IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17012 of 2014

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Ramendra Prasad Gauro, son of Late Thagai gauro, resident of village & P.O. Nautanwa, Via-Naraipur, P.S. Semra, Distt. West Champaran (Bettiah).

... ... Petitioner/s

Versus

1. The Chairman, Uttar Bihar Gramin Bank, Muzaffarpur.
2. The General Manager, Uttar Bihar Gramin Bank, Muzaffarpur
3. The Regional Manager, Uttar Bihar Gramin Bank, West Champaran (Bettiah).

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.
Mr. Ram Binod Singh, Adv.

For the Respondent/s : Mr. Prabhakar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 04-04-2018

This writ application under Article 226 of Constitution of India has been filed for issuance of writ in the nature of certiorari for quashing the order dated 12.1.2013 passed by the Chief Manager, Uttar Bihar Gramin Bank, Muzaffarpur, by which petitioner has been imposed punishment of dismissal from service (Annexure-6) as well as order dated 4.3.2014 (Annexure-11) by which appeal preferred by petitioner has been dismissed.

2. Briefly stated the facts of the case is that petitioner was appointed as a Clerk cum Cashier in Champaran Kshetriya Gramin Bank, East Champaran, and he joined on 3.10.1979. He was promoted in the Officer Scale-I in 1991. Petitioner served the bank at several places in several capacities but was never subjected to any departmental proceeding. Petitioner was posted as Branch

Manager in Officer Scale-I in Lachhanauta Branch under Regional Office, Bettiah (West Champaran) and while serving he was served a letter dated 4.3.2010 under the signature of Chairman, Uttar Bihar Gramin Bank, Muzaffarpur, by which he was placed under suspension for various latches and irregularities in making reckless advances by him and was posted at Headquarter Regional Office, Bettiah.

3. Petitioner was served upon memorandum of charges dated 24.4.2010 issued by the Disciplinary Authority by which it was resolved to hold departmental enquiry against petitioner with regard to charges as set out in Annexures-1 and 2 of the chargesheet.

4. The charges as framed tantamount to gross negligence and dereliction of duty which constitute misconduct under Regulations 17 and 19 of Uttar Bihar Gramin Bank (Officers & Employees) Service Regulation 2008. The Disciplinary Authority appointed Sri Surendra Pathak, Branch Manager, Officer Scale-III, Bettiah Branch, as Enquiry Officer. However, subsequently Sri Indradeo Singh, Officer Scale-II, Branch Manager, Ander Branch under Regional Officer, Siwan was appointed as enquiry authority in place of Sri Surendra Pathak.

5. The departmental enquiry started on 8.12.2010 and concluded on 17.8.2012 in 29 sittings. The management representative produced 62 exhibits and 7 witnesses during the course of proceedings. The delinquent produced 60 exhibits and 5 defence witnesses during departmental proceeding. The Presenting Officer submitted his written brief on 9.8.2012 whereas delinquent employee submitted his written brief on 17.8.2012. The enquiry officer on the basis of evidence adduced during proceeding found charge nos. 1, 2 and 5 as proved and charge nos. 3 and 4 as not proved.

6. The findings of enquiry officer was communicated to petitioner by letter dated 6.9.2012 and petitioner submitted his reply vide letter dated 2.11.2012 before the Disciplinary Authority. The petitioner in his reply stated that charges against him cannot be said to be proved and findings of enquiry officer are erroneous and contrary to evidence on record.

7. It has been submitted by petitioner that without appreciating the reply submitted by petitioner the order dated 12.1.2013 was passed by the Disciplinary Authority by which punishment of dismissal from service has been passed .

8. Petitioner preferred an appeal before the Chairman Board of Directors of the Bank, Muzaffarpur, on 25.2.2013 and

also submitted a written argument but same was dismissed by the appellate authority on 4.3.2014. Charge no. 1 against petitioner was related to making fraudulent payment in different KCC account by forged signature and by making alteration in amount /date in withdrawals by taking signatures of brokers on the backside of withdrawals. It was for the management to produce such loanee as a witness on behalf of management who has alleged such misconduct against petitioner on basis of which decision was taken to initiate departmental proceeding against petitioner but those beneficiaries appeared before the enquiry officer as defence witnesses and have controverted the allegations of misconduct committed by petitioner and they have alleged that the complaints were lodged by them at the instigation of persons, enimical to petitioner and due to village politics and such beneficiaries Ram Babu Singh and Lalji Yadav personally appeared before the enquiry officer and accepted that they had withdrawn the money but ignoring statements made by beneficiaries the enquiry officer has erroneously considered the materials enclosed as documentary exhibits to support the charge as proved which is not permissible. If the complainant appears before the enquiry officer and denies that complaint made by him is not correct and allegation in the complaint was made for extraneous reasons then no punishment order can be passed on suh charges which are being denied by the complainant.

