

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.755 of 2013

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Ram Nagina Choudhary S/O Late Ram Charitra Choudhary R/O Village & P.O.-
Dighi, Via- Majhauria Estate, P.S.- Bathnaha, Dist.- Sitamadhhi **Petitioner**

Versus

1. Uttar Bihar Gramin Bank Through Its Chairman, Head Office At Sharma Complex,
Kalam Bagh Chauk, Muzaffarpur, Bihar
 2. Appellate Authority (Board) Through General Manager, Uttar Bihar Gramin Bank,
Head Office At Sharma Complex, Kalam Bagh Chauk, Muzaffarpur, Bihar
 3. Chairman-Cum-Disciplinary Authority, Uttar Bihar Gramin Bank, Head Office At
Sharma Complex, Kalam Bagh Chauk, Muzaffarpur, Bihar
 4. General Manager, Uttar Bihar Gramin Bank, Head Office At Sharma Complex,
Kalam Bagh Chauk, Muzaffarpur, Bihar
- **Respondents**
- =====

Appearance :

For the Petitioner : Mr. Kumar Kaushik, Advocate
For the bank : Mr. Prabhakar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 05-07-2018

Heard learned counsel for the petitioner and learned
counsel for the Bank.

2. The writ petition has been filed for quashing order
dated 15.6.2011, issued by the Disciplinary authority awarding the
punishment of “removal from service which shall not be
disqualification of future employment in terms of Regulation
39(I)(b)(iv) of Uttar Bihar Gramin Bank (Officers & Employees)
Service Regulations, 2010” as well as order contained in letter
dated 5.10.2012, passed by the Appellate authority confirming the
aforesaid punishment order.

3. The petitioner, at the relevant time, being Scale I officer
was posted as branch manager in Uttar Bihar Gramin Bank (herein
after referred to as ‘the bank’) Head office, Muzaffarpur, Araria



Chouk. He has been proceeded against under charge memo containing eight charges. Enquiry was conducted against him departmentally and the enquiry report is dated 20.4.2011.

4. Out of the eight charges, the Enquiry officer has found charge nos. 1, 2, 3, 5 & 7 proved, whereas charge nos.4, 6 & 8 were held not proved by him. The charges were to the extent that the petitioner had exceeded the target allocated to the branch in terms of sanction of loan alleging violation of Regional Office instructions during his tenure with ulterior motive for undue gain. However, there is no allegation against him regarding financial loss on account of the aforesaid charges.

5. Learned counsel for the petitioner submits that the proceedings have been conducted in utter violation of the principle of Natural Justice. He submits that no norms have been brought on record which are alleged to have been violated by the petitioner. He submits that before the Enquiry officer, the department has not brought any document or any witness in support of the aforesaid charges. He draws attention of the Court in respect of the charges to emphasize the submission.

6. With respect to charge no.1 regarding disbursement of loan exceeding the target allocated to the branch, the petitioner pleaded that the said charge does not constitute any offence. This Court would find that the Regional Manager had issued letter of



appreciation since disbursement more than double the target had been advanced. He submits that in this respect he was rewarded and as such the same cannot be made the basis of departmental proceeding against the petitioner, let alone to punish him.

7. As regard charge no.2, he submits that the same alleges that the petitioner had enhanced the loan limit in different Kishan Credit Card (KCC) Accounts beyond the Banks prescribed norms or the prescribed scale of finance.

8. The same has also been held proved by the Enquiry officer. However, neither the Banks prescribed norms nor the prescribed scale of finance has been taken into consideration by the Enquiry officer.

9. Charge no.3 alleges that the petitioner has given debt relief in KCC A/cs in violation of prescribed guidelines of ADWR scheme to ineligible borrowers with ulterior motive. In this regard, drawing attention of the Court upon the findings of the Enquiry officer, learned counsel for the petitioner has pointed out that this charge has not been proved. However, conclusion of the Enquiry officer is that it is the petitioner's responsibility being branch manager to examine eligibility of the borrowers. The same is also without reference to any evidence or document produced before the Enquiry officer.

10. Charge no.4 is with respect to failure of the petitioner



in ensuring creation of assets of the loanees which charge has not been found proved by the Enquiry officer.

11. Regarding charge no.5, it is submitted that the charge was to the extent that the petitioner has not complied with certain instructions issued by the Regional office regarding his reporting at Regional Office. Specific case of the petitioner before the Enquiry officer is that the Regional office was not competent to issue the instruction of his deputation. Since the order of the deputation was without jurisdiction the same is not legally binding on him and it is only the Chairman of the Bank who can issue order of deputation. This charge has also been held to be proved. Taking into consideration petitioner's response to this charge, the petitioner has been visited with the consequence of reduction of five increments for five years.

12. Charge no.6, regarding disbursement of MTL Loan to one Surendra Chaudhary, has been held not proved by the Enquiry officer.

13. Charge no.7 is with respect to sanctioning of KCC/MSTP/MTL loan to eight members of one family on the basis of one collateral piece of land allegedly against the Bank's norms. It is submitted by learned counsel for the petitioner that the six members of that family had already closed their loan account and as regards two members, namely, Md. Muleman Ansari and Md.



Sabbir Ansari, he submits that they were father and son and both of them were possessing separate property in their name and were enjoying respectable position in the society. Defence of the petitioner is that this fact has not been considered by the Enquiry officer. The Enquiry officer has held this charge proved.

14. Charge no.8, which is the final charge alleging heavy deposits in his bank account in a particular financial year amounting to earning disproportionate assets, has not been held proved by the Enquiry officer.

15. Learned counsel for the bank submits that the adequate opportunity of hearing was given to the petitioner in course of departmental proceeding. He submits that more care, commitment and discipline is required by the personnel working in the banking institutions.

