

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6019 of 2016

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Raju Kumar Choudhary son of Sri Dinesh Prasad Choudhary, Ex customer Assistant, P.F. Index No. 5999405, State Bank of India, Muzaffarpur Branch (00138) Resident of at & PO – Bariyarpur Via- Piar District- Muzaffarpur- 843115 (Bihar)

.... Petitioner/s

Versus

1. The Chairman, State Bank of India, Nariman Point, Mumbai.
2. The General Manager (Network-III), State Bank of India, Local Head Officer, West Gandhi Maidan, Patna.
3. The Deputy General Manager (B&O), State Bank of India (Appellate Authority), Human Resources Section, Zonal Office, Club Road, Muzaffarpur- 842002(Bihar).
4. The Regional Manager (Region-I) – cum- Disciplinary Authority, State Bank of India, Regional Business Office, Club road, Muzaffarpur- 842002 (Bihar).
5. Sri Manoj Kumar, Investigating Officer, Region-I, State Bank of India, Club Road, Muzaffarpur- 842001 (Bihar).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Adv.
Mr. Sanjay Kumar Chaubey, Adv.
Mr. Satendra Narayan Singh, Adv.
For the Respondent-SBI : Mr. Sanjeev Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 10-05-2018

Heard Mr. Rajendra Prasad Singh, learned Senior Counsel appearing for the petitioner along with Mr. Satendra Narayan Singh Advocate on Record and Mr. Sanjeev Kumar, learned counsel for the State Bank of India and its functionaries.

With the consent of the parties the writ petition has been heard with the view to final disposal at the stage of admission.

The petitioner prays for the following reliefs:

“i. For issuance of an appropriate writ(s)/ order(s) / direction(s) in the nature of Certiorari quashing/ setting aside the order dated 17.12.2015 as contained in



Annexure-17 passed by the Disciplinary Authority i.e. Respondent No.4 whereby and whereunder the penalty of Removal from Service with superannuation benefits in terms of Clause 6(b) of Memorandum of Settlement for Workman Staff dated 10.04.2002 has been imposed with further direction that the suspension period will not be treated as on duty which is totally illegal, arbitrary, unjust, punitive, against the flagrant violation of the principle of natural justice and also based on concocted and wrong facts.

ii. For further issuance of an appropriate writ(s)/ order(s)/ direction(s) in the nature of Certiorari quashing / setting aside the Order dated 12.02.2016 as contained in Annexure-19 passed by the Appellate Authority i.e. Respondent No.3 whereby and whereunder the appeal filed by the Petitioner has been rejected mechanically upholding the order passed by the Disciplinary Authority which is bad in law and unsustainable for the reason that the same Respondent has already passed one Order dated 31.03.2015 (Annexure-4) much before the issuance of the Charge Memorandum dated 22.06.2015 (Annexure-8) and rejected the representation of petitioner with regard to revocation of his suspension order even the concern representation was sent to the Respondent No.4 who has placed the petitioner under Suspension and not to the Respondent No.3 but even though the Respondent No.3 has rejected the said representation of petitioner and passed Order dated 31.03.2015 as contained in Annexure-4 on the same reason, hence under the principle of law a person cannot be a judge for his own cause and further it was never possible for the Respondent No.3 to change his earlier decision while deciding the Appeal.

iii. For issuance of an appropriate writ(s) /order(s) / direction(s) in the nature of Certiorari quashing/ setting aside the Enquiry Report dated 14.09.2015 as contained in Annexure-14 together with second Show Cause Notice dated 09.11.2015 as contained in Annexure-15 issued by the Disciplinary Authority i.e. Respondent No.4.

iv. For issuance of an appropriate writ(s) / order(s)/ direction(s) in the nature of Mandamus commanding the Respondents to re-instate the Petitioner in service henceforth with all consequential benefits including arrears with statutory interest.

v. For further issuance of an appropriate writ(s) / order(s)/



direction(s) commanding/ directing the Respondents to pay the salary with arrears treating the entire suspension period as on duty for all purposes which has been treated not as on duty vide the impugned punishment dated 17.12.2015 as contained in Annexure-17.

vi. For any other appropriate relief(s) for which the Petitioner may be entitled to be granted.”

