

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 5118 of 2013

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Bijay Shankar Jha S/O Late Raj Kumar Jha R/O Village- Naftol, P.O.- Behram,
P.S.- Bhairabsthan, District- Madhubani

.... Petitioner/s

Versus

1. The State Bank of India
2. The Chief General Manager Appellate Authority State Bank Of India, Human Resource Department, Local Head Office, West Gandhi Maidan, Patna-800001
3. The General Manager And Appointing Authority State Bank Of India, Vigilance Department, Local Head Office, Post Box No. 103, West Gandhi Maidan, Patna-800001
4. The Deputy General Manager (O&C Network - 1) Of Disciplinary Authority State Bank of India Administration Office, J.C. Road, Patna-800001
5. The Regional Manager Regional Business Office, Darbhanga, P.O.- Laheriasarai, District- Darbhanga-846001

.... Respondent/s

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For the Petitioner/s : M/s Siya Ram Shahi, Nitya Nand Jha,
Rajani Kant Mishra, Advocates

For the Bank : Mr Kamleshwar Kumar Sinha, Advocate

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 25-07-2018

Heard learned counsel for the petitioner and the respondent-Bank.

2 The petitioner has approached this Court challenging the penalty of dismissal imposed upon him by the General Manager and Appointing Authority (respondent No 3) under order dated 09.05.2012 as also the order dated 30.10.2012 of the Chief General Manager and Appellate Authority (respondent No 2) rejecting the petitioner's appeal against the award of punishment imposed by the



Disciplinary Authority.

3 On the basis of charge memo dated 30.07.2011, the petitioner was proceeded against on the allegation that while he was ATM incharge, he has fraudulently withdrawn amount of Rs 4.80 lacs by using the ATM and the PIN of the allegationist, namely, Shri Jagdish Jha. The action has been initiated on the basis of a complaint made by the account holder Shri Jagdish Jha that the amount of Rs 4.80 lacs were withdrawn from his account under different transactions, total 31 in number, in between 03.08.2010 to 14.08.2010.

4 The complaint was made to the Branch Manager on 13.09.2010. First information report was lodged by the Branch Manager on 15.09.2010. The petitioner came to be served with the charge memo in respect of the allegations, as noticed hereinabove on 30.07.2011.

5 The petitioner, thereafter, participated in the enquiry. The enquiry report, which has been submitted on 31.01.2012 is Annexure 4/A to the writ petition. Referring to the same, the learned counsel for the petitioner pointed out that the Enquiry Officer has specifically recorded that the Presenting Officer has not produced any witness for examination or cross examination during course of enquiry. Viewed in the background of the seven exhibits, which were



submitted by the Bank including the allegation made by the account holder Jagdish Jha and various other documents, this Court would consider that such failure to produce any witness whatsoever in respect of the seven documents produced during course of enquiry would itself invalidate the proceedings.

6 Learned counsel for the respondents submits that the proceedings are to be decided on basis of Rules and, as such, the findings can still be sustainable even though there is no examination of any witness in support of any document. The duties and obligations of the Enquiry Officer performing a quasi judicial function has been noticed by this Court in the case of *State of Uttar Pradesh and Others –Versus- Saroj Kumar Sinha, (2010) 2 Supreme Court Cases 772*. The role of the Enquiry Officer has been dealt with. The level of fairness required in the proceedings has to be considered on the touchstone of the law laid down under the said decision. Such a proceeding in which the Presenting Officer does not produce any evidence and all the seven documents presented by the Bank are relied upon by the Enquiry Officer without any evidence whatsoever in support of the same cannot be countenanced

7 This is not the end of the matter. In respect of Allegation No 2 that the petitioner was an ATM incharge and, therefore, responsible for the system and procedure related to ATM



PIN mailers, Enquiry Officer has come to a finding that the petitioner was not an incharge of the ATM. This specific charge has been held not proved. Allegation No 2 alleges that he petitioner took possession of the ATM card of Shri Jagdish Jha in an unofficial manner and with mala fide intention. The finding in respect of this charge also is that the allegations are not proved.

8 In spite of the said two allegations being not proved, the Enquiry Officer proceeded to record a baseless finding that Allegation No 2 stands partially proved wherein it has been recorded by the Enquiry Officer as follows:

“After perusal of PEx-2 it is evident that the same card PIN was destroyed on 13.07.2010 (PEx-2/2) as per bank’s laid down instruction. Possession of card by the CSO is not evidenced but transaction was observed by this card. It means effectively no destruction of card and PIN was effected.”

9 Such a finding of the Enquiry Officer clearly appears to be unsustainable inasmuch as even though the possession of the ATM card forming the basis of the alleged 31 withdrawals has been found not to be evidenced but since the transactions per se have taken place, Enquiry Officer has come to the conclusion that the charges are partially proved. Such conclusion defies all logic, and is perverse inasmuch as in the absence of proof of possession of the ATM card by the petitioner, the conclusion that the transactions were made by the



petitioner, is wholly unsustainable and based on non est reasons. It is to be noted here that the Enquiry Officer has found that the PIN mailer also in respect of the allegationist was received in the Branch and it was duly recorded in the register of the Branch that the PIN mailer was destroyed at the Branch. Such conclusion has been recorded by the Enquiry Officer holding the charges proved.

