

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 163 of 2017**

Harjeet Singh Ram Gadiya S/o Guru Bax Singh Aged About 57 Years R/o Railway Crossing Tumgaon Raod, Mahasamund, Raipur, Chhattisgarh

---- Appellant

Versus

Chhattisgarh Rajya Gramin Bank Through Its Chairman, 15, Recreation Road, Choubey Colony, Police Station- Amapara, Raipur, Civil And Revenue District- Raipur, Chhattisgarh

---- Respondent

For Appellant	: Ms. Sharmila Singhai, Advocate.
For Respondent	: Shri B.D. Guru, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**16/11/2018****Per Ajay Kumar Tripathi, Chief Justice**

1. Heard counsel for the parties.
2. Writ application of the present Appellant was dismissed by the learned Single Judge vide his order dated 22.03.2017 who refused to interfere with the order dated 06.04.1994 passed by the disciplinary authority who had imposed the penalty of dismissal from service, which in turn got affirmed in appeal on 20.02.1995. It is the dismissal of the writ application which has led to filing of the present appeal.
3. The facts, in narrow compass, is that the Appellant was working as a Field Supervisor in Raipur Bilaspur Kshetriya Gramin Bank (A Regional Rural Bank). A departmental enquiry was instituted and the charge-sheet came to be issued on 10.07.1987 because it was found that when he was posted as Branch Manager of Branch Korbi, Regional Rural Bank, he had committed serious financial irregularity

by sanctioning loan under the Integrated Rural Development Project in the name of fake persons without following the established procedure of disbursement of loan on five different occasions. When an effort was made to identify the beneficiaries in an enquiry of the fact finding kind, it emerged that most of the accounts were fake and opened in the name of fake persons and withdrawals made against the false loan cases.

4. In this background, a domestic enquiry was initiated. Enquiry report emerged after a protracted exercise. Protracted because, the process of enquiry started in 1987 after issuance of charge-sheet and the enquiry report was ultimately submitted on 07.09.1992.

5. The disciplinary authority, based on the finding against the Appellant in those five charges of similar kind, decided to dismiss the Appellant from service. That order of dismissal was upheld by the appellate authority and therefore, the writ application was filed seeking quashing of the said order.

6. Before the learned Single Judge, valiant attempt was made on three counts as to why the orders in question was required to be set aside. The first ground was that the documents were not supplied which resulted in violation of principle of natural justice. Secondly, request of the Appellant for engaging a defence assistant was not allowed which caused serious prejudice in his defence, and finally, that the Appellant was not allowed to lead oral and documentary evidence in his defence and they were illegally and arbitrarily rejected by the enquiry officer.

7. Since identical submissions have also been made before us in appeal, the Court without wasting further judicial time would like to reproduce what the learned Single Judge has had to say on all these three issues in his words in the following paragraphs:-

“3. Learned counsel for the petitioner contended that though, at the initial stage of enquiry, the petitioner stated that he did not want to engage a defence assistant, later on, as the enquiry progressed, due to various intervening

circumstances like institution of a parallel criminal case against him on similar charges, an occasion arose for the petitioner to seek appointment of defence assistant. The petitioner was pitted against an expert department officer of higher rank who was presenting the case of the prosecution. In these circumstances, denial of defence assistant seriously prejudiced the petitioner as he could not effectively defend himself, he being a layman. Learned counsel for the petitioner contended that the nature of charges levelled against the petitioner were not only grave but also very complicated and it was not within the competence of the petitioner to effectively defend himself without proper legal assistance or at least defence assistant of the department, to be provided by the department. It was next contended that the petitioner was not supplied the documents as demanded by him. It is argued that even all the documents relied upon by the prosecution were also not supplied to the petitioner and, therefore, it became impossible for the petitioner to know exactly what was the case of the prosecution and the documentary evidence on which charges were based. This adversely affected the petitioner's right of effective defence. Lastly, it was contended that when the petitioner was asked to submit list of defence witnesses and documents, which were submitted by the petitioner, the enquiry officer rejected them at the threshold by stating that some of them were not relevant. It was argued that by rejecting most material oral and documentary evidence, which the petitioner intended to rely upon in rebuttal of charges, the petitioner's defence was seriously prejudiced. In this manner, it is argued, the entire enquiry was vitiated on account of unfairness, biased attitude of enquiry officer, denial of documents, opportunity to lead defence witnesses and to engage a competent legal assistant/departmental defence assistant. In support of his submissions, reliance has been placed on the decision of the Supreme Court in the case of *State of Haryana and Anr. Vs. Rattan Singh* (AIR 1977 SC 1512) and order dated 4.7.2012 passed in Writ Appeal No.182 of 2011 (*Bilaspur Raipur Kshetriya Gramin Bank Vs. Ganesh Ram Chalak*).