9. In the second charge the allegations were that petitioner in connivance with an Office Assistant Sri Murari Saran made fradulent payment in different KCC account in the name of fictitious persons and defrauded the amount. The name of persons who have been cited by the management as fictitious persons, have filed their affidavit before the enquiry officer that they are genuine persons and they have received full amount of their KCC loan. Only one complainant Akhilesh Sah appeared before the enquiry officer and has stated that he had not taken any KCC loan, but ignoring all these evidences adduced before the enquiry officer on the basis of oral evidence of one Akhilesh Sah, the enquiry officer has found charge No. 2 as proved. In charge no. 3 it is alleged that petitioner made fradulent payment in different KCC account by exceeding limit sanctioned but charge was found by enquiry officer as not proved.

10. In charge no. 4 it was alleged that petitioner sanctioned flood relief advance to a number of loanees of the bank without execution of loan document in complete violation of Head Office guidelines but the enquiry officer has found this charge also to be not proved.

11. Charge no. 5 relates to fraudulent disbursement in different KCC account by enhancing the loan limit by making manipulation in loan documents/sanctioned letter/loan ledger and in support of which names of many beneficiaries have been cited. Initially sanction of KCC limit was Rs.25,000/- but later on the amount was enhanced to Rs. 50,000/- by using whitener. All these persons confirm overwriting and cutting made in their loan document by which KCC limit was enhanced and one Adalat Mian appeared before the enquiry officer and confirmed the overwriting. The enquiry officer gave his opinion that a fresh and separate sheet of loan document ought to have been obtained instead of using the whitener and delinquent adopted a wrong practice. However, same was considered manipulation by enquiry officer and found this charge as proved.

12. It has been contended on behalf of petitioner that he had requested the higher authority of the bank to seize his financial power or transfer him to some other place as he was being threatened by some local politicians having criminal background to do the work of their men. He wrote as many as eight letters to the authorities to transfer him and seize his financial power, which has been marked as exhibit before the enquiry officer.

13. In the first audit conducted by the auditor no irregularity was found but in second audit the alleged irregularity was pointed out. It has further been submitted that charges framed against petitioner are vague, unspecific and suffers from uncertainty and as such not sustainable.

14. The High Court while examining punishment order arising out of departmental proceeding has very limited jurisdiction. The High Court cannot examine the sufficiency or adequacy of evidence produced before the enquiry officer and it cannot appreciate the evidences to substitute the finding of enquiry officer. The High Court while exercising its power of judicial review can interfere in the punishment order passed by the Disciplinary Authority if the findings are based upon no evidence or same is perverse.

15. In the present case while holding charge nos 1, 2 and 5 to be proved, the enquiry officer has placed reliance upon the evidence adduced before him by the management but the defence exhibits and explanation denying charges has not been considered and appreciated by the Enquiry Officer and same is not reflected in enquiry report.

16. Although the contents of said documents were required to be proved by the management by producing those

beneficiaries before the enquiry officer in order to substantiate the allegation made in complaint which form the basis of initiation of departmental proceeding. The management failed to bring the complainants before the enquiry officer rather delinquent produced them as a defence witness and they have denied such allegation and have stated and also filed affidavit before the enquiry officer that those complaints were filed on account of instigation by other and same is not true and what was stated before the enquiry officer is true.

17. However, the enquiry officer instead of relying upon the evidence adduced before him has found the charges to be proved on the basis of Management exhibits comparing their signatures and ignoring their affidavits and statements made during enquiry. What has been stated before the enquiry officer has to be treated as evidence and correct and what written complaint had been filed by such witnesses has to be considered by Enquiry Officer by balancing the evidences produced by Management as well as defence.

18. The question relating to jurisdiction of the court in judicial review in a departmental proceeding fell for consideration before Apex Court in M.V. Bijilani v. Union of India since reported

in 2006(5)SCC 88 wherein Apex Court held in para 25 as following:-

> *"25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceeding, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probabilities to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witness only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."*

19. The learned counsel for the petitioner has further submitted that the order passed by the Disciplinary Authority, as contained in Annexure-2, in which the Disciplinary Authority has not considered the reply of petitioner against the finding of enquiry officer, as it is reflected from the order passed by the Disciplinary Authority. The Disciplinary Authority is the punishing authority and it is his decision based upon the enquiry report and reply submitted by delinquent is to be considered and to pass a final order in which he should consider the reply of petitioner assailling the finding of Enquiry Officer. However, in the order dated

02.05.2012 there is nothing to suggest that he has considered the reply of petitioner and simply has agreed with the findings of Enquiry Officer and has passed the order of punishment, as such, the order passed by Disciplinary Authority is not sustainable and accordingly is set aside.

