IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2806 of 2004

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1. Savitri Devi wife of late Dineshwar Prasad
2. Pankaj Kumar son of late Dineshwar Prasad,
Both residents of village Kumardi, P.S. Makdumpur in the district of Jehanabad.

... ... Petitioner/s

Versus

1. Deputy General Manager, Bank of India, Patna Zone, Chanakya Place, Bir Chand Patel Path, Patna-800 001.
2. Zonal Manager Bank of India, Bhagalpur Zone, Adampur Chowk, Bhagalpur

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Parasmani, Advocate
For the BOI	:	Mr. Rupak Kumar, Advocae

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT
Date : 14-08-2018

Heard the learned counsel for the petitioners and Mr. Rupak Kumar, the learned counsel for the Bank of India.

2. The present writ petition has been filed for quashing the order of punishment of dismissal dated 20.12.2001.

3. The brief facts of the case are that a departmental proceeding was initiated against the original writ petitioner vide charge-sheet dated 22.06.2001 on the allegation of the original writ petitioner having complicity in withdrawal of a sum of Rs. 15,000/- and thereafter, it is alleged that the original writ petitioner had fraudulently altered the date of withdrawal from 15.02.2001 to 05.03.2001. It is further alleged that in order to destroy the evidence, the original writ petitioner had tore off the

page No. 143 of the supplementary book on which the entries of 15.02.2001 / 16.02.2001 had been tampered.

4. The departmental inquiry was conducted against the original writ petitioner and the inquiry officer had submitted the inquiry report dated 15.11.2001, finding the charges to have been proved as against the original writ petitioner herein. Thereafter, it appears that a second show cause notice was served on the original writ petitioner and thereupon, the order of punishment, dismissing the original writ petitioner from his services was passed on 20.12.2001.

5. The learned counsel for the petitioners has submitted that the inquiry officer has found the charges to have been proved only on the basis of the confessional statement of the original writ petitioner, made prior to the initiation of the departmental proceeding, when he was confronted by the Bank officials on 11.04.2001 as also, was threatened that he would be sent to jail and wrongly, implicated in a case. The learned counsel for the original petitioner has further submitted that the person from whose account, the said sum of Rs. 15000/- has been alleged to have been withdrawn by the original writ petitioner in a fraudulent manner, has not been produced as a witness in the present proceedings resulting in the original writ petitioner

having been not able to cross-examine the said witness which has resulted in grave prejudice to the original writ petitioner herein. It is further submitted that there is no iota of evidence in the entire disciplinary inquiry to the effect that the original writ petitioner had either tampered with the alleged records or made manipulations and withdrawn a sum of Rs. 15,000/- from the account of one Sri Keshav Prasad Suman. It is further submitted that the said Keshav Prasad Suman has nowhere deposed that any amount was withdrawn illegally from his account. Lastly, it is submitted that the very basis of passing of the punishment order i.e. the inquiry report dated 15.11.2001 is perverse and based on extraneous material, hence, the order of punishment dated 20.12.2001 is fit to be set aside.

6. Per contra, the learned counsel appearing for the Bank of India has submitted that the original writ petitioner himself had voluntarily confessed about his complicity in the matter and to the effect that he had also made statement in writing before the higher authorities on 11.04.2001, when he was confronted by the Bank officials, hence, the complicity of the original writ petitioner is writ large on the records. It is further submitted that in such matters, high integrity and impeccable records of the employees is of utmost importance and any charge levelled

against the delinquent of misappropriation etc. is liable to entail punishment of dismissal from service.

7. The learned counsel for the Respondents has relied upon the judgments of the Hon'ble Apex Court reported in ***(2006)7 SCC 212, (2006)7 SCC 410*** and in ***(2008)7 SCC 580.***

8. I have heard the learned counsel for the parties and perused the records and as per the submissions made by the learned counsel for the parties, I find that the entire basis of the inquiry report dated 15.11.2001 is the confessional statement of the original writ petitioner made at the time when he was confronted by the higher officials on 11.04.2001 i.e. prior to the enquiry proceedings and not before the enquiry officer.

9. It is a trite law that any extraneous material cannot be considered for the purposes of coming to a finding in the inquiry proceedings and only those materials, which are a part of the inquiry proceedings, are to be considered for forming an opinion by the inquiry officer. In the instant case, the confessional statement of the original writ petitioner is definitely an extraneous material, which the original writ petitioner has also retracted from, hence, the same could not have been used for the purposes of coming to a finding of guilt as against the original writ petitioner herein, by the inquiry officer in his inquiry report

dated 15.11.2001. I further find that the main witness i.e. Keshav Prasad Suman from whose account a sum of Rs. 15,000/- is said to have been withdrawn, has not been examined by the prosecution and it appears that he has been deliberately withheld so as not to grant an opportunity to the original writ petitioner to cross-examine him which has definitely caused grave prejudice to the original writ petitioner herein, hence, the entire inquiry, in the opinion of this Court, is vitiated.

10. Having regard to the facts and circumstances of the case as also for the reasons which have been stated hereinabove in the preceding paragraphs, this Court is of the opinion that since the findings of the inquiry officer is based on extraneous materials, the same has rendered the entire inquiry proceedings non est in the eyes of law resulting in rendering perverse finding by the inquiry officer, hence the enquiry report dated 15.11.2001 is quashed. Consequently, the order of punishment dated 20.12.2001, which is solely based on the report of the inquiry officer dated 15.11.2001, being contrary to law, is also quashed.

11. Since the order of punishment dated 20.12.2001 has been set aside, the appellate order dated 18.04.2002 is bound to fall and is, accordingly, quashed.

12. The writ petition stands allowed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
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