IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1789 of 2016
In
Civil Writ Jurisdiction Case No.10640 of 2007

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Binod Tiwary Son of late Govind Tiwary. resident of Village and Post Office Pomdil, Police Station - Kurtha, District - Arwal at present resident of Village - Rajiv Nagar, Road No. 15, P.S. - Digha, District - Patna

... ...Petitioner/ Appellant

Versus

1. The Allahabad Bank Through Its Chief General Manager, Zonal Office, Buddha Marg, Patna.
2. The Chief General Manager, Allahabad Bank, Zonal Office, Buddha Marg, Patna.
3. The General Manager cum Reviewing Authority, Allahabad Bank, Zonal Office Buddha Marg, Patna.
4. The Depurty General Manager-cum-disciplinary authority, Zonal Office, Buddha Marg, Patna.
5. The Assistant General Manager cum Disciplinary Authority, Allahabad Bank, Regional Office, Buddha Marg, Patna.
6. The Presiding Officer-cum-Enquiry Officer, Regional Office, Allahabad Bank, Buddha Marg, Patna.

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anand Kumar Ojha
Mr. Ashok Kumar Verma
Mr. R.K.Singh

For the Respondent-Bank Mr. Naresh Kumar Malhotra, Sr. Advocate
Mr. Binod Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 03-07-2018

It is feeling aggrieved by a judgment and order dated 21.06.2016, passed by a learned Single Judge of this Court in CWJC No. 10640 of 2007, whereby the writ petition filed by the appellant-writ petitioner has been dismissed that the writ petitioner is before this Court in this intra-Court appeal.

This appeal was admitted vide order passed on 13.12.2017 and has been put up for consideration when the parties have been heard.

Pleadings on record of this appeal as well as the connected writ proceedings would confirm that the appellant-writ petitioner, an ex-Branch Manager with the Kurtha Branch of the Respondent-Bank in the district of Arwal, was proceeded against for alleged acts of misconduct relatable to his official discharge as a Branch Manager of the Bank concerning disbursement of the loan which, according to the respondent-Bank, was in violation of the statutory procedure/prescription exposing the loan disbursed by the writ petitioner to a serious risk. The petitioner filed his reply to the charges, rebutting each of them. An inquiry was held/conducted after observance of the statutory procedure and after providing due opportunity to the writ petitioner to defend himself. The Inquiry Officer, in consideration of the stand taken by the Charged Officer-the appellant-writ petitioner, the Presenting Officer as well as the evidence led by the contesting parties, while upholding 09 out of 19 article of charges, held the remaining either partly proved or proved without jeopardy/subsequently ratified.

It is not in dispute that a copy of the inquiry report was served on the writ petitioner, inviting his representation thereon, which was duly filed. The disciplinary authority, after taking note of the entire circumstances accompanying the issue i.e.the charges set up, the defence of the appellant-writ petitioner thereto, the evidence on record, the stand of the Presenting Officer, the evidence led during the proceeding and the inquiry report submitted, including the representation thereon by the writ petitioner, while upholding the 09 charges, upheld by the Inquiry Officer and observing that even the other charges were equally serious, upheld the finding of the Inquiry Officer and consequently held the appellant petitioner guilty of the charges so proved during the inquiry.

The disciplinary authority, in exercise of its power vested in the matter under Allahabad Bank Officer Employees' (Conduct) Regulations, 1976 read alongside Allahabad Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 has been pleased to impose penalty of dismissal from the bank services for the appellant-petitioner which, in effect, would mean a disqualification from future employment as well as forfeits his entitlement to pay, allowances or post-retiral benefits. The dismissal order passed on 09.08.2003 is impugned at Annexure-1 to the writ petition and the statutory appeal filed by the petitioner to question the dismissal order has also been rejected by the appellate authority, vide order passed on 14.10.2004 impugned at Annexure-2 to the writ petition. It is feeling aggrieved by the orders aforementioned that the writ petitioner moved this Court through the writ petition in question which also stands dismissed by the judgment and order impugned. Hence this intra-Court appeal.

We have heard Mr. Anand Kumar Ojha, learned counsel for the appellant-writ petitioner and Mr. Naresh Kumar Malhotra, learned Senior Counsel, appearing for the respondent-Bank, along with Mr. Binod Kumar Sinha, the Advocate-on-record.