10 The learned counsel for the respondents, thereafter, has drawn attention of the Court towards the proceedings in respect of Allegation No 5. He has submitted, drawing the attention of the Court towards the prosecution plea that on 24.10.2011, the Presenting Officer had produced an exhibit which is the confession of the petitioner with respect to the allegations. It is noticed from the enquiry report that such confessional statement was not exhibited as an exhibit for want of its original and only copy of the statement certified by the Chief Manager was presented before the Enquiry Officer on the last date of the proceedings. Admitted position is that the original document allegedly being the confession of the petitioner was never produced in the enquiry.

11 In view of such a procedure adopted by the Enquiry Officer, the conclusion of the charges having been proved cannot be sustained since neither there was any evidence in the proceedings nor the Enquiry Officer concluded that the petitioner was ATM incharge.



The enquiry Officer has also not found possession of the ATM card to be evidenced by the petitioner in the enquiry.

12 In view of the aforesaid findings, the conclusion of the charges having been proved is unsustainable and perverse.

13 The Disciplinary Authority, however, had an option at this stage to differ with the enquiry report submitted by the Enquiry Officer. The same has not been done under his order dated 09.05.2012 awarding the petitioner, severe punishment of dismissal. After recording the various allegations levelled against the petitioner and without examining any of these issues which were found in the enquiry report, the Disciplinary Authority has passed an order visiting the petitioner with such severe consequences by recording as follows:

“I have duly examined the enquiry report/proceedings, CSO’s written submission to the enquiry report and his submission made before me during the course of personal hearing on 26.04.2012. After independent application of my mind to the facts and circumstances of the case, I impose upon him the penalty of “Dismissal” in terms of Rule No 67 (j) of SBIOSR. Further, the period of his suspension will be treated as such, i e not on duty.

I order accordingly.”

14 This decision of the Disciplinary Authority shows total non-consideration of the matter including non-consideration of the manner in which proceedings before the Enquiry Officer were



conducted. The order is a cryptic order without assigning any reason. Whether such an order of the Disciplinary Authority, viewed in the background of the manner in which the Enquiry Officer has conducted the proceedings can sustain the touchstone of fairness, is an issue which is no longer res integra. Assigning of reason is an aspect of fairness. The same limits the scope of arbitrariness. The requirement of assigning reason has been reiterated time and again by the Courts and such decision showing total non-consideration of the issues do not subserve the principles of natural justice and are legally unsustainable. Recently, the Division Bench of this Court in the case of *Hassan Muzahid –Versus- Bihar State Electricity Board and Others*, 2015 (4) PLJR (HC) 435 has dealt with the issue wherein the following observations have been made.

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 In view of the aforesaid position, the order of the Disciplinary Authority without assigning any reason and without considering any of the issues raised by the petitioner, with reference to the proceedings before the Enquiry Officer being based on no evidence, visiting the petitioner with severe punishment of dismissal is illegal both in fact and in law.

16 The petitioner has preferred his appeal before the Appellate Authority by raising his grievance by a detailed appeal which is Annexure 8 of the writ petition. The issues have been dealt with by the Appellate Authority by committing the same mistake which has been committed by the Disciplinary Authority. The Appellate Authority has rejected the appeal of the petitioner by an order which, after recording the various allegations and the sequence of facts therein, has concluded against the petitioner by one paragraph order which reads as follows:

"After carefully going through the appellant's submission and the facts of the case, I am of the view that the appellant has not brought out any notable new fact/evidence which may merit consideration. The disciplinary proceedings have



been conducted as per SBIOSR and punishment imposed on the appellant is commensurate with the gravity of lapses. I, therefore, do not find any reason to interfere with the order of the Appointing Authority and thus reject the appeal as without substance and order accordingly.”

17 This again is a non-speaking order. Both, the order of Disciplinary Authority, and Appellate Authority are showing no consideration of the points raised by the petitioner and are without assigning any reason. This Court would only add that the reason for rejecting the appeal, which has been assigned by the Appellate Authority, is wholly unsustainable. The Appellate Authority has rejected the petitioner's appeal by recording that he has not brought any notable facts or evidence which may merit consideration. This Court would only observe that at the stage of Appellate Authority, the petitioner is not required to bring any new facts or evidence. The Appellate Authority was required to deal with the facts which were before the Disciplinary Authority. Apparently, the same has not been done. The Appellate Authority has proceeded on the erroneous assumption that some new facts at the appellate stage have to be brought on record which reasoning of the Appellate authority is wholly unsustainable in law. The order passed by the Appellate Authority communicated to the petitioner on 30.10.2012 is also unsustainable for the aforesaid reasons.

18 Having considered the matter, as aforesaid, this



Court would quash the order of dismissal dated 09.05.2012 imposed upon the petitioner by the General Manager –cum- Disciplinary Authority as also the appellate order dated 30.10.2012 of the Chief General Manager –cum- Appellate Authority.

19 The Disciplinary Authority should proceed with the matter after the stage of submission of the enquiry report. The petitioner would cooperate in the proceedings before the Disciplinary Authority and final decision must be taken by the Disciplinary Authority within a period of three months from the date of receipt/production of a copy of this order.

20 The entitlement of the petitioner of consequential benefits would abide by the final decision of the Disciplinary Authority.

21 Writ petition is allowed to the extent indicated hereinabove.

22 The petitioner would be deemed to be under suspension.

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.08.2018
Transmission Date	NA

