IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13318 of 2004

Lalit Kumar son of Sri Mushar Yadav, resident of 158-C.D.A. Colony, Shasstri Nagar, P.S. Shastrinagar, Town & District Patna.

.... Petitioner/s

Versus

1.The Punjab National Bank, through its Chairman, 7 Bhikajikama Place, Africa Avenue, New Delhi.

2. The General Manager, Personnel, Punjab National Bank, 7 Bhikajikama Place, Africa Avenue, New Delhi.

3.The Deputy General Manager-cum- Disciplinary Authority, Punjab National Bank, Zonal Office, Third Floor, Chanakya Complex, R. Block, Patna.

4. The Sr./ Regional Manager, Punjab National Bank, R. Block, Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Ambar Nath Banerji, Adv.
Mr. Bimlendu Shekhar Thakur

For the Respondent/s : Mr. Sunil Kumar Singh- I, Adv.
Mr. Prashant Vedasan, Adv.
Mr. Subhash Chandra Bose, Adv.,

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date: 27-08-2018

The present writ petition has been filed for quashing the order dated 30.9.2003, as communicated to the petitioner vide letter dated 1.10.2003, whereby and where under the petitioner has been compulsorily retired from service. The petitioner has further prayed for quashing the order dated 27.2.2004, whereby and where under the appeal of the petitioner has been rejected.

2. The brief facts of the care are that a departmental proceeding was initiated against the petitioner herein and a charge sheet dated 4.2.2002 was served on the petitioner herein on the allegation of committing lapses/ irregularities while working at Branch Office, Lalganj Sehra and sanctioning and

disbursing loans to the borrowers without ensuring creation of sureties and misappropriating the amount of subsidy by adopting fraudulent modus operandi. The disciplinary authority has further levelled the charge of not exercising proper control over the affairs of the Branch. The petitioner had participated in the departmental enquiry and thereafter, the enquiry officer had submitted his enquiry report, said to have been received by the disciplinary authority on 13.5.2003 whereby and where under charges no. 1A, 1B, 1D were partially proved while charges no. 2(2) to 2(5) were found to have been proved and the charges no. 1C and 2(1) were not found to be proved. The disciplinary authority had then issued a show cause notice dated 19.5.2003 enclosing the copy of the enquiry report and the petitioner was asked to submit his reply. The petitioner had then submitted his reply to the second show cause notice and then the impugned order of punishment dated 30.9.2003, inflicting punishment of compulsory retirement, has been passed. The petitioner had filed an appeal against the said punishment order dated 30.9.2003, however, the appeal was dismissed by an order dated 27.2.2004.

3. The learned Senior counsel for the petitioner has submitted that the present case is a case of no evidence inasmuch as not a single witness was examined by the

department/ prosecution, hence none of the charges levelled against the petitioner could have been conclusively proved. It is submitted that even the documents submitted by the department had not been proved during the course of departmental enquiry. The learned senior counsel has further relied on a judgment of the Hon'ble Apex Court dated 15.2.2018 passed in Civil Appeal No. 2693 of 2013 (**UCO Bank & Ors. Vs. Rajendra Shankar Shukla**), to contend that once a proceedee has been granted promotion, it means that the past conduct of such proceedee has been without any blemish and in case any misconduct regarding such a proceedee was in the notice of the disciplinary authority, no benefit of being placed in a higher category of crossing the efficiency bar could have been granted to such proceedee. In order to elaborate his submission, the learned senior counsel for the petitioner has submitted that the petitioner was promoted on 4.1.2001 whereas the charge sheet had been issued on 4.2.2002 pertaining to stale charges of the period 1993-1996, hence the proceeding has been initiated against the petitioner in a mala fide manner, which is not permissible in law. The learned senior counsel for the petitioner has further drawn attention of this Court on a communication of the Chief Manager, Audit Department (fraud), Zonal Office, Patna, vide his Bank letter dated 17.9.2002 written to the Chief Manager, Inspection & Cont. Division, FIPS/HO/Rajendra Place, New Delhi stating that as far as the matter of embezzlement of term loan and subsidy amounts at Branch office, Lalganj Sehra, pertaining to the petitioner herein is concerned, no clear-cut status/ position of fraud has been indicated. The learned Senior counsel on the issue of no evidence has relied upon the judgment rendered by the Hon'ble Apex Court in the case of **Rup Singh Negi vs. Punjab National Bank**, reported in (2009) 2 SCC 570.

4. Per contra, the learned counsel for the respondent Bank has submitted that there is no procedural irregularity in conduct of the departmental proceeding, hence this Court is not required to sit in appeal and re-appreciate the evidence, thus no interference is required in the impugned order of punishment. The learned counsel for the respondent Bank has also relied upon the various judgments, which are being dealt with herein below:-

(i) AIR 2016 SC 2510 (**Chamoli District Co-operative Bank Ltd. & Anr. Vs. Raghunath Singh Rana & Ors**.).

The learned counsel for the Bank has relied upon paragraphs no. 15 to 18 of the said judgment.

Reliance of the learned counsel for the Bank on the said judgment is misplaced inasmuch as the said judgment deals with a situation wherein no enquiry proceeding has been conducted subsequent to issuance of second charge sheet.

(ii) (2006) 5 SCC 88 (**M.V. Bijlani vs. Union of India & Ors**). The reliance of the learned counsel for the Bank on the said judgment is also misplaced inasmuch as the said judgment only reiterates the well settled law to the effect that though the jurisdiction of the Court in judicial review is limited, however, there should be some evidence to prove the charge.

(iii) AIR 1963 SC 1723 (**State of Andhra Pradesh & Ors. Vs. S. Sree Rama Rao**).

