

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1512 of 2013
IN
Civil Writ Jurisdiction Case No. 10422 of 2004**

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1. The Madhya Bihar Gramin Bank , Head Office Meena Plaza, South Of Museum, Patna - 1 Through Its Chairman

2. The Chairman, Madhya Bihar Gramin Bank, Head Office, Meena Plaza, South Of Museum, Patna - 1

3. The Board Of Directors And Appellate Authority Of The Then Nalanda Gramin Bank Head Office Biharsharif Represented Through The Then Chairman, Board Of Directors, Nalanda Gramin Bank, Biharsharif, District - Nalanda (Biharsharif), Now After Ite Merger Through The Chairman, Board Of Directors Of Madhya Bihar Gramin Bank, Head Office Meena Plaza, South Of Museum, Patna - 1

4. The Chairman/Disciplinary Authority, The Then Nalanda Gramin Bank, Earlier Head Office Biharsharif, P.S. - Biharsharif, District Nalanda (Biharsharif) Now Known As Madhya Bihar Gramin Bank, Head Office Meena Plaza, South Of Museum, Patna - 1

5. The Senior Manager (Personnel), The Then Nalanda Gramin Bank (Now Known As Madhya Bihar Gramin Bank), Head Office - Biharsharif, P.S. - Biharsharif, District - Nalanda (Biharsharif)

6. The Manager (Personnel), The Then Nalanda Gramin Bank (Now Known As Madhya Bihar Gramin Bank), Head Office - Biharsharif, P.S. - Biharsharif, District - Nalanda (Biharsharif)

7. The Then Nalanda Gramin Bank , Earlier Head Office Biharsharif, P.O. & P.S. - Biharsharif, District - Nalanda (Biharsharif) Now Known As Madhya Bihar Gramin Bank, Head Office Meena Plaza, South Of Museum, Patna - 1 Through Its Chairman

.... Appellant/s

Versus

1. Mahesh Kumar Sinha Son Of Late Lal Babu Sinha Branch Manager, The Then Nalanda Gramin Bank, Mohalla - Ambair, P.O. & P.S. - Biharsharif, District - Nalanda (Biharsharif) (Now Known As Madhya Bihar Gramin Bank, Biharsharif), District - Nalanda (Biharsharif)

2. Sri R.P. Sah, Enquiry Officer, Then Nalanda Gramin Bank, Biharsharif, P.S. - Biharsharif, District - Nalanda (Biharsharif) Now After Its Merger Known As Madhya Bihar Gramin Bank, Biharsharif, P.S. - Biharsharif, District - Nalanda (Biharsharif)

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Suresh Prasad Singh No. 1, Advocate
Mr. Sanjay Kumar Jha, Advocate

For the Respondent/s : Mr. Birendra Kr. Jha, Advocate
Mr. Sanat Kumar Mishra, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**



ORAL JUDGMENT**(Per: HONOURABLE THE CHIEF JUSTICE)****Date: 06-03-2018**

Seeking exception to an order passed by the learned Writ Court on 28.08.2012 in CWJC No.10422 of 2004, this appeal has been filed by the respondent-Bank. The respondent was working as a Manager of the Bank in question and based on certain acts of commission and omission conducted by him as a Branch Manager of Muraura Branch between 28.08.1990 to 09.03.1994, a charge-sheet was issued to him on 28.03.1995.

A departmental enquiry initiated against him and thereafter a punishment was imposed based on findings of guilt recorded by Enquiry Officer in a report submitted on 19.06.2000 wherein charges bearing nos. 1, 2, 4, 7, 8 and 10 were found to be proved, charge no. 5 and 11 found not proved and charge no.6 was partially proved.

