IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19743 of 2015

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1. Rakesh Roshan Gupta S/o Raghunath Prasad Gupta resident of Flat No. 305, C/o Satyam Apartment, Montessori School Lane, Boring Road, P.S. S.K. Puri, Distt. - Patna

.... Petitioner/s

Versus

1. The Chairman Cum Managing Director, State Bank of India, Nariman Point, Mumbai
2. The Chief General Manager, State Bank of India, Local Head Office (L.H.O.), West Gandhi Maidan, Patna
3. The General Manager, State Bank of India, Local Head Office, West Gandhi Maidan, Patna
4. The Deputy General Manager (Business & Operation), State Bank of India, Zonal Office, Kala Bhawan Road, Purnea
5. The Assistant General Manager, (Domestic Enquiry), State Bank of India, Local Head Office, Patna
6. The Chief Manager, State Bank of India, Local Head Office, Patna
7. The Manager (Vigilance), State Bank of India, Local Head Office, Patna
8. Mr. Kumar Gaurav S/o Ravindra Prasad resident of Mohalla - Jai Prakash Nagar, Purnea College Chowk, P.S. + Distt. - Purnea, Erstwhile Branch Manager, Agwanpur Branch, Saharsa, at Present Posted as a Manager, Personal Banking Branch, Near Dr. I.D. Singh Clinic, New Colony, Naya Bazar, Saharsa, Pin Code 852201 (Bihar)

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Sunil Kumar Verma
For the Respondent/s : Mr. Kaushlendra Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 23-04-2018 Heard the learned counsel for the petitioner and learned counsel for the respondents.

Charge memo dated 24.12.2013 served upon the petitioner contains the allegation as follows:

> "On 15.03.2013 you unauthorized posted and passed a voucher for Rs. 50,000/- for debit to SB A/C No. 11859364685 of Sri. Parmeshwari Thakur and credited the proceeds to your own SB A/C No. 10789017933, maintained at Munger Branch. Later on, you have restored

> the amount of Rs.50,000/- to the above mentioned SB A/c of Shri Parmeshwari Thakur on 25.03.13 from your OD A/c No. 10788905146 maintained at Munger Branch.
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> ii) On 13.03.13, you have opened an SB A/c No. 32880557595 in your own name under the segment "Personal Public" and under a new CIF No. 86653881021, without obtaining permission from Competent Authority. In this account, you have concealed your SBI identity, local address and PAN No against extant instructions of the bank.
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> iii) You were on unauthorized absence from duty from 10.05.13 to 05.06.13."

The Bank conducted the enquiry against the petitioner and enquiry reports in respect of such charges were submitted. Most severe charge was charge no-1 regarding debiting the account holder by an amount of Rs. 50000/- in favour of petitioner's account. The findings of the enquiry officer in support of such charges is as follows:

> "pex-1 and pex-2 both are double entry vouchers on the basis of which transactions in question have taken place and both contains debit confirmations of the account holders. Therefore, these can not be considered as unauthorized transactions. A confirmation to this effect is also there in DEX-5 page-2 which also establishes the authorization of the transactions by Shri Parmeshwari Thakur.
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> In the above context allegation-I is found to be NOT PROVED."

The clear finding of the Enquiry Officer was that since the said account was not having cheque facility and with consent of the account holder, the debit entry was made, which was subsequently returned after 10 days. Conclusion has been arrived at with reference to Ext. no. 5 which was part of the proceedings before the enquiry officer being letter no. 79 dated 12.05.2014.

The Deputy General Manager-cum-Disciplinary Authority issued a second show cause notice to the petitioner. The second show cause notice in respect of first charge is without reference to the findings of the enquiry officer. The disciplinary authority has in fact recorded his own conclusive finding on the said charge, holding it to be proved and thereafter issued second show cause notice. No reasons for disagreement with the findings of the enquiry officer in respect of first charge are spelt out in the second show cause dated 12.05.2014. However, the same culminated into an order of punishment dated 06.02.2015.

