IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8750 of 2016

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Yoglal Rai, son of Bipat Bhajan Rai, resident of Mohalla- Chiknauta, P.S.- Town, District- Vaishali at Hajipur.

... ... Petitioner

Versus

1. The Uttar Bihar Gramin Bank, Muzaffarpur, through its Chairman,
2. The Chairman, Uttar Bihar Gramin Bank, Kamalbagh, District- Muzaffarpur.
3. The General Manager-cum-Appellate Authority, Uttar Bihar Gramin Bank, Kalambagh, District- Muzaffarpur.
4. The Area Manager, Uttar Bihar Gramin Bank, District Saran at Chapra.
5. The Enquiry Officer of the then Uttar Bihar Kshetriya Gramin Bank, District- Vaishali.
6. The Management Representative of the then Uttar Bihar Kshetriya Gramin Bank, District Saran at Chapra.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Verma, Advocate Mr. Vineet Kumar, Advocate
For the Respondent/s	:	Mr.Prabhakar Jha, Advocate Mr. Amitesh Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date : 14-08-2019

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

2. In this case, the petitioner is challenging the order dated 07.01.2016 passed by the Chairman of the Uttar Bihar Gramin Bank, whereby and whereunder the application filed by the petitioner for review of the order of dismissal dated

24.09.2009 passed by the Disciplinary Authority has been rejected.

3. In the present case, the petitioner is raising the grievance that after the finality of the departmental proceeding a parallel criminal case was lodged against him, in which the Police has submitted the Final Form and after giving notice to the informant, Bank official, the Court below has refused to take cognizance in the matter and accepted the Final Form submitted by the Police, is the basis for claiming the relief of reviewing the order of punishment.

4. The petitioner was working as Branch Manager in Saran Kshetriya Gramin Bank, Chapra, now known as Uttar Bihar Kshetriya Gramin Bank, Chapra. An audit was conducted during 14.07.2005 to 24.07.2005 and it was found that certain irregularities were committed by the petitioner in distribution of the loan amount during the Loan Festival, accordingly, the Audit Team submitted the report dated 25.07.2005, giving the details of the irregularities of about Rs. 2.5 crores. On the basis of the audit report, a departmental inquiry was initiated on the charges mentioned in the charge-sheet vide memo no.646 dated 22.09.2005, which are quoted herein-below:-

*"**<u>MEMO</u>***

While working as Branch Manager at Sakhnouli Branch Sri Yoglal Rai is found to have committed following acts of omission and commission with malafide intentions in processing, recommending, sanctioning & disbursing of loans, issuing of ICICI cheques at par, furnishing wrong and connected figure to HO overdrawing self OD & HSS A/cs etc.

*1. **<u>Loans disbursement defying HO instruction</u>***

Sanction of all types of loans (expect DL on own security) was stopped by Head office vide HO letter no.HO/p&D/04-05/CM/01 dated 02.04.05. In violation of the said instruction Sri Y.L. Rai disbursed more than Rs.30 lakh during stopped period which is clear disobey of HO Circular.

<u>2. Large Scale irregularity in loan disbursement-</u>

Sri Y.L. Rai has violated all the laid down norms and regulations while processing, recommending, sanctioning and disbursing of loans.

No proper documents obtained where embossed agreement guarantee papers is required, plain & photo copy of application/guarantee agreement papers have been taken without discharge by the borrowers.

Most of the disbursed loans are without sanctioning Memo, PDR etc.

Great abuse of power in disbursement of KCC loans and mis-utilization of ICICI cheques system.

Frequent violation of discretionary power of Branch Manager tampered the facts of loans amt in loan ledger & other books.

No proper margin, security either movable or immovable obtained while disbursing of loans. No balancesheet/PL statement project report, Stock Statement etc available in CC loans.

3. ICICI Cheques issued at par.

ICICI cheques at par facility was made available to the Branch for benefits of depositors, to ease liquidity problem but Sri Y.L. Rai has misutilised this facility for personal gain and violated all the prescribed norms. Most of loans are disbursed through the issue of ICICI cheques - without consent and request of borrowers-requisition slip without signature. Most of the KCC borrowers were given ICICI cheques at par drawn on big cities wherever KCC borrowers have no need of ICICI cheques drawn on cities like New Delhi, Kolkata, Ranchi, Patna, Indore etc. Most of ICICI requisition forms are blank and not singed by the applicant-filled in by Sri Y.L. Rai himself-no fund transfer to HO for ICICI cheques issued No Pan No. obtained for high value amount while issuing ICICI cheques at par. Many ICICI cheques were issued to SB/CD a/c holders without debiting concerned a/cs in the ledger.

4. MSTP Loans

Many loans have been disbursed without obtaining proper document, many documents are without sign of the borrower, no. of disbursed a/cs without sanction memo, no voucher bill, chalan, etc. found for disbursed boring on p. sets and without post-disbursement report. Name of borrower and amount changed by using whitener. Twice or thrice disbursement of loan in the *same MSTP a/cs. nearly two hundred documents not embossed and documents blank.*

5. Transport Loans

Large scale irregularity found in transport loans a/cs like :-

No proper margin and security obtained.