16. Essence of the submission made by learned counsel for the petitioner is that there was no evidence in support of the five charges, i.e., charge nos. 1, 2, 3, 5 & 7 which have been held to be proved by the Enquiry officer. The Enquiry officer has submitted the enquiry report without taking note of his submission. He submits that the report submitted by the Enquiry officer shows total non consideration by the Enquiry officer.

17. The Disciplinary Authority has issued second show cause notice dated 26.4. 2011 to the petitioner. In respect of charge



no.4 also the Disciplinary Authority has recorded his disagreement with conclusion of the Enquiry officer which was not found proved by the Enquiry officer. The Disciplinary Authority has called upon the petitioner for his submission in respect of this charge. It would also be relevant to consider the charge no.6 which was held not proved by the Enquiry officer. No notice has been issued by the Disciplinary Authority purporting to disagreement with the said findings of the Enquiry officer. It is submitted that without assigning any reason and without recording any points of dissent and his tentative finding in respect of charge no.4, which was held not proved by the Enquiry Officer second show cause has been communicated by the Disciplinary Authority in notice dated 26.4.2011. The said notice has been responded by the petitioner by a detailed and elaborate submission under his communication dated 12.5.2011 (Annexure 12).

18. Apart from the aforesaid infirmities in the proceedings before the Enquiry officer the petitioner has raised an objection that since some of the charges, i.e. charge nos. 6 and 8, the allegations were pertaining to disbursement of loan to the persons which requires examination of persons who are not employees of the Bank, then the Bank was required to take recourse of the procedure prescribed under Rule 42 of the Uttar Bihar Gramin Bank (Officer & Employee) Service Regulation, 2008/Rule 43 under 2010 Rules.



He submits that in such a case where evidence of persons who are not officials or employee of the bank was required to be examined. Rule 42 provided that the Chairman of the Bank was to form an opinion whether evidence into such allegations can/cannot be undertaken by the Bank or entrusted to any other authority for consideration. These issues have been raised by the petitioner which have not been considered by the authorities. The response to the second show cause dated 12.5.2011 which have been submitted by the petitioner raising all these points have been rejected by the Disciplinary authorities in the following manner:-

“Sri Choudhary submitted his submission on findings of the Inquiring Authority vide his letter dated 12.5.2011 in which Sri Choudhary neither submitted any cogent reason in his defence nor brought any new fact in his support to disprove the charges.

I have carefully gone through the documents, enquiry proceedings, written brief of Presenting officer, written brief of CSO/DR, Findings of Inquiring Authority, and submission of CSO on enquiry report.”

19. Impugned order shows a complete lack of consideration and discloses no reasons whatsoever for rejecting the detailed and point wise objections raised by the petitioner. Such finding without assigning any reason has been held perverse. Such order without assigning reasons does not subserve the principle of Natural Justice. The Disciplinary Authority without assigning any reason and without considering petitioner's response, was awarded the severe punishment of removal from service.



20. Even though charge nos. 4 and 5 have not been proved by the Enquiry officer, the same has been held to be proved by the Disciplinary authority. Learned counsel for the petitioner has relied upon a decision in case of **Ravindra Nath Vs. The Chairman, Uttar Bihar Gramin Bank and others**, reported in **2017 (2) PLJR 634**. Referring to paragraph 34(b) of the said judgment, he submits that the order which does not take notice of the defence raised by the petitioner and which proceeds to record findings without assigning any reason for rejecting the explanation given by the petitioner and without considering the infirmities committed in course of proceedings before the Enquiry officer, is a perverse order. Learned counsel for the petitioner has also relied upon a Division bench decision in case of **Hassan Muzahid Vs. The Bihar State Electricity Board and others**, reported in **2015(4) PLJR 435(HC)**.

21. The grounds for non consideration of petitioner's response to second show cause is that the petitioner has neither submitted any cogent reason in his defence nor brought any new fact in his support to disprove the charges. Basic premise for non consideration of petitioner's response to second show cause is wrong, as if petitioner is required to bring any new facts at this stage, and as if the onus of disproving the charge is on the petitioner.

22. Such a conclusion is an expression of the perverse



mindset of the Disciplinary Authority. It is trite law that it is for the department to bring home/establish/prove the charges on basis of some material on the preponderance of probability. Also the scope of scrutiny by the Disciplinary Authority was to see whether proceedings before the Enquiry officer was procedurally sustainable and whether findings of the Enquiry officer were sustained by any material on record. At this stage there is no requirement that petitioner has to bring any new fact in his support. Clearly conclusions of the Disciplinary Authority are not sustainable.

23. Since in the instant case, no reason has been assigned, this Court is of the opinion that the interest of justice would be served by remanding the matter to the Disciplinary Authority at the stage after submission of Enquiry Report who would consider the points raised by petitioner in his response to the second show cause.

24. As the issue is yet to be decided by the Disciplinary Authority and since the order of punishment is perverse, violative of the principles of Natural Justice and without assigning any reason and shows total non application of the mind, the same cannot be made the basis of the visiting the petitioner with grave civil consequence of dismissal. Accordingly, order dated 15.6.2011, issued by the Disciplinary Authority is quashed. Order passed in appeal rejecting petitioner's appeal against order passed by the Disciplinary Authority is also quashed. The Disciplinary Authority



may proceed to consider the petitioner’s response to the second show cause reply and pass reasoned and speaking order in accordance with law.

25. As a result of quashing of the dismissal order, the petitioner would be entitled to reinstatement in service with consequential benefits, treating him to be under suspension.

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

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	6.8.2018
Transmission Date	NA

