

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2066 of 2011

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UMESHWAR PRASAD SINGH S/O LATE MUNSHI SINGH R/O 301,
PATNA SUPER MARKET, BLOCK 'B', FRAZER ROAD, P.S.- GANDHI
MAIDAN, PATNA Petitioner

Versus

1. THE STATE BANK OF INDIA THROUGH ITS CHAIRMAN
CORPORATE CENTRE, MADAME CAMA ROAD, NARIMAN POINT,
DELHI
2. THE GENERAL MANAGER, NETWORK-1 STATE BANK OF INDIA,
LOCAL HEAD OFFICE, WEST GANDHI MAIDAN, PATNA
3. THE ASST. GENERAL MANGER (ADMIN) STATE BANK OF INDIA,
ADMINISTRATIVE OFFICE, J.C. ROAD, PATNA
4. THE CHIEF MANAGER, STATE BANK OF INDIA, J.C. ROAD BRANCH,
PATNA

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Sandeep Kumar, Advocate Mr. Pramod Kumar, Advocate Mr. Rohit Raj, Advocate
For the Bank	:	Mr. Chittaranaan Sinha, Sr. Advocate Mr. Surya Nilambari, Advocate Mr. Binod Bihari Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 02-07-2018

The petitioner, who was initially appointed as Guard in the service of the State Bank of India at Maheshkhunt in the district of Khagaria, being aggrieved by the memorandum of charge dated 13th October, 2009 (Annexure-3 to the writ application) and the initiation of the disciplinary proceeding thereby against the petitioner, has moved this Court in its writ jurisdiction seeking quashing of the memorandum of charge with other consequential reliefs.

2. It appears that during pendency of the writ



application an Interlocutory Application bearing No. 4078 of 2011 has been filed by which the petitioner has prayed for quashing of the order dated 16.05.2011 passed by the Appellate Authority-cum-Deputy General Manager (O & C), Network 1, State Bank of India, Patna whereby the appeal preferred by the petitioner against the order of punishment dated 01.02.2011 passed by the Assistant General Manager-cum-Disciplinary Authority awarding 'removal from service' has been dismissed and the order of punishment has been upheld.

3. In course of argument, learned counsel representing the petitioner has made a limited prayer, based on the principle of natural justice, seeking quashing of the appellate order on the ground that the appellate authority has not at all considered the grounds raised in the appeal and has rejected the appeal preferred by the petitioner with a pre-conceived mind and in complete violation of the procedures laid down under the Memorandum of Settlement dated 10th April, 2002 between the Management of 52 'A' Class Banks as represented by the Indian Banks' Association and their workmen which is popularly known as 'Bipartite Settlement'. In order to support his submissions, learned counsel for the petitioner has placed before this Court the order as contained in Memo dated 01.02.2011



(Annexure-12 to the writ application) whereby the disciplinary authority has been pleased to impose punishment of removal from service against the petitioner. It is submitted that the written show cause dated 20.01.2011, submitted by the petitioner in response to the notice to show cause received from the disciplinary authority, has not all been considered. The disciplinary authority has in fact, at one place recorded in his order that because he had already found the charges proved against the petitioner even prior to issuance of show cause notice, the petitioner was called upon only to submit his stand on the punishment proposed by the disciplinary authority. It is the submission of learned counsel for the petitioner that a bare perusal of the order passed by the disciplinary authority would show that he was not in favour of considering the reply of the petitioner as regards the findings recorded by the inquiry officer. It is submitted that the view taken by the disciplinary authority is directly in teeth of the judgment of the Hon'ble Supreme Court in the case of **Managing Director ECIL Versus B. Karunakar** reported in **AIR 1994 SC 1074; (1994) SCC (Supplementary Volume-2) 391**.

4. Referring to the terms of the Bipartite Settlement (Annexure A to the counter affidavit), learned counsel submits



that the procedures required to be followed by the disciplinary authority in the matter of disciplinary action against an employee in the category of the petitioner have been fully enumerated in the Bipartite Settlement. According to the learned counsel, the view taken by the disciplinary authority that the reply of the petitioner was not required to be looked into because he had already found the charges proved against the petitioner, even prior to issuance of show cause notice, cannot be said to be a correct view and the grievance raised by the petitioner before the appellate authority against the order of punishment not having been considered, the writ application is fit to be allowed by granting the reliefs prayed by the petitioner.