4. Per contra, learned counsel for the respondent submits that petitioner's grievance against non-supply of document is vague and unspecific. The petitioner has not specified which documents, relied upon by the prosecution, were not supplied to him. Referring to the proceedings of departmental enquiry, as contained in the documents (filed collectively as Annexure A-7), learned counsel for the respondent submitted that the proceedings revealed that all the prosecution documents were duly supplied to the petitioner and all through the enquiry, till the petitioner appeared, he did not raise any objection, oral or in writing, regarding non-supply of any particular document. Moreover, the petitioner has failed to specify as to how he was prejudiced in his defence on account of non-supply of any particular document. Replying to other grounds, learned counsel for the respondent submitted that, in fact, the petitioner did not cooperate during enquiry. At the beginning of the enquiry as early as on 9.3.1988, when the petitioner was given an opportunity to

engage a defence assistant, the petitioner stated that he would defend himself. However, thereafter, the petitioner did not participate in the enquiry and remained absent on most of the days of hearing and, therefore, the enquiry officer had no option but to proceed. On 9.9.1989, the presenting officer completed prosecution case and thereafter the case was adjourned for almost two years. The petitioner was granted time up to 31st July, 1991 to submit reply. The petitioner did not submit his defence statement. The enquiry report was finally submitted on 7.9.1992. Despite repeated opportunities, the petitioner did not avail opportunity to submit his defence. It is also submitted that it was within the authority of the enquiry officer to require the petitioner to establish relevancy of oral and documentary evidence which were proposed to be led in defence. This aspect was considered by the enquiry officer and the enquiry officer gave its ruling. The petitioner did not dispute it and allowed the enquiry to be completed and order to be passed. Lastly, it is submitted that even in the appeal filed by the petitioner, the petitioner raised vague grounds which were found to be without any merit and therefore, the appeal was also dismissed.

5. I have considered the rival submissions made by learned counsel for the parties and perused the records.

6. In so far as petitioner's grievance of non-supply of documents is concerned, the pleadings contained in paragraph 5.10 of the petition do not indicate as to which document was not supplied to the petitioner. It has been vaguely stated, without any specific details, as to which document was not supplied despite demand made in that regard. All that has been stated by the petitioner in his pleadings, as contained in para 5.10 of the petition is that "the petitioner had demanded various documents". The only other averment made in this paragraph is "whenever the petitioner has asked for the documents, the same were refused". Except aforesaid bald pleadings, without any specific details, no material has been placed by the petitioner in this regard. The petitioner has not even placed on record any single application in writing, bearing acknowledgement of receipt of the same by the enquiry officer, to establish the aforesaid plea of non-supply of any document much less, documents relied upon by the prosecution so as to show that the petitioner was prejudiced on account of non-supply of documents. Plea in this regard, if I may say so, is blissfully vague and bereft of any material. On the contrary, a perusal of enquiry proceedings, cumulatively filed as Annexure A-7 by the petitioner, revealed that the petitioner was supplied documents. In this regard, minutes of proceedings dated 9.3.1988 clearly show that the documents of the prosecution were supplied to the petitioner. The minutes of proceedings dated 9.4.1988 also clearly establishes that all the documents relied upon by the prosecution were supplied to the petitioner and his acknowledgment was also obtained. Not only this, the petitioner was also allowed inspection of original records. When the enquiry officer enquired from the

