IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3867 of 2013

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Umesh Chandra Byas Son Of Shri R.D. Tyagi Resident Of At House Chapra, Near No. 44 Railway Crossing, P.S.- Town, District- Chapra (Saran)

... ... Petitioner/s

Versus

1. Uttar Bihar Gramin Bank, Head Office, Muzaffarpur Through Its Chairman
2. Chairman, Uttar Bihar Gramin Bank, Head Office, Muzaffarpur
3. Board Of Directors Through Its Chairman, Uttar Bihar Gramin Bank, Head Office, Muzaffarpur

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Adv.
		Mr. Kushagra Raj, Adv.
For the Respondent/s	:	Mr. Prabhakar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 20-04-2018

This writ petition under Article 226 of Constitution of India has been filed for quashing the order dated 13.1.2012 issued by the General Manager of Uttar Bihar Gramin Bank (hereinafter referred to as 'UBGB') by which the appeal preferred by petitioner was dismissed as well as order dated 2.7.2010 passed by the Disciplinary Authority by which punishment of removal from service was imposed upon petitioner in terms of regulation 38(I)(b)(iv) of UBGB (Officer & Employees) Service Regulations, 2008.

2. Petitioner was initially appointed in the service of UBGB in the year 1986 as an officer and during relevant period petitioner was working against the post of Branch Manager of Bheldi Branch and subsequently petitioner was working as an officer at

Bishunpura Branch when vide letter dated 15.12.2005 issued by the Chairman of Bank a memo of charge was served upon petitioner containing certain articles of charges of omission and commission committed by him while acting as a Branch Manager of Bheldi Branch. Memo of charge dated 15.12.2005 as contained in Annexure-1 was served upon petitioner which contains four charges and charge no. 1 was further bifurcated into five sub-charges. Charges were mainly related to sanction and disbursement of loan to the loanee without following guidelines and circulars issued by the Bank in the matter of sanction and disbursement of loan. Petitioner was charged for negligence, insubordination and dereliction of duty.

3. It has been submitted on behalf of petitioner that while functioning as Branch Manager of Bheldi Branch, bank had been governed by guidelines issued from time to time and also prescribed modalities for the purpose of processing, sanctioning and disbursement of loans. Petitioner had always acted as per report and feedback provided by the Field Officer of the concerned Branch and prior to disbursement of any loan he had taken consent of the concerned authorities at the Head Office and guidelines contained in different circulars issued by the Bank for the purpose

of sanction of loan and other ancillary matters under different schemes.

4. The said guidelines lay down the modality containing a detailed description and petitioner acted in complete conformity with the said guidelines and circulars of the Bank. Petitioner had acted in terms of report submitted by the concerned officials and steps toward disbursement of loan was always taken following recommendation of the Head Office. As such, charges against petitioner that he acted in contravention of guidelines is baseless. And nowhere it has been indicated as to which guidelines have been violated by petitioner.

5. As far as charge no. 1 is concerned, prior to disbursement and sanction of the loan a detailed enquiry was conducted by Field Officer of the Bank looking into the guidelines issued by Head Office and loans were sanctioned on the basis of such report along with recommendation and after having necessary permission from the Head Office and only after final approval of the Head Office the loans were disbursed.

6. As far as charge against petitioner that the title deeds and land documents towards mortgage of land were found to be forged, it has been submitted that land documents, deeds etc. are as a matter of established practice that same are examined by the legal

advisor of the bank and only after receiving positive report from the concerned legal advisor, further steps were taken by the petitioner. The Circle Officers of the concerned Circles are Government servants and the land related documents, deeds etc. were examined by the petitioner prior to sanction and disbursement of loans on the basis of report received from the Circle Officer, who is the custodian of revenue records and as a matter of fact the duly executed affidavits were also taken from loanees and/or no dues certificates were also taken from the loanees in terms of the circulars issued by the Bank.

7. It has further been submitted that loan disbursed had not caused any loss to the Bank as the borrowers had been making repayment of the instalments, as such, Bank has not suffered any loss. Petitioner filed a detailed representation before the enquiry officer mentioning details of accounts controverting the allegation made against petitioner. During enquiry, petitioner furnished all the relevant documents, he demonstrated that charges levelled against petitioner are not correct and without appreciating the evidence on record the enquiry officer found charge Nos. 1 and 2 to be proved whereas charge No. 3 was held to be partially proved and charge No. 4 was found not to be proved.