5. In course of argument attention of this Court has also been drawn towards Annexure-B to the counter affidavit filed on behalf of the Bank which is a copy of the reply dated 20.01.2011 submitted by the petitioner to the disciplinary authority wherein he has refuted the charges levelled against him and the findings in the inquiry report. It has been submitted in his reply that nothing was placed on record before the inquiry officer that he was unauthorizedly occupying the room of Sri Pathak and even the certificate issued did not bear anything of such nature. He had also submitted that no witness was



produced by the Management to establish or corroborate that the petitioner was in unauthorized occupation of room or rooms as enumerated in the chargesheet.

6. On the other hand, Mr. Chittaranjan Sinha, learned Senior Counsel representing the respondent Bank has submitted that even though the appellate order does not specifically shows consideration of each and every ground raised in the appeal by the petitioner, the order passed by the appellate authority duly shows application of mind and consideration of the entire facts and circumstances as also the materials available on the record. In the counter affidavit filed on behalf of the Bank, a statement has been made that “A copy of inquiry report was duly served to the petitioner i.e. charged employee by the disciplinary authority vide Annexure-9 and gave an opportunity to him to make submissions, if any, on the inquiry report, and after receipt of the submission of the petitioner, the disciplinary authority after proper consideration of his submission and other material on record of the inquiry proceedings, served the show cause to the petitioner on the proposed punishment i.e. the ‘Annexure-8’.....”

7. Having heard learned counsel representing the petitioner and learned Senior Counsel representing the Bank and



also on perusal of records, this Court finds that the statements made in paragraph 4 of the counter affidavit filed on behalf of the Bank to the extent that the petitioner was given an opportunity to make his submission, if any, on the inquiry report and after receipt of the submission of the petitioner he was served with the show cause on the proposed punishment, could not be substantiated by annexing any evidence to that effect. In fact, what appears from the order of the disciplinary authority itself is that the petitioner was served with a show cause notice only to submit his reply on the proposed punishment and in reply thereto the petitioner submitted his response in which he assailed the findings of the inquiry report but the disciplinary authority did not consider the reply by taking a view that the petitioner was only called upon to submit his response on the proposed punishment. In the case of **B. Karunakar** (*Supra*) the Hon'ble Supreme Court has in fact settled the legal position as regards service of copy of inquiry report on the delinquent employee giving him an opportunity to meet, explain and controvert the findings of the inquiry report. In the present case the materials available on the record, however, nowhere shows compliance with the said procedure which has been held to be mandatory.



8. From the impugned order passed by the Appellate Authority as contained in annexure 15 (with I. A. No. 4078 of 2011) also it appears that he has not referred any material available on the record to suggest that the copy of inquiry report was served on the petitioner calling upon him to submit his response on the findings of the inquiry report. All that the appellate authority has taken note of is that he agrees with the view taken by the disciplinary authority that the petitioner in his reply dated 20.01.2011 had not said anything about the proposed punishment. Apparently, the stand taken in the counter affidavit filed on behalf of the Bank is prima facie an improved version, but at this stage, instead of going into the merit of the case, this Court thinks it just and proper to set aside the appellate order dated 16.05.2011 as contained in Annexure-15 annexed with I.A No. 4078 of 2011.

9. The appellate order suffers from an infirmity because of non-consideration of the grounds raised by the petitioner before the Appellate Authority. The Appellate Authority shall consider the grounds raised by the petitioner as also the stand taken by the Bank as regards the service of inquiry report on the petitioner with an opportunity to give his reply and that only after consideration thereof the show cause



notice was issued. Since there is no material before this Court to find out the correctness of the statements made in the counter affidavit, now it is for the Appellate Authority to find out from the materials available on the record whether any such opportunity was ever given to the petitioner. The appellate authority shall pass a fresh reasoned order within a period of three months from the date of receipt/production of a copy of this order.

10. With the aforesaid direction/observation this writ application is disposed of.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.07.2018
Transmission Date	NA