Challenging the departmental action taken of punishing the petitioner with reduction of one increment with cumulative effect, an appeal was filed which was rejected by the Board of Directors on 03.05.2001 and communicated to the petitioner on 15.06.2001. The writ petition was filed in the year 2004 challenging the disciplinary action primarily on the ground that in the departmental enquiry conducted various documents requested



for by the petitioner was not supplied. The entire enquiry was conducted in a manner which shows gross violation of the principles of natural justice inasmuch as no witnesses were examined and based on documents produced by the presenting officer the petitioner was held guilty of the charges leveled against him without examination of the authors of the documents and without producing them for cross-examination. The learned writ court took note of all these aspects of the matter and came to the conclusion that the departmental enquiry was not properly conducted and documents sought for by the petitioner was not supplied and without examination of the witnesses and without producing them for cross-examination accepting the documents and held the petitioner guilty which amounts to breach of principles of natural justice. Learned writ court quashed the enquiry report and consequential order of the disciplinary authority and appellate authority on account of procedural illegality conducted in the departmental enquiry.

Learned counsel for the appellant-Bank argued that even if the learned writ court found procedural irregularities in conduct of the enquiry liberty should have been granted to the Bank to conduct an enquiry in accordance with law and take action. In not doing so, it is stated that right of the Bank to proceed with the enquiry has been taken away and as the enquiry was quashed on



technical ground, i.e., the violation of principles of natural justice liberty should have been granted to the Bank to cause enquiry afresh in accordance with law and in support thereof reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of **Managing Director, ECIL V. B. Karunakar** reported in (1993) 4 SCC 727 and in the case of **Mohd. Yunus Khan V. State of Uttar Pradesh and Ors.** reported in (2010) 10 SCC 539, to say that when a departmental proceeding is found to be vitiated on technical grounds like violation of principles of natural justice, the enquiry has been remanded and continued from the stage of illegality or procedural irregularity found in the enquiry. However, learned counsel for the respondent employee vehemently opposed the prayer aforesaid and argued that for a breach committed in the year 1990-1994, the respondent employee is facing the departmental proceeding right from 28.3.1995. He is now at the verge of retirement, and therefore, at this stage, when the employee has suffered the consequences of departmental proceeding for more than 26 years, the matter should be put to rest now and no liberty to conduct enquiry should be granted.

We have considered the rival contentions and we find that the departmental proceedings were held for the allegations in question by issuing the charge-sheet on 28.03.1995 and the



allegation pertains the period 28.08.1990 to 09.03.1994, the enquiry was conducted within a reasonable period of time and the punishment order was also imposed after the enquiry officer submitted his report on 19.06.2000. Thereafter, between the year 2000-2004, the petitioner kept on representing to the authorities concerned and invoked the jurisdiction of this Court in the year 2004 and it was only on 28.08.2012 i.e. after eight years, the writ petition was decided, and now since 2013, the appeal is pending. The delay in the matter cannot be attributed to the appellant-Bank with cumulative effect of various factors including the delay in pendency of the matter before this Court. That being so, once Constitution Bench in the case of **E. Karunakar (supra)** has laid down a principle of granting liberty to employer to conduct an enquiry in case enquiry has been vitiated on procedural illegality, we see no reason to allow the prayer made before us by the learned counsel for the Bank.

Keeping in view the aforesaid, we allow the appeal in part. We find no error in the order passed by learned writ court holding the illegality in conduct of the enquiry but at the same time we grant liberty to the Bank to conduct enquiry in the matter if so advised in accordance with law. However, in case the Bank proposes to conduct an enquiry in the matter they are required to do so within



a period of three months from the date of receipt of certified copy of this order failing which the right to proceed with enquiry shall stand forfeited. However, the time limit of three months fixed for conduct of the enquiry is subject to cooperation by the respondent employee.

With the aforesaid, the appeal stands allowed and disposed off.

We would also take note of the fact that charge-sheet issued has not been quashed by the learned writ court. The writ court has only quashed the finding of the departmental proceeding and consequential order passed thereof and therefore, charge-sheet being alive the department was entitled to conduct enquiry into the same.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/Rajeev-

AFR/NAFR	NAFR
CAV DATE	NA
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