IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2607 of 2013

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Laxmi Narayan Sah S/O Late Kalar Sah R/O Vidya Bihar, Road No.- 04, Behind Laxmi High School, Po, Ps & Dist.- Sitamarhi

... ... Petitioner/s

Versus

1. Uttar Bihar Gramin Bank Through Its Chairman, Head Office At Sharma Complex, Kalam Bagh Chauk, Muzaffarpur, Bihar
2. Appellate Authority (Board) Through General Manager, Uttar Bihar Gramin Bank, Head Office At Sharma Complex, Kalam Bagh Chauk, Muzaffarpur, Bihar
3. Chairman-Cum-Disciplinary Authority, Uttar Bihar Gramin Bank, Head Office At Sharma Complex, Kalam Bagh Chauk, Muzaffarpur, Bihar
4. General Manager, Uttar Bihar Gramin Bank, Head Office At Sharma Complex, Kalam Bagh Chauk, Muzaffarpur, Bihar

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Adv & Mr. Ram Binod Singh, Adv

For the respondent-Bank: Mr. Prabhakar Jha, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 16-05-2018

Heard learned counsel for the parties.

2. This writ petition under Article 226 of the Constitution of India has been filed for quashing the order dated 27.03.2012, passed by the Disciplinary Authority by which petitioner has been awarded punishment of recovery of Rs. 13,58,505/- being the amount of gratuity and leave encashment as a part of pecuniary loss sustained by the Bank of Rs. 43,29,583.05/- as well as order dated 05.10.2012, passed by the Appellate Authority by which appeal preferred by the petitioner has been dismissed.

3. Briefly stated, the facts of the case as stated by the petitioner is that he belongs to cadre of Officer Scale-II of the Bank and was posted at Muzaffarpur, Head Office, under Audit and Inspection Department and was transferred to the Regional Office, Siwan as Regional Manager by order dated 28.07.2009, where he worked till 08.05.2010 and petitioner was transferred to Head Office on 08.05.2010, when he was on the verge of superannuation on 28.02.2011.

4. Petitioner was served with memorandum of charge dated 16.02.2011 to submit his defence within 10 days on 8 article of charges as contained in Annexure-1 and statement of imputation of misconduct in support of article of charges as Annexure-2. Petitioner was also intimated that as he was retiring on 28.02.2011, he will not be entitled for payment of retirement benefit till final orders are passed except his contribution to P.F.

5. Under Siwan Regional Office there are 74 branches of the Bank out of which misconduct pertains to Sawan Bigrah Branch and Rajendra Khadi Branch. Before petitioner was posted Sri D.N Verma Scale-III Officer, worked as Regional Manager from 29.05.2007 to 20.12.2008 for about 19 months and thereafter Shri R.N. Paswan worked there from 29.12.2008 to 31.07.2009 for about 7 months, who was also Scale-III

Officer and petitioner was posted there as stop-gap arrangement till Scale-III Officer is posted there. However, Shri D.N. Verma, was made Enquiry Officer although the alleged misconduct also pertains to the period when Shri D.N. Verma was posted as Regional Manager and as such he could not have been appointed as Enquiry Officer by the Disciplinary Authority, who inquired into the allegations of misconduct for the period when he himself functioned as Regional Manager of the Bank.

6. The charges framed against the petitioner relates to two branches within the region i.e. Sawan Bigrah Branch and Rajendra Khadi Branch in allowing funds to the said branches without ascertaining their genuine requirements and without ensuring proper utilization with malafide intention and vested interest.

7. The Enquiry Officer after conducting the enquiry submitted its report dated 29.06.2011 to the Disciplinary Authority by which he has found charge no. 2 as proved, charge no. 1, 3, 4, 6and 8 as partially proved and charge no. 5 and 7 as not proved. A second show cause notice was issued to the petitioner along with enquiry report to submit his explanation with respect to finding of enquiry officer and petitioner submitted a detailed reply against the finding of Enquiry Officer

by his reply dated 24.07.2011 as contained in Annexure-15 of the writ petition. The Disciplinary Authority considered the reply of petitioner against the findings of the Enquiry Officer and by the order dated 27.03.2012 imposed punishment of recovery of Rs. 13,58,505/- being the amount of gratuity and leave encashment payable to the petitioner as part of pecuniary loss caused to the Bank of Rs. 43,29,583.05/-.

8. The charge memo as contained in Annexure-2 of the writ petition, 8 charges have been framed against the petitioner however, there is no charge of causing pecuniary loss to the Bank of Rs. 43,29,583.05/-, as such no punishment can be imposed upon the petitioner when in the articles of charges there is no such charge framed against the petitioner that the Bank has suffered a loss of Rs. 43,29,583.05/- and petitioner is responsible for such loss caused by him due to negligence or lack of monitoring and supervision or non-observance of Bank's guidelines or by any deliberate or wilful act of omission and commission.