In the said circumstances, the petitioner had earlier moved this Court by filing a writ petition bearing CWJC No. 4163 of 2015. The same was permitted to be withdrawn by order dated 19.03.2015 and the petitioner was permitted to file an appeal before the prescribed appellate authority. The appellate authority thereafter passed an order dated 18.09.2015 by which the findings of the disciplinary authority have been affirmed without any modification. Hence, this writ petition has been filed challenging the order passed by the appellate authority as also the order of punishment issued by the disciplinary authority.

The counsel for the petitioner has submitted that the second show cause notice dated 12.05.2014 was not only without assigning any reason for disagreement with the enquiry report but also after recording the conclusive findings holding the charge to be proved. He submits that the same is in violation of the law as declared by the Apex Court in the case of ***Punjab National Bank and others Vs. Kunj Behari Mishari [(1998) 7 SCC-84].*** No reason for disagreement with the findings of the enquiry officer has been recorded by the disciplinary authority in the second show cause.

It is submitted that the second show cause notice is only a mere formality and against the principle of natural justice inasmuch as the disciplinary authority while issuing a second show cause notice has specifically concluded charge no. 1 to be proved and, as such, same shows the pre-determined mind of the disciplinary authority.

In the findings of the disciplinary authority with respect to charge no. 1, reliance is placed on one written statement dated 24.06.2013 allegedly issued by Sri. Thakur in support of the allegations made against the petitioner. The same is not one of the documents relied upon in the enquiry before the enquiry officer. On the point of this letter dated 24.6.2013, no difference has been communicated to the petitioner even under the second show cause dated 12.05.2014. Since neither the enquiry officer in the enquiry nor the disciplinary authority, while issuing the second show cause notice to the petitioner, had ever relied upon the letter dated 24.06.2013, the same could not have been made the basis of awarding a punishment, that also, the extreme punishment of dismissal from service to the petitioner.

In respect of other two charges, it is submitted that the findings are also not with reference to any evidence or supporting documents. It is submitted that no one has deposed in the proceedings in support of the said two charges. However, in view of the nature of the order that this court proposes to pass the veracity of the findings in respect of these two charges are not being examined for the present.

The charges were required to be considered as per law by the Disciplinary Authority so as to comply with the principles of natural justice assigning tentative reasons for disagreement with findings of the enquiry officer so as to afford the petitioner reasonable opportunity to persuade the Disciplinary

Authority, not to upset the findings of the Enquiry Officer in his favour. The same has not been done. On the contrary the Disciplinary Authority has recorded a conclusive findings in respect of the first charge holding the same to be proved. While issuing the second show cause notice. The same has been done even though the first charge has been found not proved as per the enquiry report. Final order of the Disciplinary Authority have to be after giving the delinquent opportunity of making his comments on the points of disagreement if any communicated by the Disciplinary Authority by issuing second show cause notice, without recording a conclusive finding.

This court, therefore, would quash the second show cause notice dated 12.05.14 and the findings of the disciplinary authority dated 06.02.15 in respect of the first charge. The order is being passed in view of the consideration hereinabove regarding the same without issuing any second show cause notice in accordance with law. The disciplinary authority would be at liberty to proceed from the stage of second show cause against the petitioner and afford an adequate opportunity by communicating the point of disagreement with the findings of the enquiry officer since the second show cause notice is to be issued by the respondent it would be open to the petitioner to take all the points available to him.

In view of the fact that the order passed by the disciplinary authority is being set aside, the order of the appellate authority is also not sustainable, inasmuch as the same conclusion has been sustained by the appellate authority. Thus the same is also quashed.

As a consequence of the quashing of the second show cause notice dated 12.05.14 the findings of the disciplinary authority dated 06.02.15 and appellate order dated 19.09.15, the petitioner would entitled to reinstatement with all consequential benefits. It would be open to the authorities to proceed in the matter from the stage of second show cause notice expeditiously.

The writ petition is allowed to the extent indicated above.

(Madhuresh Prasad, J)

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