8. Petitioner was issued second show cause by the Disciplinary Authority along with a copy of enquiry report by letter dated 13.3.2009 and petitioner submitted his reply against the findings of enquiry officer dated 31.3.2009 denying the charges levelled against him.

9. It has been further contended that without taking into account the submission of petitioner against the findings of the enquiry officer and materials brought on record during the course of enquiry, the order dated 2.7.2010 was passed by the Disciplinary Authority by imposing punishment of removal from service which shall not be a disqualification for future employment in terms of regulation 38(I)(b)(iv) of UBGB (Officer & Employees) Service Regulations, 2008.

10. It has lastly been submitted by the learned counsel for the petitioner that even assuming the charges to have been proved, the punishment imposed is disproportionate to proved charges. Petitioner preferred an appeal in terms of Regulations 47 and 48 of Service Regulation of Bank against the order passed by the Disciplinary Authority before the Board of Directors of the Bank but without proper consideration of appeal by the Appellate Authority the appeal was dismissed by order dated 13.1.2012.

11. A counter affidavit has been filed on behalf of Respondent-Bank in which it has been stated that Sri Surendra Dwivedi was appointed as enquiry officer by letter dated 28.6.2007 and petitioner appointed Sri Ashok Kumar Dubey as his defence representative and altogether four charges were framed against petitioner. The departmental enquiry started on 28.3.2006 and concluded on 2.2.2008 and during that period altogether 13 sittings of enquiry were held and 32 Management Exhibits and four management witnesses were produced and examined during departmental proceeding on behalf of management. The defence produced 16 Defence Exhibits and two witnesses to disprove the charges. The enquiry officer submitted his findings dated 22.8.2008 to the Disciplinary Authority holding charge nos. 1 and 2 to be proved, charge no. 3 partially proved and charge no. 4 not proved. The enquiry report was sent to petitioner on 13.3.2009 to submit his reply with respect to findings of Enquiry Officer and same was submitted by petitioner on 31.3.2009 to the Disciplinary Authority.

12. The Disciplinary Authority after considering the reply filed by petitioner against the findings of enquiry report came to the conclusion that petitioner was guilty and accepted the enquiry report and in the light of proved charges passed the order of

removal from service. Against the order of Disciplinary Authority dated 2.7.2010, petitioner preferred an appeal before the Board of Directors and after due consideration the appeal of petitioner was rejected and charge of negligence, insubordination and dereliction of duty was found true against the petitioner.

13. The charges against petitioner relates to negligence, insubordination and dereliction of duty and charges were not of any misappropriation or defalcation or any monetary loss caused to the Bank but was to the effect that petitioner had violated the circulars and guidelines of the Department while sanctioning and disbursing of loan. However, which circulars and which guidelines have not been followed by petitioner that has not been brought on record but only a vague and general allegation have been made that petitioner has not followed the guidelines and circulars of the Bank while sanctioning and disbursing the loan amount by the petitioner.

14. The Writ Court has a limited jurisdiction in judicial review of departmental proceeding and cannot go into the adequacy or sufficiency of evidence produced before the enquiry officer and if same is based upon evidence adduced before the enquiry officer, the Writ Court is precluded to re-examine the evidence as an Appellate Authority.

15. This Court in case of Hassan Muzahid versus Bihar State Electricity Board and other 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 proceeding 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."*

16. 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.

17. 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 reason, 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."*

18. The Disciplinary Authority and appellate authority are final authorities on facts and they can appreciate the evidences adduced before the Enquriy 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 Enquriy Officer while passing the order of punishment. The Petitioner has exhibited 50 documentary evidences in his defence but neither the Disciplinary Authority nor the Appellate Authority have considered the defence, explanation, reply and documentary and oral evidences adduced by petitioner in the orders passed by departmental authorities.

19. 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. Lastly it has been submitted that petitioner has served bank with unblemished record and he has been punished with removal of 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.

20. In the result the order passed by Disciplinary Authority as well as Appellate Authority are set aside, 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 the order.

21. The writ petition stands allowed.

(S. Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	