9. The Bank suffered a loss of Rs. 43,29,538.05/- is based upon charge no. 6 in which it has been indicated that in Sawan Bigrah Branch a fraud to the tune of Rs. 43,29,583.05/- was committed in various accounts and allegation in charge no.

6 against petitioner is that he failed to monitor, check and control voluminous fraud during his tenure at Sawan Bigrah Branch. However, the findings of the Enquiry Officer on this charge is that petitioner had performed his role as Regional Manager and is not responsible for the said fraud for which the Assistant posted in the office was responsible who has been dismissed from service. The Enquiry Officer has specifically held that for this fraud the employees posted in the concerned branch are responsible and petitioner is not responsible, as such the impugned order passed by the Disciplinary Authority while accepting the enquiry report and without differing with the finding of Enquiry Officer who had exonerated him, no order of recovery could be passed against the petitioner.

10. A counter affidavit has been filed on behalf of respondent-bank that during the period from 31.07.2009 till 08.05.2010, petitioner was posted as Regional Manager and was chargesheeted for various acts of omission and commission vide memo of charge dated 16.02.2011 and altogether 8 charges were levelled against him.

11. Departmental proceeding was initiated against him and Mr. Devaki Nandan Verma, Sr. Manager Officer, Scale-III, was made Enquiry Officer and Arun Kumar Singh as

management representative and petitioner defended his case himself.

12. The enquiry started on 21.04.2011 and concluded on 11.06.2011 in which altogether nine sittings were held, 11 management exhibits were produced whereas defence produced 22 defence exhibits. The Enquiry Officer submitted his enquiry report dated 29.06.2011 in which charge no. 2 was proved, charge no. 1, 3, 4, 6 and 8 were partially proved and charge no. 5 and 7 were not proved.

13. The Disciplinary Authority issued second show cause notice along with enquiry report to the petitioner to submit his written reply against the finding of Enquiry Officer.

14. The Disciplinary Authority by its order dated 27.03.2012 imposed a punishment of recovery of Rs. 13,58,505/- from gratuity and leave encashment of petitioner as a part of pecuniary loss of Rs. 43,29,583.05/- to the Bank and appeal preferred was also dismissed.

15. In their counter affidavit in para no. 13 the Bank has stated that petitioner failed to check financial irregularities of the branches under his jurisdiction which was communicated by the Head Office vide letter dated 10.07.2006, although petitioner joined said post even according to respondents in

2009 and prior to him in the relevant period Mr. D.N. Verma (Enquiry Officer) and thereafter Mr. R.N. Paswan were posted as Regional Managers but no action was taken against them.

16. Learned counsel for the petitioner and learned counsel for the Bank have been heard at length. This Court has gone through the articles of charges, statement of imputations of misconduct, findings of Enquiry Officer and reply filed by the petitioner and order dated 27.03.2012 passed by the Disciplinary Authority as well as order dated 05.10.2012 passed by the Appellate Authority and the Enquiry Officer in its enquiry report has found only charge no. 2 as proved and has found charge no. 1, 3, 4, 6 and 8 as partially proved. Charges as framed in the departmental proceeding can either be proved or not proved, there cannot be any finding that charges are partially proved and as such the findings recorded by Enquiry Officer is vitiated and order passed by the Disciplinary Authority and the Appellate Authority based upon such enquiry report is equally vitiated and as such both the orders are not sustainable.

17. The Disciplinary Authority as well as Appellate Authority has not considered the reply submitted by the petitioner against the finding of Enquiry Officer while passing order of punishment and on this account also, the order passed

by the Disciplinary Authority as well as Appellate Authority is not sustainable as grounds taken by the petitioner against the finding of Enquiry Officer as well as before the Appellate Authority is not reflected in the order passed by the Disciplinary Authority as well as Appellate Authority.

18. Petitioner has been singled out to be proceeded departmentally for loss sustained by the Bank although there are many other employees who have been also found to be equally responsible for causing loss to the Bank including the Enquiry Officer himself but no action was taken against them and petitioner was only proceeded although allegation against him is of only lack of supervision and proper monitoring and there is no allegation of misappropriation or defalcation of fund and even in the so called enquiry conducted against him only charge no. 2 was found to be proved.

19. Petitioner is entitled for refund of amount recovered from his gratuity and leave encashment which is to be refunded to him within three months from the date of receipt/production of a copy of this order with 8 per cent simple interest per annum from the due date till its realization.

20. The writ petition stands allowed. The order dated 27.03.2012 passed by the Disciplinary Authority as contained in

Annexure-16 as well as order dated 05.10.2012, passed by the Appellate Authority as contained in Annexure-18, is quashed.

However, this order will not preclude the Disciplinary Authority to initiate fresh proceeding against all the employees who were responsible for loss sustained by the Bank and petitioner cannot only be singled out for such proceeding.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	20.06.2018
Transmission Date	N.A.