IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11756 of 2005

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Niranjan Prasad S/o late Braj Kr. Prasad Resident of N. Nilamyam Ganga Vihar Colony, P.S. Digha, P.O.- Digha Ghat, District- Patna

..Petitioner

Versus

1. The Central Bank of India represented through its Chairman having Central Office , Mumbai at Mumbai.
2. The Central Bank of India, Zonal Office, Patna represented through its Zonal Manager Block 'B' 2nd Floor, Maurya Lok Complex, Dak Bunglow Road, Patna-1
3. The Appellate Authority and the D.G.M. Central Bank of India, Zonal Office Block 'B' 2nd Floor, Maurya Lok Complex, Dak Bunglow Road, Patna- 1
4. The Appellate Authority-cum Assistant General Manager, Regional Office, Jatin Chandra Road, Lalpur Chowk, Ranchi(Jharkhand), Pin-834001
5. Sri. C.P. Pathak, Disciplinary authority cum Chief Manager Central Bank of India, Zonal Office, Patna.
6. Mr. Deepak K. Das(as the then was), Sr. Manager Central Bank of India Patna Branch, New Dak Bunglow Road, Patna-1
7. Manoj Kumar S/o not known to this petitioner at present serving as Manager in central Bank of India, Boring Road, Patna.
8. Mr. Irshad Ahmed S/o Not known to this Petitioner at present posted at Central Bank of India, Muradpur Branch, Patna(At the relevant time posted as Clerk in Central Bank of India, Boring Road Branch, Patna).
9. Smt. Poonam Rani W/o not known posted at the relevant time as Clerk in Central Bank of India Boring Road Branch, Patna.
10. Sushil Kr. Mishra Head Cashier, Saving Incharge Central Bank of India, Boring Road, Branch, Patna(As the then was), at Present Assistant Central Bank of India, Begusarai.
11. Ashok Kr. Gupta, The Assistant Manager Savings Incharge Central Bank of India, Boring Road, Branch, Patna.
12. Smt. Anjani Kumari W/o Not known to the petitioner Cashier, Central Bank of India, Boring Road, Branch, Patna.
13. Ram Darshan Ram S/o not known to this petitioner(At the relevant time posted as Daftari in Central Bank of India, Boring Road, Patna) at Present posted at Daftari C.B.I. Patliputra Branch

.. respondents

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Appearance :

For the Petitioner : Mr. Sriprakash Srivastava, Advocate with Anu Priyadharshni, Advocate

For respondent no.1 to 6 : Mr. Bimlendu Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 06-03-2018

Heard leaned counsel for the petitioner as well as leaned counsel for respondents no. 1 to 6.

2. At the very outset, it is submitted by the counsel for the petitioner that during pendency of the writ petition the petitioner has crossed the age of superannuation on 31.1.2016 and as of today, the writ petition is relevant in view of the stigma attached to the petitioner by way of awarding him punishment of compulsory superannuation vide order dated 10.12.2004 (Annexure 5), passed by the Disciplinary authority (respondent no. 5) and the appellate order dated 2.8.2005, contained in Annexure 7, passed by respondent no.4.

3. The pleadings and undisputed facts of the case are that the charge memo dated 30.9.2003 (Annexure 1) came to be served upon the petitioner in relation to some allegations for a period when he was working as Computer Terminal Operator (C.T.O.) in the Boring Road branch of the Central Bank of India. The charge sheet distinctly makes out charge that the petitioner had scanned a fake signature of the account holder to facilitate fraudulent withdrawals of total sum of Rs. 38,800/- on five different dates, details of which are given in the charge memo. There are three distinct ingredients of the said charge. One relating to the scanning being done on 20.11.2002, being the date of first fraudulent withdrawal of Rs.5000/-, the second is relating to processing/posting of the withdrawal slips on five different dates being 20.11.2002, 22.11.2002, 25.11.2002, 28.11.2002 & 30.11.2002. In respect of processing done on two of the said dates, it is said in the charge memo that he got other two withdrawals posted by other staff members; and lastly the third is relating to destroying all the five withdrawal slips on the basis of which fraudulent withdrawals had been done.

4. Charge no.2 in the charge memo is of unauthorisedly operating the Computer System by logging into it on 28.12.2002 and 29.1.2003 with ulterior motives after getting transferred from Boring Road Branch. Petitioner logged into the system on 28.12.2002 from 12:50:41 hours to 12:52:04 hours and on 29.1.2003 from 13:53:55 hours to 14:00:56 hours. The above acts of the petitioner are prejudicial to the interest of the bank after his transfer from the Boring Road branch to the Zonal office, Patna. The charge sheet merely states that the petitioner's act is prejudicial to the interest of the bank, but the same does not disclose what is the actual prejudice or whether logging into the system *per se* constitutes misconduct when no consequence of the logging in has been alleged.

5. Short point raised by learned counsel for the petitioner is that in respect of the first charge relating to scanning of fake signature of the deceased account holder, the management seems to have relied upon Management exhibit (MEX) 7, which is a report submitted by the expert of the Computer M/s Nellito Systems Ltd. Sri Jitendra Kumar (Computer Engineer). It is submitted that from the said report it is evident that the alleged forged signature of the deceased account holder was scanned under Code No. C0004 which was allotted to petitioner and was obliterated under Code No. BM 005 which was allotted to Manager Manoj Kumar, Defence exhibit (DEX) 1).