The sum and substance of the arguments advanced by Mr. Ojha is that the order passed by the disciplinary authority does not deal with the defence advanced by the petitioner in opposition to the charges. According to Mr Ojha, even if the disciplinary authority was persuaded to agree with the report submitted by the Inquiry Officer, yet he has an obligation to deal with the explanation given by the writ petitioner against each of the charges. In reference to the observation made by the disciplinary authority in the order of the dismissal, he submits that this reflected a premeditated mind of the disciplinary authority.

Mr. Ojha while acknowledging the difficulty on account of non-representation of the petitioner at the stage of the writ proceedings, is conscious to limit his argument on the issue of law and the undisputed factual position reflected from the proceedings. According to Mr. Ojha, the order of the disciplinary authority does not show that the explanation given by the petitioner to the charges, has been discussed. It is argued that the order does not satisfy the obligations cast on the disciplinary authority, as advised by the Supreme Court in the case of **Managing Director ECIL, Hyderabad and others Vs. B.Karunakar and others**, reported in **(1993) 4 SCC 727**, more particularly, paragraph 26.

It is the argument by Mr. Ojha that the supply of the copy of the inquiry report to the delinquent seeking his representation thereon, was an empty formality, because the object for such exercise, has not been fulfilled. According to Mr. Ojha, the Inquiry Officer, after taking note of the contesting stand of the parties, had recorded his opinion and thus if, yet, an opportunity is given to a delinquent to meet the issue by service of a copy of the inquiry report, then such exercise needs to be taken to its logical conclusion in purposeful manner. He submits that the disciplinary authority has failed on this count.

While responding to the charges, he submits that the major part of the charges has been condoned by the Inquiry Officer himself inasmuch as only 09 out of 19 charges were found proved. He submits that even if there has been some kind of irregularity in disbursement of the loan by the petitioner, it was never exercised with a mala fide intention nor has resulted in loss for the Bank, rather it is preserving the interest of the Bank that the petitioner had disbursed the loan in question which may not be strictly in tune with with the procedure, nonetheless, it is taking note of the status of the customer concerned that the decision was taken by him. According to Mr. Ojha, since no loss has been suffered by the Bank by the act of the petitioner, who has reached the age of superannuation, a consideration may be given on the quantum of punishment which may protect the superannuation benefits of the petitioner.

The argument of Mr. Ojha has been contested by Mr. Malhotra, who has submitted that the charges have not been denied by the petitioner, although he has his own explanation for his actions. Responding to the 'no loss' plea taken by Mr. Ojha, to defend the action of the delinquent petitioner, Mr.

Malhotra has invited the attention of the Court to the statement made by the petitioner at paragraph 16 of the writ petition and, in reference thereto, he submits that the stand of the petitioner before the writ Court is in admission of the fact that the loan disbursed had not been recovered. The petitioner however tries to defend the default by stating that the Bank can take a decision for its recovery but by terminating the service of the petitioner, no purpose would be served.

According to Mr. Malhotra, once the statement of the petitioner is in admission of the reckless disbursement of loan, then no illegality can be found in the punishment order. In reference to the proved charges, it is submitted that the petitioner has violated the statutory procedure in dealing with public trust and money and the consequences for such violation are also serious. Learned counsel has invited the attention of this Court to a judgment of the Supreme Court in the case of **Union of India and others Vs. P. Gunasekaran,** reported in **(2015) 2 SCC 61**0 and with reference to the opinion expressed at paragraph 20, he submits that the issue of integrity finds discussed and the bank officials are expected to maintain the highest degree of integrity. He relies on paragraphs 9 to 13 of the said judgment to canvass the limited jurisdiction for interference vested in Court while dealing with the disciplinary matter.

In support of his contention on the issue of misconduct, learned counsel has relied upon the judgment of the Supreme Court reported in **(1996) 9 SCC 69 (Disciplinary Authority-cum-Regional Manager and others Vs. Nikunja Bihari Patnaik)** and in reference to paragraph 7 of the judgment, it is submitted that acting beyond an authority would constitute a misconduct as held by the Supreme Court and proof of any loss is not necessary element for upholding such misconduct. For the same proposition, learned counsel has relied upon the judgment of the Supreme Court in the case of **Chairman and Managing Director, United Commercial Bank and others Vs. P.C. Kakkar** reported in **(2003) 4 SCC 364**; para 14.

We have heard the learned counsel for the parties and we have perused the records.