petitioner whether he has inspected the original records, photocopies of which have been supplied to him, the petitioner admitted that he has not only obtained photocopies, but also inspected the original records. Therefore, it is clear that the grievance that the documents were not supplied to him, has no legs to stand. Neither in the pleadings nor in the record of proceedings (Annexure A-7), there is anything to indicate that after supply of documents relied upon by the prosecution and inspection of original records, the petitioner submitted any application for supply of document other than those relied upon by the prosecution, to establish his defence and those documents, despite being in possession of the respondent, were neither allowed to be inspected nor copy supplied so as to say that relevant documents were withheld from the petitioner.

7. In so far as challenge to the departmental enquiry and the penalty order on the ground of rejection of prayer of engaging defence assistant is concerned, the respondent have come out with emphatic stand and replied that on 9.3.1988 when the petitioner was given an opportunity to defend the case with the help of defence counsel, the petitioner expressed that he would defend his case himself. Though the petitioner filed rejoinder, the aforesaid assertion of the respondent has not been disputed by the petitioner. However, the petitioner has sought to justify through his averment in para-6 of rejoinder that the petitioner in the changed circumstance, made a request as late as on 5.8.1991 to engage defence counsel. The proceedings of enquiry (Annexure A-7) read along with the reply of the respondent would show that the petitioner remained absent on various dates during enquiry. He was absent from 17.3.1988 to 21.11.1988. On 9.8.1989, the presenting officer had completed prosecution case and thereafter for about two years, the petitioner did not take any steps to defend his case. Finally, he was granted time up to 31st July, 1991 to submit reply. It was only at this belated stage that the petitioner came out with a request for engaging a defence counsel on 5.8.1991. The enquiry officer was therefore fully justified in rejecting petitioner's prayer at such a belated stage of enquiry. During the course of hearing before this Court, it was enquired from the petitioner whether the relevant rules applicable in the matter of departmental enquiry contained any specific provision giving any such right to engage defence assistant, but no specific provision could be brought to the notice of the Court. In any case, the petitioner was afforded this opportunity at the very threshold of the enquiry, as early as possible on 9.3.1988, on which the petitioner expressed that he would be defending his case himself. Moreover, present is not a case where the petitioner was pitted against any legal expert presenting the case of the prosecution. Therefore, on facts also, this Court is unable to except the submission of learned counsel for the petitioner that rejection of petitioner's prayer for engagement of defence assistant was unjustified, illegal or had the effect of denying the petitioner a reasonable opportunity of hearing. In this regard, it is relevant to refer to clause (1) & (2) of

Regulation 30 of the Bilaspur Raipur Kshetriya Gramin Bank
Staff Service Regulations, 1980, as below:-

- “30. (1) Without prejudice to the provisions of other regulations, an officer or employee who commits a breach of these regulations or who displays negligence, inefficiency or indolence, or who knowingly does anything detrimental to the interests of the Bank or in conflict with its instructions or who commits a breach of discipline or is guilty of any other act of misconduct, shall be liable to the following penalties :-
- (a) Reprimand;
 - (b) delay or stoppage of increments or promotion;
 - (c) degradation to a lower post or grade or to a lower stage in his incremental scale;
 - (d) recovery from pay of the whole or part of any pecuniary loss caused to the Bank by the officer or employee;
 - (e) Removal from service which shall not be a disqualification for future reemployment
 - (f) dismissal.

(2) No officer or employee shall be subjected to the penalties referred to in clause (b), (c), (d), (e) or (f) of sub-regulation (1) except by an order in writing signed by the Chairman and no such order shall be passed without the charge being formulated in writing and given to the said officer or employee so that he shall have reasonable opportunity to answer them in writing or in person, as he prefers and in the latter case his defence shall be taken down in writing and read to him.

