IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6736 of 2009

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Sidharshi Kumar Pandey, Son of Late Yogendra Nath Pandey, Resident of Manik Sarkar Ghat Road, Behind Kalibari, Bengali Tola, P.S. – Adampur (Kotwali), District – Bhagalpur

.... Petitioner/s

Versus

1. UCO Bank, through its Chairman-cum-Managing Director, 10, Brabourne Road, Calcutta.
2. Chairman-cum-Managing Director, 10, Brabourne Road, Calcutta.
3. Assistant General Manager-cum-Disciplinary Authority, UCO Bank, Regional Office now Zonal Office, 24/6, Central Jail Raod, Tilkamanjhi, Bhagalpur.
4. Enquiry Officer-cum-Deputy Chief Officer, UCO Bank, Regional Office Now Zonal Office, Central Jail Road, Tilkamanjhi, Bhagalpur.
5. The General Manger, (Personnel Service)-cum-Appellate Authority, UCO Bank, Head Office No.-2, Personnel Service Department at 3 & 4 D.D. Block, Sector 1, Salt Lake, Kolkata – 700064
6. D.C. Mandal, (Name of father not known to the petitioner) Enquiry Officer-cum-Deputy Chief Officer, UCO Bank, Regional Office Now Zonal Office, Central Jail Road, Tilkamanjhi, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Advocate Mr. Sanjeet Kumar, Advocate Mr. Raj Kamal, Advocate
For the Respondent/s	:	Mr. S.D. Sanjay, Sr. Advocate Mr. Ranjeet Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

Date: 10-08-2018

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

2. The petitioner is aggrieved by order dated 09.02.2008 issued by the Assistant General Manager (Disciplinary Authority) whereby and where under the petitioner has been visited with the punishment of dismissal from service with immediate effect which is to be a disqualification for future employment. He has also sought

quashing of the order dated 09.08.2008 issued by the General Manager (Personnel Services, the Appellate Authority of respondent Bank). The petitioner's appeal has been rejected by the Appellate Authority.

3. Learned senior counsel appearing on behalf of the petitioner has submitted that the order visiting the petitioner with severe and grave punishment of dismissal is unsustainable in law since in the proceedings conducted against the petitioner under charge memo communicated vide letter dated 30.12.2005, no witness has been produced in support of the various documents relied upon. It is also the petitioner's case that even the documents running into 1500 pages which have been produced in the enquiry against the petitioner, have been relied upon to conclude the petitioner's guilt without serving copies of the same on the petitioner.

4. Referring to the record of proceedings learned senior counsel has pointed out that the charge memo did not communicate the list of documents on the basis of which the charges were sought to be sustained in the proceedings. Without serving a copy on the petitioner the same was relied upon by the Bank to bring home the charges against the petitioner and after closure of the presentation on behalf of the Bank on 05.11.2007 the petitioner was allowed one day opportunity to examine/see the evidence comprising of 1500 pages in

the Bank. This cannot be said to be sufficient opportunity to the petitioner and at best is only an empty formality. If the Bank had relied upon 1500 pages of documentary evidence, the Bank even if they were not willing to supply copies of all the documents to the petitioner, should at least have granted him sufficient time to examine the documents and the contents thereof so as to enable him to effectively defend himself. It is thus, concluded that the petitioner at this stage had been deprived of due opportunity. Such action of the authority was contrary to the concept of fairness and surely in violation of the Principles of Natural Justice.

5. Two other lapses in the proceedings before the Enquiry Officer are relevant to take into consideration. Other than the Presenting Officer no witness had been produced on behalf of the Bank in support of the allegations levelled against the petitioner. In fact the Presenting Officer himself had given evidence against the petitioner, which has been recorded by the Enquiry Officer. In the circumstances the petitioner in the proceedings dated 05.11.2007 requested an opportunity for cross-examining the Presenting Officer. Such opportunity of cross-examination, which is a vital opportunity in departmental proceedings, has been denied to the petitioner. It may be noted here that cross-examination is the only opportunity which is afforded to the delinquent for testing the veracity and authenticity of the evidence given against him. The specific request of the petitioner

which is recorded at page 167 of the proceedings of enquiry and the Enquiry Officer's decision overruling the petitioner's request for cross-examination is being quoted herein.

> "The petitioner again requested for cross-examination of the P.O. (Presenting Officer) on his evidence recorded by the E.O. on proceeding pages 2 to 27, 28,29,30,31,32,33,36,38 and 39. The Enquiry Report dt. 21.12.2006 shows that the E.O. relied on the evidence of the P.O. to prove charge Nos. 1,2,3,4,5 and 7 against the petitioner.
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> E.O. -- Over ruled."

6. When the petitioner was denied of his opportunity to cross-examine the Presenting Officer, he made specific query whether the Presenting Officer is going to examine any witness to prove the charge since the genuineness and bonafide of the prosecution exhibits had been objected to and challenged by the petitioner as being false and fabricated documents. The response of the Enquiry Officer to such query is quite shocking. The Enquiry Officer has given a ruling that he will not allow examination of witness on behalf of the Bank. Relevant request and response of the Enquiry Officer are to be found at page 173 of the proceedings which are being quoted herein :

> "DR and C.S.O. want to know from the E.O. and P.O. finally that the P.O. is not going to examine any witness on behalf of the DA to prove the charge No. 1, 2, 3, 4, 5,

> 6, and 7 and Allegation Nos. 1, 2, 3, 4, 5, 6, 7 and 8 and to prove the genuiness, and bonafide of the prosecution Exhibits P-1, 41, 42 and 47 which were objected and challenged as fake, fabricated, manufactured with all content at the earliest stage of enquiry on 27.4.2006 and 19.9.2006.
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> Since the presentation on behalf of bank by the P.O. is over. Witness on behalf of bank will not be allowed for examination."

7. It is clear from bare perusal of the enquiry report that no witness had been examined on behalf of the Bank to prove any of the 1500 pages documents relied upon in the course of enquiry.

8. Specific assertion of the petitioner regarding non-supply of list of documents and list of witness is responded by the Bank in its counter affidavit by saying "……..it is not necessary to enclose the entire list of documents and witnesses along with the charge-sheet which is to be served upon the delinquent Officer." Bank has specifically admitted that no list of documents or witnesses had been annexed with the charge-sheet. However, without referring to any receipt in respect of the same a statement had been made in the counter affidavit that "….same was dully communicated and delivered to the petitioner during the enquiry as per his prayer." Such bald assertion of the respondent Bank, without annexing any documentary proof showing such service cannot be relied upon. It is a

basic rule of practice and procedure that the pleadings made in the affidavit with respect to certain facts as in the instant case should be supported by annexing documentary evidence. The same has not been done. Assertion of the Bank that there was many communications after issuance of charge memo is *per se* not reliable. It is another issue whether supplying a list of documents and witnesses after closure of the Bank's case would be sufficient compliance with the Principles of Natural Justice.

9. In response to the petitioner's assertion that no oral evidence had been produced in support of the documents to sustain the charges against the petitioner, learned senior counsel appearing on behalf of the Bank has submitted that since documents being relied upon were the documents maintained by the Bank in the normal course of its business, the same should be considered as admitted. Such submission is advanced by relying upon the fact that since the documents relate to a period when the petitioner was a Branch Manager of the Bank, petitioner cannot be permitted to dispute the authenticity of the documents. Such submissions of the learned senior counsel are factually as well as legally unsustainable.

10. "The account wise irregularities in loans which is annexed to the articles of charges contains reference to land possession certificate issued by the Government Revenue Authorities

defective mortgage deed and non-encumbrance certificate issued by Government Revenue Authorities. These documents were not documents which were maintained by the Bank in the normal course of its business. These were documents issued by other authorities. Though such documents have been mentioned in the account wise irregularities in loans Annexure but even details such as date of the documents have not been mentioned, let alone supplying a copy thereof to the petitioner. Therefore, submission of the learned senior counsel appearing on behalf of the Bank that the documents were maintained in the ordinary course of business of the Bank is factually incorrect.

11. Now coming to the submission that the documents should be deemed to be admitted, this Court would again refer to the proceedings recorded before the Enquiry Officer at page no. 173, which have been quoted hereinabove wherein the petitioner has specifically disputed the genuineness and bonafides of the documents being relied upon by the Presenting Officer. In view of such dispute it was incumbent upon the Enquiry Officer exercising authority in the nature of a quasi judicial authority, to insist for examination of some witness in support of the documents, so as to ensure fairness in the proceedings. On the contrary, as noticed above the Enquiry Officer has ruled that witness on behalf of the Bank would not be allowed for

examination.

12. The charge memo contains altogether seven charges. Senior counsel for the Bank submits that he would confine himself to the charge no. 1-5 since charge no. 6 was not proved in the enquiry, and charge no. 7 which is an ofshoot of charge no. 6 was, unsustainable since charge no. 6 itself had not been proved in the enquiry. This Court would therefore, take notice of charge nos. 1-5 only. Charge nos. 1-5 against the petitioner were as follows:

- Charge no. 1 was regarding reckless financing disproportionate to the corresponding deposits figure of the Bank and in gross violation of Bank's Rules and guidelines.
- Charge no. 2 was financing of tractors under UCO, Hirak Jayanti Scheme without taking proper documents and following existing Rules and guidelines of the Bank.
- Charge no. 3 was allowing withdrawal in certain CCA accounts though term loan account of the party had been declared as non-performing assets (NPA). It is also alleged that lending power of the petitioner was seized by the Regional office at that point of time.
- Charge no. 4 alleges financing of huge amount of loan to

two or more borrowers of the same family closely related to each other without taking prior permission of controlling office and without proper recording.

- Charge no. 5 alleges that petitioner had submitted a self declaration format where he had confessed that there was an outside liability of about Rs. 8 lacs in the name of his wife and the dependents. But it is alleged that loan had been availed by his wife and dependents without taking competent authorities permission.

13. Admitted position is that there was no oral evidence in support of any of the charges and in support of any of the 1500 pages of documents being relied upon on the basis of which the petitioner is sought to be visited with the grave punishment of dismissal. Such a situation cannot be countenanced.

14. Apart from the fact that documents were not supplied, adequate opportunity to examine the documents were not allowed, it is also observed that the documents were relied upon by the Enquiry Officer without even examining any witness whatsoever in support of the documents relied upon by the Bank. The same is a glaring procedural lapse striking at the route of fairness of the entire proceedings conducted against the petitioner leading to award of severe punishment of dismissal.

15. The last submission made on behalf of the counsel for the Bank is that the charges against the petitioner were grave. He has submitted that the level of integrity, standard of conduct commitment to duty, required from an officer of the Bank, when such officer is dealing with public money is of a very high standards. He submits that lapses committed by such Bank officials who are custodians of public money cannot be tolerated by any standard and they are required to dealt with severely so as to deter such conduct from others. Such propositions of law, submitted by the learned senior counsel appearing on behalf of the Bank are axiomatic.

16. This Court would only observe that if the authorities were sincere in bringing to book the petitioner and if they had the intention of firmly dealing with the lapses alleged against the petitioner, they should have meticulously observed the procedural requirement of fairness. They ought to have conducted the proceedings in accordance with law and after giving reasonable opportunity to the petitioner, so as to ensure that if the same resulted in award of any punishment then the same would withstand the test of fairness. In the instant case the manner in which the proceedings have been conducted against the petitioner demonstrates a casual approach by the Enquiry Officer.

17. In view of the considered opinion of this Court, the

Enquiry Officer has miserably failed to establish the charges by observing a fair procedure. The entire proceeding has been conducted in gross violation of the Principles of Natural Justice and fair play. Petitioner has pointed out the aforesaid irregularities in his reply dated 29.01.2008 to the second show cause submitted to the Disciplinary Authority. The Disciplinary Authority has not granted any consideration to the petitioner’s reply and in spite of the aforesaid glaring procedural lapse in the proceedings before the Enquiry Officer has proceeded to award the petitioner punishment of dismissal from service which has been made a disqualification for future employment.

18. Order of the Disciplinary Authority is dated 09.02.2008. The said order of punishment is a product of a procedure wholly unknown to law. The same is based on unfair procedure adopted by the Enquiry Officer as noticed above. This was the vital stage for the petitioner, where the various irregularities in the procedure adopted by the Enquiry Officer would have been addressed by the Disciplinary Authority. On the contrary Disciplinary Authority after recording the charges has rejected the petitioner’s contentions by a non-speaking order without assigning any reason to reject the petitioner’s plea. The Disciplinary Authority has also failed to take into consideration that documents to the tune of 1500 pages had been relied upon to hold the petitioner guilty in the proceedings without

giving copies of the same to him and without allowing him sufficient opportunity to examine the same. The documentary evidence has been accepted without any oral evidence in support thereof. The order of the Disciplinary Authority dated 09.02.2008 is clearly unsustainable for the reasons stated here in above. The order of punishment dated 09.02.2008 is therefore, quashed.

19. As a result of quashing of the order of punishment the order of the Appellate Authority Dated 09.08.2008 affirming the order of punishment is also quashed. As a result of quashing of the proceeding the petitioner would be entitled to his consequential benefits in accordance with law. This order however, would not preclude the Bank from proceeding against the petitioner afresh if such opportunity is available in law.

20. The writ petition is allowed.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	