No insurance paper found in most of a/cs.

No pre or post sanction/ no PDR by BM.

Rs.175000 disbursed for one tempo without margin, security in one of the loan a/cs.

Abuse of discretionary power frequently. In one a/c BM sanctioned Rs.340000/- not under discretionary power limit of BM.

No project report found in transport loan a/cs

No processing charge debited in all the transport a/cs.

6. Saran Nakad Rin Yojana (SNRY)

Sri Y.L. Rai, BM disbursed nearly 10 a/cs in violation of given circular and guidelines.

7. PCL

Sri Y.L. Rai, BM, disbursed the loan in this scheme without obtaining proper document margin and security, insurance papers etc.

8. Saran Vyapari Rin Yojana

Sri Y.L. Rai has disbursed nine loan a/cs violating all the directions. He has misused the given discretionary power in this scheme abundantly. He has not taken any margin, security, balance sheet, PL statement, project report, stock statement, turnover statement etc. in any of disbursed a/cs. No. balancing of this a/c done since long.

9. SCC

Sri Y.L. Rai, has disbursed nearly 28 a/cs in this scheme and has not followed the RBI, NABARD and Banks own circulars while disbursing the loan under this scheme. He has enhanced the limit from Rs.50000/- to one lakh by simply adding the additional Rs.50000/- in the ledger – rest all parameters unchanged. He has not obtained the required essential papers and has disbursed the loans without any margin and security.

10. Retail Trade

Loan disbursed in this head are most irregular and necessary formalities have not been completed. NTG loans sanctioned without margin and security, application form not completed, embossed agreement and guarantee papers have not been taken. In one a/c no.302 Rs. 2 lakh disbursed in one installment having no applicant signature on loan application, no margin & security and this loan not shown in GL with the intention to hide the disbursement of loan before HO since it has been disbursed during banned period.

11. KCC

Sri Y.L. Rai, BM has violated all the norms, guidelines, circulars while disbursing loans in this head. Sri Rai has committed all the possible irregularities for his personal gain. These are the glaring example of a irresponsible banker which shows the fraudulent attitude of Sri Rai.

12. Some more irregularities are as follow"-

Loan limit enhanced from Rs.50000/- to Rs. 1 lakh by simply adding the additional amount in the loan ledger *only.*

No security, margin obtained issued ICICI cheques at par frequently for business purpose – disbursed in excess of limit regularly, no consideration of land holding, did not consider land possession and land receipts in many cases Sri Rai has disbursed nearly Rs. 1 lakh to borrowers having land receipts/land holding of one bigha or less. Most of the withdrawals filled in by Sri Rai himself and are without a/c No. folio and not debited the loan ledger. All the documents obtained are most irregular having no photo, non embossed paper, application forms not duly signed by the borrowers and without any security, no sanction endangering the fate of issued loan amount. In one a/c ICICI cheque for Rs.149669/- issued in favour of different name, land holding less than one bigha, no security obtained.

13. MTL

All loans disbursed in this head are in violation of given guidelines having no proof of cattle purchase.

14. Demand Loan

Mysteriously time deposit receipts remains in the documents file even after maturity/closure of the D/L a/c and not used as voucher which is sufficient proof of fraudulent motive of Sri Rai. No quarterly interest provision in this head done.

15. Other loan Heads

Loans under SHG, Staff OD, General House loan, Rural Housing Loan. Staff Loans have been disbursed without caring the given guidelines and against laid down norms.

16. Other important irregularities

Two simultaneous GLB maintained with the intention to hide truth of ongoing process of loan disbursement during banded period. He reported wrong outstanding balance of loan a/cs in Form 111 in March 2005. He allowed more than one loan of big amount to same borrower without any security/guarantee.

Sri Rai overdrew self OD a/c Dr. balance of Rs.62398/- against the sanctioned limit of Rs.18900/- and in own HSS a/c overdrawn for more than 7 thousand in violation of the Bank's rule. Many Credit entries (Unknown source of income) in own OD & HSS a/cs of Sri Rai have been found.

Improper payslip issued a/c system without any register.

Cheques issued to illiterate a/c holders. CD a/c opened and maintained not found in order.

Most irregular posting of debit entries in HSS A/cs withdrawals mostly filled in by Sri Rai himself without folio which proves non posting of the voucher in the ledger HSS a/cs holders are not being issued passbooks.

Forwarded HO wrong and misleading balancing report.

Sri Yoglal Rai is instructed to explain within 7 days as to why disciplinary action should not be initiated against him failing which it will be presumed that Sri Rai has nothing to submit and that the Bank will be free to proceed further as deemed fit."

