

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4432 of 2013

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Murari Sharan S/O Late Shatrughan Prasad Resident Of Mohalla- New
Agarwa, Near Gyan Sagar School, P.O- Motihari, P.S- Motihari, District- East
Champaran. Petitioner/s

Versus

1. UTTAR BIHAR GRAMIN BANK, SHARMA COMPLEX, KALAMBAGH CHOWK, MUZAFFARPUR, THROUGH ITS CHAIRMAN.
 2. THE CHAIRMAN, UTTAR BIHAR GRAMIN BANK, SHARMA COMPLEX, KALAM BAGH CHOWK, MUZAFFARPUR.
 3. THE CHIEF MANAGER, UTTAR BIHAR GRAMIN BANK, SHARMA COMPLEX, KALAM BAGH CHOWK, MUZAFFARPUR.
 4. THE GENERAL MANAGER, CUM DISCIPLINARY AUTHORITY UTTAR BIHAR GRAMIN BANK, SHARMA COMPLEX, KALAM BAGH CHOWK, MUZAFFARPUR.
 5. THE PERSONNEL MANAGER, UTTAR BIHAR GRAMIN BANK, SHARMA COMPLEX, KALAM BAGH CHOWK, MUZAFFARPUR.
 6. THE REGIONAL MANAGER, BETTIAH, UTTAR BIHAR GRAMIN BANK WEST CHAMPARAN.
 7. THE BRANCH MANAGER, LACHHNAUTA, BETTIAH, UTTAR BIHAR GRAMIN BANK, EAST CHAMPARAN. Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Kumod Kumar Shrivastaw
For the Respondent/s : Mr. Prabhakar Jha

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 20-04-2018

Heard the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 02.05.2012 passed by the Disciplinary Authority-Cum-General Manager (respondent No. 3), as contained in Annexure-2 by which the punishment of removal from service was imposed on petitioner as well as order dated 15.10.2012 passed by the Appellate Authority (respondent No. 1), as contained in Annexure-4, dismissing the appeal of petitioner. Petitioner has also prayed



for quashing the enquiry report dated 10.12.2011, as contained in Annexure-1.

3. Petitioner was transferred in November 2001 to Lachhanauta Branch in West Champaran where he continued till 1st November, 2009 and from where he was sent on deputation at Parsa Branch in West Champaran on 02.11.2009.

4. A letter was handed over to the petitioner on 04.03.2010 issued by General Manager (respondent No. 3) by which he was placed under suspension for alleged irregularities committed by him while working as Office Assistant at Branch Lachhnauta in West Champaran District. Charge sheet dated 17.05.2010 was sent to the petitioner containing three charges to hold enquiry under the provisions of the Uttar Bihar Gramin Bank Staff Service Regulations 2008 and he was asked to submit his reply within 10 days from receipt of memo of charge.

5. Petitioner denied the charges. However, respondents decided to hold enquiry. Sri Indra Narayan Singh was appointed as Enquiry Officer. Sri Rambabu Singh was appointed as Presenting Officer and Sri Sudhir Kumar Sinha was appointed by petitioner as a defence representative.

6. During enquiry, the Bank Management examined 52



documents as ME1 to ME52 and defence side exhibited 50 exhibits from DE1 to DE50. Petitioner also submitted his written argument defending and controverting all three charges through his defence representative on 04.12.2011.

7. On the basis of evidences adduced before the Enquiry Officer, he prepared enquiry report in which charge No. 1 was held to be proved, charge No. 2 partially proved and charge No. 3 partially proved.

8. The Management did not bring a single oral witness either any loanee or any complainant for proving the charges leveled against the petitioner. The Disciplinary Authority issued 2nd show cause notice to petitioner along with enquiry report to submit his reply with respect to findings of Enquiry Officer within 8 days from receipt of 2nd show cause notice.

9. Petitioner submitted his reply through speed post but without considering the reply of petitioner, only on the basis of finding of the Enquiry Officer the Disciplinary Authority proposed punishment order dated 13.04.2012 (i) Removal from service; (ii) Shall not be paid salary and allowances for suspension period, and thereafter, order of punishment dated 02.05.2012 was passed by the Disciplinary Authority against the



petitioner.

10. Petitioner preferred an appeal before the Chairman-Cum-Appellate Authority of Uttar Bihar Gramin Bank, Muzaffarpur on 28.05.2012 and appellate authority without giving any reason or considering the grounds of appeal, agreeing with the order of Disciplinary Authority, dismissed his appeal.

11. The High Court in judicial review cannot appreciate the sufficiency or adequacy of the evidences adduced before the Enquiry Officer as same is to be considered and looked into by the Disciplinary Authority and appellate authority. The High Court can interfere in the matter of punishment order only if the finding is based upon no evidence or same is perverse. The High Court cannot substitute its view to the findings recorded by the Enquiry Officer if it is based upon some evidence adduced during the enquiry proceedings. After going through the enquiry report, this Court finds that the Enquiry Officer has considered evidences brought before him by the Management but consideration of defence evidence or explanation of petitioner to deny charges is not reflected in the enquiry report.



12. The question relating to jurisdiction of the court in judicial review in a departmental proceeding fell for consideration before Apex Court in M.V. Bijlani 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 proceedings, 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 witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

13. 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 authority, 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 and said order should consider the reply of petitioner by which he has assailed 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.

14. 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.

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 attempt 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.

15. 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.

16. 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.

17. 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. The petitioner has exhibited 50 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 explanation and written statement submitted by petitioner in the orders passed by departmental authorities.

18. 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 removal is too harsh for the alleged misconduct and shall also consider the quantum of punishment at the time of passing the 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 and has sanctioned the loan amount in absence of Branch Manager. Lastly it has been submitted that petitioner has served the bank for nearly 28 years with unblemished record and he has been punished with removal of service at the age of 57 years on verge of retirement, 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.

19. The writ petition is allowed to the extent as indicated above, however, without any costs.

veena/-

(S. Kumar, J)

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