Provided that the requirements of this sub-regulation may be waived, if the facts on basis of which action is to be taken have been established in a court of law or court martial, or where the officer or employee has absconded or where it is for any other reason impracticable to communicate with him or where there is difficulty in observing them and the requirements can be waived without injustice to him. In every case where all or any of the requirements of this sub-regulation are waived, the reasons for so doing shall be recorded in writing.

- (3) x x x
- (4) x x x

8. The Regulations incorporate the principles of natural justice that no order imposing any penalty shall be passed without the charge being formulated in writing and given to the officer or employee so that he shall have reasonable opportunity to answer them in writing or in person, as he prefers and in the latter case his defence shall be taken

down in writing and lead to him. Therefore, on facts, the aforesaid ground to assail legality and impropriety of the enquiry proceedings and consequent order of penalty cannot be accepted and liable to be rejected.

9. Learned counsel for the petitioner has also stated that the petitioner sought to produce in defence, certain documents and witnesses which were relevant but arbitrarily rejected by the enquiry officer. On this issue, upon perusal of proceedings of enquiry, filed collectively as Annexure A-7, I find that during the proceedings of departmental enquiry, on 9.4.1988, an objection with regard to relevancy of some of the proposed defence witnesses was raised by the presenting officer and the petitioner sought adjournment to establish the relevancy. He was granted opportunity also to establish relevancy of witnesses No. 4, 5, 6, 8 & 9. On 15.10.1988, the presenting officer requested the enquiry officer to disallow the petitioner's proposed witnesses No.4, 5, 6 & 8 as the petitioner failed to establish the relevancy in the context of charges levelled against him. The enquiry officer, on the basis of the submissions made by the presenting officer and the petitioner, particularly taking into consideration that the petitioner failed to satisfy the relevancy and absence of any document, that those proposed witnesses as cited, they were either customers or applicants for loan, gave his ruling on 21.11.1988 that witnesses No. 4, 5, 6, 8 & 9 are not relevant. In fact on that date, when this ruling was given by the presenting officer, the petitioner was not even present during enquiry. In the proceedings of enquiry dated 5.8.1991, it has been recorded that despite various opportunities granted to the petitioner, the petitioner remained absent on earlier dates and even though he was granted opportunity to submit his written defence by 31st July, 1991, he failed to submit the same within the stipulated period. On 5.8.1991, the petitioner appeared to submit that now he wants to engage a defence counsel. The presenting officer, recording that the petitioner was not cooperating in the enquiry and even after fixing a date of the enquiry after two years, the petitioner failed to submit his defence, rejected petitioner's claim for engaging defence counsel at that stage. It is relevant to note that even though the remaining witnesses of the defence were not disallowed, they were also not examined by the petitioner. This only reflects that the petitioner was only buying time. Therefore, the conduct of the petitioner dis-entitles him to any relief on the ground that he was denied reasonable opportunity of hearing to defend himself."

8. From a reading of the findings which have been given by the learned Single Judge and on having re-looked into the records and materials available before us, we too hold the view that the learned Single Judge has not been incorrect in repelling all the three grounds on which the order of punishment was sought to be

shaken off. The detailed analysis with regard to all the three issues relating to non-supply of documents or refusal of permission to engage a defence assistant or not being allowed to lead oral or documentary evidence, do not seem to be correct stand to take. The pleas which have been taken or set up to overcome the rigors of order of punishment cannot be taken on the face value and with due credit to the learned Single Judge, he too had gone through the records in detail to verify things for himself, whether any of the three defence which were taken before him could be borne out from the enquiry report or the proceedings which are reflected from the order-sheets maintained meticulously by the enquiry officer.

9. Except for trying to delay the enquiry, which the Appellant succeeded to quite an extent, as enquiry lasted for almost five years, none of the defence or objections were supported by materials on record to show that the enquiry was not conducted in a free and fair manner or any serious prejudice as such on any of the grounds so pleaded was caused to the Appellant. In fact, the only effort which has been made and is evident from record is that the Appellant tried to prolong the enquiry as long as he could and the technical objections were only raised as an afterthought and not as a serious effort made on his part to meet the charges and establish his innocence.

10. The appeal therefore has no merit. It is dismissed.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE