment order i.e. discharged from service with superannuation benefits and if there is shortage in length of service which deprives petitioner from retiring pension, the authorities will deem that petitioner has completed the minimum length of service for grant of retiring pension and as such he will be granted retiring pension as contemplated in the order of discharge otherwise the order passed by Departmental Authorities will be empty handed.

21. The writ petition is disposed of in terms of above direction and observation and petitioner to be granted all post retiral benefits along with arrears within three months from the date of receipt/production of a copy of this order.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18.12.2018
Transmission Date	N.A.