The learned counsel for the Bank has relied upon paragraph no.7 of the said judgment, however, this Court finds that the paragraph relied upon by the learned counsel for the Bank only reiterates the well settled law to the effect that the High Court is not required to review the evidence and to arrive at an independent finding on the evidence in a petition under Article 226 of the Constitution of India, however, the High Court can interfere in cases where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules or where the authorities have disabled themselves from reaching a fair decision by some consideration extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations. It has also been stated by the Hon'ble Apex Court that there should be some legal evidence on record and only then the adequacy or reliability of that evidence should not generally be permitted to be canvassed before the High Court. However, in the present case the case of the petitioner is that no evidence whatsoever has been led, hence the said judgment is also of no help to the respondents.

(iv) 2017(1) PLJR 277 (SC) [**H.P. State Electricity Board Ltd. Vs. Mahesh Dahiya**]. Again the said judgment pertains to the issue of judicial review of the disciplinary proceedings.

(v) (1996) 9 SCC 69 [**Disciplinary Authority-cum-Regional Manager & Ors. Vs. Nikunja Bihari Patnaik**].

The said judgment deals with the meaning of misconduct and defines that acting beyond one's authority is by itself a breach of discipline and constitutes misconduct within the meaning of Central Bank of India Officer, Employees' (Disciplinary and Appeal) Regulations, 1976. However, the issue in the present case is different, thus the said judgment is of no use to the respondents.

(vi) (2005) 7 SCC 435 [**State Bank of India & Anr. Vs. Bela Bagchi & Ors.**].

Again, the said judgment is not relevant in the facts and circumstances of the present case inasmuch as the same deals with a Bank employee acting beyond his/her authority and that being a misconduct.

(vii) AIR 1999 SC 677 [**Kuldeep Singh Vs. The Commissioner of Police and others**].

The learned counsel for the respondent Bank has relied upon paragraph-10 of the said judgment which in fact helps the petitioner herein inasmuch as the

Hon'ble Apex Court has held that if a decision is arrived at on no evidence, which is thoroughly unreliable and no reasonable person can act upon, the order would be perverse.

(viii) AIR 1996 SC 1561 [**State of U.P. & Ors. Vs. Nand Kishore Shukla & Anr**].

The said judgment has been relied upon by the learned counsel for the Bank only to canvass the issue that even if one of the charges is held to be proved, the same is sufficient for imposition of penalty by the disciplinary authority.

(ix) (1998) 4 SCC 310 [**Union Bank of India Vs. Vishwa Mohan**].

The learned counsel for the Bank has lastly relied upon paragraph-12 of the said judgment to impress upon the Court that in Banking Business absolute devotion,diligence, integrity and honesty needs to be preserved by every Bank employee and in particular the Bank Officer, hence the dismissal order should not be set aside merely on the ground of non-furnishing of the enquiry report to the delinquent. At this juncture itself, it may be pointed out that the present case is not a case where the enquiry report has not been supplied to the petitioner herein, hence the reliance of the learned counsel for the Bank on the aforesaid judgment is misplaced.

(x) 2018 (3) PLJR 677 [**Bal Mukund Prasad Singh vs. Punjab National Bank**].

The learned counsel for the Bank has relied upon the aforesaid judgment to only canvass the well settled law to the effect that unless a delinquent is able to demonstrate that he was denied reasonable opportunity to defend himself and/or punishment enforced appears excessive, there can be no interference either with the process adopted or the punishment order passed thereon.

5. I have heard the learned counsel for the parties and gone through the materials on record. Admittedly, the present case is a case of no evidence, inasmuch as neither the Bank has produced any witness to prove any charges nor the documents have been proved. Reference in this regard be had to a judgment reported in (2010) 2 SCC 772 [**State of U. P. Vs. Saroj Kumar Sinha**], paragraphs- 27, 28 and 29 whereof are reproduced herein below:-

"27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.

28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.

29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee."

6. It may also be useful to refer to the judgment of the Hon'ble Apex Court reported in (2009) 2 SCC 570 [Roop Singh Negi vs. Punjab National Bank & Ors.], paragraphs- 14, 15 and 23 whereof are reproduced herein below:-

> "14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.
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> 15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the enquiry officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. The appellant being an employee of the Bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the enquiry officer had made up his mind to find him guilty as

> otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.
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> 23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

7. Though the order of punishment is fit to be set aside on the aforesaid grounds alone, but nonetheless another issue which arises for consideration is that once the petitioner was promoted on 4.1.2001, the stale charges pertaining to the years 1993-1996 could not have been pressed for punishing the petitioner herein inasmuch as only after the departmental authorities had found the service career of the petitioner to be unblemished and unimpeachable, they had granted promotion to the petitioner herein. Reliance is placed on

the judgment of the Hon'ble Apex Court rendered in the case of **Rajendra Shankar Shukla** (supra). It may also be noted that internally also the Chief Manager (Audit Department (Fraud), Zonal Office, Patna had also not found any indication of fraud in the instant matter pertaining to the petitioner herein.

8. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, the order of punishment dated 30.9.2003 is not sustainable in the eyes of law inasmuch as the same is based on a perverse enquiry report which is in turn based on no evidence inasmuch as the prosecution has not only failed to lead any oral evidence, but has also failed to prove the documents being relied upon during the course of enquiry proceeding, thus the order of punishment, imposing major penalty of compulsory retirement upon the petitioner herein, dated 30.9.2003 is quashed. As a result of quashing of the order of punishment dated 30.9.2003, the appellate order dated 27.2.2004 does not survive, hence the same is also set aside.

9. The writ petition is allowed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
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