20. This court in case of Hassan Muzahid Versus Bihar State Electricity Board and others since reported in 2015 (4) PLJR (HC) as in paragraph No. 4 and 7 has held as following:-

> *"4. The principal ground urged by the petitioner was that the Disciplinary Authority did not take into account, any of the grounds pleaded by him in the explanation submitted to the second show cause notice, and that the order of dismissal is bereft of any reasons. These grounds weighed with the learned Single Judge and accordingly, he allowed the writ petition and has set aside the order of punishment. It was left open to the petitioner, to submit an explanation, and the Disciplinary Authority was directed to pass order afresh. The learned Single Judge further held that the petitioner shall not be entitled to back wages for a period of six years, even if the disciplinary proceedings are dropped against him. This was on the ground that there was delay in pursuing the remedy."*
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> *"7. The petitioner was dismissed by the Disciplinary Authority, after conducting enquiry. The only flaw pointed out by the petitioner and the one that weighed with the learned Single Judge, is that the Disciplinary Authority did not furnish any reason in support of his conclusions. It needs hardly any mention that the issuance of second show cause has a definite purpose to serve and that is the only occasion, or avenue where the*

delinquent employee can make an att to convince the Disciplinary Authority that the findings by the Enquiry Officer are not correct. He can also impress upon the Disciplinary Authority that the proposed punishment need not be awarded and he can plead extenuating circumstances. Since, the order passed by the Disciplinary Authority was passed without taking into account, the grounds pleaded by the delinquent employee in his reply to the second show cause, it certainly turns to be defective. Time and again, the Hon'ble Supreme Court held that such exercise tends to be violative of one of the facets of the principles of natural justice, and the opportunity given to an employee would be reduced to empty formality. We, therefore, do not find any basis to interfere with the view taken by the learned Single Judge in this behalf."

21. Similarly, the appellate authority has also not considered the grounds of appeal preferred by petitioner against the finding of Enquiry Officer and without considering the grounds of appeal has dismissed the appeal of petitioner.

22. The Apex Court in case of Chairman Disciplinary Authority Rani Laxmi Bai Kshetriya Gramin Bank Versus Jagdish Sharan Varshney and others in paragraph No. 5 has held as following:-

"5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover case has itself stated that the appellate order

> *should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority."*

23. The Disciplinary Authority and appellate authority are final authorities on facts and they can appreciate the evidences adduced before the Enquiry Officer, and to take a decision whether there were sufficient evidences adduced by the Management before the Enquiry Officer, upon which the finding of guilt found by Enquiry Officer is proved or not, as such, it is mandatory on behalf of Disciplinary Authority and appellate authority to consider the reply of petitioner against the finding of Enquiry Officer as well as ground of appeal by the appellate authority while passing the order of punishment and both the orders are bereft of such consideration, as such are not sustainable and accordingly quashed. The matter is remitted to the Disciplinary Authority to pass fresh order on the basis of enquiry report as well as considering the reply of petitioner against the finding of the Enquiry Officer while passing the order of punishment/exoneration. The petitioner has exhibited 60 documentary evidences in his defence but neither the Enquiry

Officer nor the Disciplinary Authority or the appellate authority has considered defence exhibits in their order nor there is any consideration of written reply submitted by petitioner in the orders passed by departmental authorities.

24. It has lastly been submitted on behalf of the petitioner that the punishment imposed by the Disciplinary Authority is disproportionate to the gravity of charge, as such, Disciplinary Authority while passing a fresh order should also consider as to even if charges against the petitioners stands proved whether punishment of dismissal is too harsh for the alleged misconduct and shall also consider the quantum of punishment at the time of passing fresh order if Disciplinary Authority finds petitioner guilty of charges. It has been further submitted that there are no allegation of any misappropriation or defalcation of money or any fraudulent act against petitioner and bank has suffered no loss and allegations are only that petitioner has not followed the banking norms. Lastly it has been submitted that petitioner has served the bank with unblemished record and he has been punished with dismissal from service as such his case may be considered sympathetically by the authorities. The disciplinary authority shall take into consideration above aspect also while passing fresh order against the petitioner.

25. The writ petition is allowed. The order passed by Disciplinary Authority (Annexure-6) as well as Appellate Authority (Annexure-11) is quashed. The petitioner is directed to be reinstated in service with all consequential benefits and 50% back wages with liberty to Disciplinary Authority to consider the enquiry report, reply of petitioner against finding of enquiry officer and to pass a fresh order as per observation made in this order at the earliest preferably within six months from date of production/receipt of a copy of order.

26. The writ petition stands allowed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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