We can safely observe that the challenge has been made in a rather casual manner. The attempt of Mr. Ojha to salvage the situation at the appellate level/stage would really not serve any purpose considering the nature of the charges framed by the disciplinary authority as well as the reply of the appellant/petitioner thereto. We are constrained to note that except for the dismissal order and the order of the appellate authority, no other document was enclosed by the writ petitioner before the Writ Court. Even if a plea has been taken by Mr. Ojha to the alleged failure of the disciplinary authority in dealing with the explanation of the petitioner to the charges, the petitioner has not bothered to enclose his reply to the charges either before the Writ Court or this Court.

Be that as it may, we proceed to deal with the issue in the light of the documents on record, to see whether the passionate argument of Mr. Ojha would bear any other result than opined by the learned Single Judge.

Since the disciplinary authority has upheld its enquiry report, which in turn uphold 09 charges of the 19 charges, we shall deal with only the proved charges. Mr. Ojha did canvass about the premeditated intention of the disciplinary authority while passing the impugned order and that he got swayed in the process by taking note of the remaining charges which have not exactly been proved, but having examined the plea, we record our satisfaction that neither of the two situations exists herein. While the reasons present in the decision of the disciplinary authority in context with the 09 proved charges, would confirm that the acts of the petitioner complained of, constitute a misconduct under the Allahabad Bank Officer Employees' (Conduct) Regulation, 1976, insofar as his observation in respect of the remaining 10 charges are concerned, which were either partly proved or not proved, may be a casual observation has been made by the disciplinary authority but then he has been very cautious in recording his opinion on the penalty which is resting on the 09 proved charges. The two objections thus raised by Mr Ojha do not merit substance.

We shall now advert to the 09 charges which have been found proved in the inquiry and have been discussed in the order of the disciplinary authority. We note that each of the 09 charges relate to reckless disbursement of the loans by the petitioner in violation of the statutory procedure and without completion of the procedural formalities. In fact, in avoiding to follow the norms prevailing in the Bank for such disbursement, the petitioner has abused his position as the Bank Manager and by interpolating the loan register by making fictitious entry as manifest from the charge no.1, the charge becomes extremely serious. Apparently this fictitious entry was made by the petitioner with conscious mind of demonstrating that a margin money has been deposited by the loanee when in fact, such is not a position.

This charge no.1 has been accepted by the petitioner as confirmed from his representation to the inquiry report.

We note similar admission by the petitioner to the other charges even if he has his own explanation for such violation. The judgment relied by Mr. Malhotra rendered in the case of **Nikunja Bihari Patnaik** (supra) at paragraph 7, holds that any exercise by the Bank official beyond the statutory procedure would amount to misconduct and whether or not such exercise has resulted in a loss, is of no relevance for no proof of such kind is necessary for upholding such misconduct. The views expressed by the Supreme Court in the case of **Nikunja Bihari Patnaik** (supra) was reiterated in a subsequent judgment reported in **(2005) 7 SCC 435 (State Bank of India and another vs. Bela Bagchi and others)** and we are persuaded to record the opinion present at paragraph 15 of the judgment which reads as under:-

> "A bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of

the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank. As was observed by this Court in Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik, it is no defence available to say that there was no loss or profit which resulted in the case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon each of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charges against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance."

The opinion of the Court on the integrity expected of bank employees is primarily for the reason that they are repository of public trust while dealing with public money.

Understandably so, these bank officials are expected to maintain utmost integrity and not to deviate from the prescribed norms, lest any action on their part should leave the loan disbursement in a financial irregularity, as in the present case. None has an authority to do so while dealing with the public fund and the bank officials are no exception to this.

It is taking note of the circumstances existing that the learned Single judge has refused to exercise his discretion to interfere with the orders impugned and even if the opinion expressed by the learned Single judge was in absence of the counsel for the petitioner but surely it is on perusal of the records and on hearing the counsel for the Bank. The argument advanced by Mr. Ojha, appearing on behalf of the writ petitioner, at the appellate stage, has made no difference to the opinion recorded by the learned Single Judge because the acts of misconduct by the petitioner and the statutory violation in the matter of disbursement of loans is writ large and any amount of explanation by the petitioner whether on the status of the customer or on the viability of the loan is of no consequence once it is established that the disbursement was without sanction of law.

For the reasons so discussed above, the appeal is dismissed.

No order as to cost(s).

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

HR/-

AFR/NAFR	AFR
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