6. Other than the said report (MEX 7) about scanning of signature, none of the witness has ever said that they have seen the CSE/the petitioner scanning the signature on 20.11.2002. Learned counsel has submitted that one Mr. D.P.Sinha, Senior Internal Auditor who enquired and submitted his Audit report about the alleged fraud has stated in the Audit report that the system developed by M/s Nellito Systems Ltd., is defective and passwords do not remain confidential and it is possible that any other person with vested interest can misuse the user code and password of any other staff for ulterior reason. In this background, it is submitted by the learned counsel for the petitioner that the examination of Sri

Jitendra Kumar (Computer Engineer), was essential as he had submitted/signed the report (MEX 7) regarding petitioner's involvement, he has not been produced before the Enquiry officer, even though his testimony was of great consequence to the allegations made against the petitioner. The petitioner, in paragraphs 9 and 10 of his written argument dated 30.8.2004 before the Enquiry officer, has specifically raised this issue.

7. Respondent bank, on the other hand, has relied upon the deposition of the management witness MW 1 Sri Bijay Kumar, Assistant Manager, who has deposed in relation to the said report submitted by Mr. Jitendra Kuamr (Computer Engineer) and read the contents of the said report in the proceedings. By examining MW 1, respondent bank states that the report supports the allegation and there is sufficient compliance of the Principle of Natural justice as MW 1 has reiterated the report (MEX 7) i.e., the report submitted by another person, namely, Mr. Jitendra Kumar (Computer Engineer). It is submitted that since the said report indicates that User Code No. C0004 of the petitioner was used for scanning the fake signature of the deceased account holder, the charge has sufficiently been established in the proceeding. As regards the allegation regarding two withdrawals, namely, 2nd and 4th withdrawal being made by other employees of the branch, namely, Mr. Irshad Ahmad and Smt. Poonam Rani, allegations itself are that said two withdrawals made on 22.11.2002 and 28.11.2002 were by other staff but the petitioner has been made responsible for the said withdrawals due to the reason that they were passed on the basis of scanned signature. The third allegation of destroying all the five withdrawal slips by relying on the statement of management witnesses, namely, MW 2 that only interested persons would destroy the withdrawal slips, charge has been found to be proved against the petitioner.

8. Having examined the counter affidavit filed by the bank, one thing becomes clear that the report (MEX 7) of Mr. Jitendra Kumar (Computer Engineer), who has never been examined in the proceeding, has been made the basis of establishing petitioner's guilt in the proceeding. Besides, the report of Mr. D.P.Sinha, Senior Internal Auditor who stated that the Nellito System is defective and passwords do not remain confidential, has not been examined in the proceedings. Therefore, from the proceedings it is evident that none has appeared and supported the report (MEX 7) submitted by Mr. Jitendra Kumar (Computer Engineer).

9. This Court is conscious of the fact that the technical rules of the evidence do not apply in the case of departmental proceedings but nonetheless the charges must be established with reference to materials available on record. At least author of the documents which are being placed on record to substantiate the guilt against the petitioner should have been examined in the enquiry. This has not been done in the instant case. What would have been the outcome of examination of Mr. D.P.Sinha, Senior Internal Auditor as also Mr. Jitendra Kumar (Computer Engineer), author of the report (MEX 7) cannot be visualized. Their non examination has prejudiced the case of the petitioner in the proceedings and in absence of their examination, deparatmental proceedings cannot be said to have been conducted fairly in accordance with the Principle of Natural justice. In this connection, this Court would refer to a decision rendered in case of **Hardwari Lal vs State Of U.P. & Ors** reported in **(1999) 8 SCC 582.** Paragraph of the said judgment is reproduced herein for easy reference:-.

> *"Before us the sole ground urged is as to the non-observance of the principles of natural justice in not examining the complainant, Shri Virender Singh, and witness, Jagdish Ram. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the state or the condition of the appellant. We do not think the Tribunal and the High Court were*

justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant."

10. As noticed above, there is nothing on record to support the findings regarding the petitioner destroying the withdrawal slips. To bring home the ingredients of the charges that all the five withdrawal slips were processed by the petitioner, no evidence has been referred in the charge memo. In such circumstances, the findings with respect to the petitioner's responsibility in respect of five withdrawals is unsustainable. As regards Charge no.2 one defence witness DW 1 has deposed in the proceedings that he is a close friend of the CSE/the petitioner and on 28.12.2002 and 29.1.2003 he had visited the Boring Road Branch along with him. DW 1 further deposed that he came to withdraw the salary and the CSE had come for disbursement of a loan and CSE was with him throughout on the said two dates when he (CSE/the petitioner) had visited the branch. The said statement of DW 1 has not been considered by the Enquiry officer. On the contrary, findings of guilt have been recorded on the basis of surmises and conjectures.

11. In view of the facts as noted above, it is clear that the findings of the Enquiry officer are perverse, rather based on no evidence. The conclusion of the enquiry report dated 20.9.2004

(Annexure 2) is therefore quashed. In view of quashing of the findings of the enquiry report, further conclusion of the Disciplinary Authority (respondent no.5) as contained in order dated 10.12.2004 (Annexure 5) as also the appellate order dated 2.8.2005 (Annexure 7) also fail as being based on no evidence and being in violation of the Principles of Natural justice. Since, the counsel for the petitioner at the very outset, has stated that the instant issue is an issue of stigma, no further direction need be passed.

12. The writ petition is allowed to the extent indicated above.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	
CAV DATE	NA
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