5. In the departmental proceeding, the petitioner was asked to file his explanation, which he has submitted but, the

Management was not satisfied with the explanation and finally a full fledged departmental proceeding was conducted, in which the petitioner did not participate and ultimately, an *ex parte* proceeding was conducted and inquiry report was submitted showing the charges were found proved against the petitioner. The petitioner was given second show-cause, to which the petitioner filed his explanation and ultimately, the petitioner was visited the order of punishment, thereby he has been dismissed from the service, that order was challenged by the petitioner in C.W.J.C. No.4609 of 2010, which was dismissed vide order dated 23.08.2012 holding that sufficient opportunity was given to the petitioner for participating in the inquiry, this Court did not find any wrong in awarding the punishment of dismissal from service inflicted upon the petitioner, which was challenged by the petitioner in L.P.A. No.1666 of 2012 unsuccessfully, given a final seal to the action of the management. Being aggrieved by the order of the Division Bench, the petitioner preferred S.L.P. before the Hon'ble Supreme Court, which was also dismissed. It has been submitted by the Bank that again the petitioner had again filed Review Petition before the Hon'ble Supreme Court, that was also rejected.

6. Parallely, an F.I.R. was lodged against the petitioner vide Awtar Nagar P.S. Case No. 95 of 2006 for the offence under Sections 420, 467, 468 and 406 of the Indian Penal Code, in which allegation has been made that while the petitioner was posted as Branch Manager large number of account holders filed complaints against him, whereupon, an inquiry was conducted and it was found that during his tenure he committed several irregularities. It has further been alleged that this petitioner with an ulterior motive has exercised the power and granted the financial benefit to different persons. It has further been alleged that he had granted loan without any agreement, which is completely *de hors* to the Banking Rules. It has further been alleged that from different customers he has taken withdrawal forms but, did not pay the money on the plea, having no sufficient money for payment, when on next date, same customers came, he took another withdrawal forms of the lesser amount and paid the said amount and after that by using the earlier withdrawal forms he encashed the amount and misappropriated bank money. The petitioner either from his own account or from the loan account withdrew the money beyond limit. The petitioner committed fraud with bank customers. The written complaint of the Regional Manager led to institution of Police Case vide Awtar Nagar P.S. Case No. 95 of 2006.

7. The Police after investigation has submitted the Final Form and the Court below after giving notice to the informant, who is the Bank official, refused to take cognizance in the matter and accepted the Final Form submitted by the Police. Whereafter, the petitioner has filed an application for reviewing the order of dismissal *inter alia* alleging that as the Police has submitted the Final Form in his favour and as such, the earlier order of dismissal should be reviewed and for that he has filed a representation, that has been rejected vide order dated 07.01.2016.

8. Learned counsel for the petitioner has raised the grievance that the order which has been passed is a cryptic order as the same does not show any reason, which ought to have been there in the order. Another set of the argument is that as the Police has not found any incriminating material against the petitioner submitted the Final Form and as such, it is at par with the clean acquittal, hence, the order of dismissal requires to be interfered with and he should be given the relief accordingly.

9. In support of his submissions, learned counsel for the petitioner has placed reliance on the following decisions:-

(i) ***Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Anr.,*** *reported in* ***(1999) 3 SCC***

679.

(ii) ***G.M. Tank vs. State of Gujarat*** reported in ***(2006) 5 SCC 446***.

(iii) ***Prafulla Chandra Mohapatra vs State of Orissa and Others*** reported in ***AIR 1992 SC 2209.***

10. Whereas, learned counsel for the Bank has submitted that the proceeding of criminal case is quite different to the departmental proceeding and it may be possible that the allegation made may not constitute criminal offence but, would constitute serious misconduct. The charges mentioned in the charge-sheet is not identical to the allegation mentioned in the F.I.R. He was proceeded in departmental inquiry on to the charges of misconduct, which has finally been settled by the Hon'ble Supreme Court, and the submission of Final Form which has been accepted by the Court below not be the basis of review of order of punishment. Merely not taking cognizance by the Magistrate on account of filing a Final Form will not lead to cause of fresh review of the order of punishment as the criminal proceeding as well as the departmental proceeding runs in different field, having different considerations in proving of the charge. In the case of criminal proceeding, the charge has to be proved beyond reasonable doubt whereas in the departmental proceeding the theory of preponderance of probability applies but, which does not apply in the criminal proceeding.

11. Having considered the rival contentions of the parties, in the present case, admittedly the inquiry has been conducted *ex parte* and this Court by a well reasoned judgment did not find any error in the departmental proceeding, inasmuch as, the Court has refused to interfered with the order of the punishment which has been approved upto the Hon'ble Supreme Court. Further, the judgments which the petitioner has placed reliance does not apply to the facts of the present case as in all the aforesaid judgments acquittal has been recorded after full fledged Trial was conducted by the Criminal Court, but in the present case, the Police did not find incriminating material against the petitioner, so it cannot be said that the Police has conducted any trial or the Court has conducted any trial but, the Court has merely refused to take cognizance in the matter and did not find an incriminating materials against the petitioner, inasmuch as, on comparing the allegation made in the F.I.R. as well as in the charge-sheet, allegations made in both documents are different. Furthermore, even if the Police did not find any incriminating material against those charges, does not mean that the inquiry conducted on the charges mentioned in the charge-sheet is completely vitiated or requires interference by this Court as the allegation in the charge-sheet is quite different to the charges mentioned in the F.I.R.

12. In such view of the matter, this Court finds that the action of the Bank in refusing to review the order of dismissal is completely just and proper, does not require any interference by this Court. Hence, this writ petition is dismissed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	19.08.2019
Transmission Date	