Facts of the case leading to orders impugned briefly is that the petitioner while posted as a Customer Assistant in the respondent Bank was proceeded against departmentally for alleged acts of misconduct and violation of Banks instructions. On being proceeded he was put under suspension vide order dated 17.12.2014 present at Annexure-1. An explanation was initially asked from the petitioner vide letter dated 16.04.2015 at Annexure- 5 charging him with defrauding the Bank by misappropriation of a sum of Rs. 44,615/-. The petitioner filed his reply at Annexure-6 but the same was not accepted and the petitioner was subjected to disciplinary proceeding by service of a charge memo dated 22.06.2015 at Annexure- 8. The petitioner again filed his reply to the charge memo at Annexure-9. The matter went to enquiry, the report of which is at Annexure-14 upholding the charges. The petitioner was served with the second show cause notice dated 09.11.2015 at Annexure- 15 to which he filed reply rebutting the allegations at Annexure- 16 but has been met with the impugned order of removal while preserving his superannuation benefits, a copy of which is impugned at Annexure-17. The appeal of



the petitioner has been rejected by the Appellate Authority as communicated vide letter dated 12.02.2016 at Annexure-19 and feeling aggrieved, the petitioner is before this Court.

Mr. Singh, learned Senior Counsel appearing for the petitioner has referred to the records of the proceedings before the Enquiry Officer, a copy of which has been placed on record by the respondent-Bank at Annexure-B to submit that it is simply on filing of the documents allegedly supporting the charge by the Presenting Officer; without holding any enquiry; with the Presenting Officer taking no steps of either leading oral evidence or proving the documentary evidence; that the Enquiry Officer has closed the enquiry on 13.08.2015 to prepare his report at Annexure-14.

In short, it is the argument of learned Senior counsel for the petitioner that the Enquiry Report is resting on no enquiry inasmuch as no evidence was led by the Presenting Officer for proving the charge. He submits that no doubt the prosecution documents were filed during the course of enquiry but then neither any oral evidence was led nor the documentary evidence were proved by the Presenting Officer and it is simply upholding the stand taken by the Presenting Officer through his written argument that the Enquiry Officer has proceeded to uphold the charge.

It is the argument of Mr. Singh that the Enquiry Officer has a



role to perform but he has abdicated his responsibility. Since Mr. Singh has chosen to address the Court on procedural default by the Enquiry Officer in holding the enquiry, Mr. Sanjeev Kumar was asked to contest the submissions of Mr. Singh and he was also asked to produce the records of the disciplinary proceeding which has since been produced by him. Mr. Sanjeev Kumar on going through the records has returned back to Annexure-B to reiterate the position of submission of prosecution document and prosecution brief by the Presenting Officer but he has not been able to demonstrate that any evidence was led in support of charge or in support of the documents so filed. It is his submission that since the prosecution document was not rebutted by the delinquent hence there was no requirement of a formal proof of those documents. He also submits that since copy of the documents were served on the delinquent who had all opportunity to contest its veracity, no prejudice can be claimed by him. He further submits that a disciplinary proceeding and a criminal trial are on a different pedestal and whereas strict rules of evidence is to be followed in a criminal trial and though procedurally, the law has to be applied but so long as there are evidences to prove the charge on record, the application is not as per the rule book.

I have heard learned counsel for the parties and I have perused the records.



There is no contest on the position that except for filing of the prosecution documents with copy served on the delinquent as well as of filing of a prosecution brief with copy served on the delinquent, no evidence was led either to prove the documents or in support of the charge. It is a matter of record that it is on simple filing of those documents that the Presenting Officer has proceeded to mark the same as prosecution Exhibit and defence Exhibit respectively. There is no contest on the legal position that strict rules of Evidence Act, is not to be followed in a disciplinary proceeding being in the nature of the quasi judicial proceeding but then the broad principles are to be followed. That the Conducting Officer has completely failed in his duty to hold the disciplinary proceeding in the manner prescribed under the rules, is manifest from the records of the proceedings.

I would be referring to certain provisions of the Memorandum of Settlement dated 10.04.2002 as circulated to the different branches of the State Bank of India, which is a guideline as to how the disciplinary proceeding is to be held in respect of the workman, to demonstrate the procedural lapse.

Clause 1, Clause 10 and Clause 12(a) of the Terms of Settlement reads as under:-

- “1. A person against whom disciplinary action is proposed or likely to be taken shall in the first instance, be informed of the particulars of the charge against him and he shall have a proper opportunity to give his



explanation as to such particulars. Final orders shall be passed after due consideration of all the relevant facts and circumstances. With this object in view, the following shall apply.

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10. In all cases in which action under Clauses 4, 6 or 8 may be taken, the proceedings held shall be entered in a book kept specially for the purpose, in which the date on which the proceedings are held, the name of the employee proceeded against, the charge or charges, the evidence on which they are based, the explanation and the evidence, if any, tendered by the said employee, the finding or findings, with the grounds on which they are based and the order passed shall be recorded with sufficient fullness, as clearly as possible and such record of the proceedings shall be signed by the officer who holds them, after which a copy of such record shall be furnished to the employee concerned if so requested by him in writing.
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12. (a) An employee against who disciplinary action is proposed or likely to be taken shall be given a charge-sheet clearly setting forth the circumstances appearing against him and a date shall be fixed for enquiry, sufficient time being given to him to enable him to prepare and give his explanation as also to produce any evidence that he may wish to tender in his defence. He shall be permitted to appear before the Officer conducting the enquiry, to cross-examine any witness on whose evidence the charge rests and to examine witnesses and produce other evidence in his defence. He shall also be permitted to be defended.”

A plain reading of these clauses would show that every opportunity is to be provided to a delinquent to contest the charge including the cross-examination of witnesses as well as evidence. This necessary pre-requisite to a preparation of the report by an Enquiry Officer, has not been followed and which is manifest from the



records of the proceeding, an extract of which has been enclosed at Annexure- B to the counter affidavit. That it is simply on the filing of prosecution document and the prosecution brief as well as on the filing of the written brief by the petitioner that the Enquiry Officer has proceeded to conclude the enquiry without directing the Presenting Officer to lead his evidence to prove the charge either by oral evidence or by proving the documentary evidence so filed, is not in contest rather is an admitted position.

For the purpose I am persuaded to reproduce relevant paragraphs of the enquiry report as relied upon by Mr. Singh in support of his contention that no enquiry was held. The enquiry proceeding dated 16.07.2015 at running page 111 contains the following interactions between the Enquiry Officer and the Presenting Officer.

“
 E.O to P.O -Please submit your prosecution documents.
 P.O to E.O -Yes sir, I submit my prosecution documents
 before the enquiry.
 E.O to C.E- Please acknowledge, the receipt of list of
 prosecution documents as posted on page
 no. 11
 C.E. to E.O-I acknowledge receipt of the list of
 Prosecution
 Documents, posted on page no. 11
 E.O to P.O- Will you submit any prosecution documents
 before the enquiry.
 P.O. to E.O- Yes sir, I will submit more prosecution
 documents before the enquiry on next date.
 ”



The document so filed are at running page 112 and there is no dispute that it was served on the petitioner.

The proceeding dated 23.07.2015 records submission of the prosecution documents as manifest from the following interaction:

“
E.O to P.O :- Please submit your prosecution document, finally.
P.O to E.O :- Sir, I submit list of prosecution documents, as posted on page no. 13, except item no.(b) due to non-availability of zerox copy.
E.O to C.E :- Please acknowledge receipt of list of prosecution documents as posted on page no. 13.
C.E to E.O :- Sir, I acknowledge receipt of list of prosecution documents except item no (b) as posted on page no. 11
E.O to P.O :- Will you submit any prosecution documents on next date of enquiry?
P.O to E.O:- Yes sir, I will submit further list of documents, on next date due to delay response of Muzaffarpur Branch. I will also submit item no.(b) of the list of prosecution documents as posted on page no.13, on 25/07/2015.
.....”

The documents filed are at running page 114.

The proceeding dated 23.07.2015 was adjourned to 25.07.2015 which is present at running page 116 and records following interactions:

“
E.O to P.O:- Please submit your remaining Prosecution documents.
P.O to E.O:- Sir, I submit my prosecution documents.
E.O to C.E:- Please acknowledge receipt of the list of Prosecution documents as posted on Page no.



16.

C.E to E.O:- Sir, I acknowledge receipt of the list
prosecution documents (photocopy of
documents) as posted on Page No.16.

E.O to C.E:- Will you submit defence documents if any.

C.E to E.O:- Sir, I will submit my defence documents on
next date of enquiry.

.....”

The documents so submitted are at running page 117.

The defence documents submitted by the petitioner on
31.07.2015 is manifest from the proceedings present at running page
118. The enquiry was adjourned to 07.08.2015 and on which date the
exhibits were marked by the Enquiry Officer without the Presenting
Officer taking any steps to present them and/or to prove them. Such is
the statement recorded by the Enquiry Officer on 07.08.2015 which is
quoted herein below:

“
E.O to P.O – Let us make PEX & DEX
.....”

The enquiry was adjourned to 13.08.2015 and on which date
the Enquiry Officer by simply noting that the documents had been
filed, concludes the enquiry by recording the following decisions:

“The enquiry is concluded at this stage.”

Such is the manner in which the Enquiry Officer has proceeded
to prepare his enquiry report.

I would not dispute the submission of Mr. Sanjeev Kumar that



the provisions of the Indian Evidence Act, 1872 would not strictly apply to a disciplinary proceedings but nonetheless, the procedure prescribed therein to uphold a charge, has to be taken to its logical conclusion in a transparent fair manner with equal opportunity to the parties to contest the same. I am persuaded to reproduce two opinions of the Supreme Court on the manner of taking evidence on record as well as the role of the Enquiry Officer, in a disciplinary proceeding.

The judgment of the Supreme Court in the case of **State of Uttar Pradesh and Others versus Saroj Kumar Sinha** reported in **(2010) 2 SCC 772** at paragraph 28, succinctly explains the role and the duty of an Enquiry Officer which is quoted hereinbelow:

“28. Enquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.”

I have already reproduced paragraph 12(a) of the Memorandum of Settlement which obliges a Presenting Officer to lead his evidence either oral or documentary to enable the delinquent to cross-examine the same but in the present case undisputedly, this



step was never taken by the Presenting Officer rather his duty ended with mere filing of the documents. Unless a witness or a document is examined by a Presenting Officer, it does not give any opportunity to a delinquent to cross-examine the same and in the present case neither any oral evidence was examined nor the documentary evidence, proved.

A mere filing/ presentation of a document ipso facto does not prove the charge rather the document has not only to be presented lawfully rather is to be proved by an authority competent to do so and only whereafter it is to be treated as an evidence on record, allowing the delinquent to cross-examine the same. Again this procedure was never followed and this lapse has proved disastrous for the bank because due to this serious lapse, the findings rest on no evidence. The opinion of the Supreme Court in the case of **Roop Singh Negi versus Punjab National Bank** reported in (2009) 2 SCC 570, again succinctly explains the position. Paragraph 14 of the judgment reads as under:

“14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove



the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.”

In view of the undisputed position that no evidence either oral or documentary was examined by the Presenting Officer during the course of the enquiry nor the Presenting Officer proceeded to substantiate the charge against the petitioner, it is not only the failure of the Presenting Officer in his duty rather the Conducting Officer has also failed to discharge his obligation as cast upon him under the Memorandum of Settlement as well as in view of the legal position settled by the Supreme Court.

For the reasons so expressed, the proceedings including the enquiry report dated 14.09.2015, the punishment order dated 17.12.2015 as well as appellate order dated 12.02.2016 impugned at Annexures- 14, 17 and 19 respectively cannot be upheld and are quashed and set aside. As a consequence the petitioner is reinstated.

I am conscious of the charge facing the petitioner and thus I would not be interfering the charge at the present stage rather would remand the matter to the stage of enquiry allowing one more chance to the Enquiry Officer to record his opinion after holding enquiry in the manner prescribed and to take the proceeding to its logical conclusion. The choice is with the Disciplinary Authority whether or



not to proceed thereafter.

It goes without saying that should the petitioner fail to co-operate in the proceeding so initiated despite due service of notice upon him, the Bank would be at liberty to proceed accordingly but in accordance with law. The backwages shall be subject to final disposal of the proceeding.

The writ petition is allowed with the liberty aforementioned.

(Jyoti Saran, J)

Bibhash

AFR/NAFR	A.F.R
CAV DATE	NA
Uploading Date	01.06.2018
Transmission Date	NA

