

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13837 of 2005

Mostt. Sona Devi Wife of Late Amir Lal Sah, r/o Village Mehnsi, PS Mehnsi,
District East Champaran, Motihari

... .. Petitioner

Versus

1. The State of Bihar
2. The Board of Directors, Champaran Kshetriya Gramin Bank, Head Office East Champaran at Motihari now known as Uttar Bihar Gramin Bank, headquarter at Kalambagh Chowk Muzaffarpur
3. The Chairman, Champaran Kshetriya Gramin Bank, Head Office East Champaran at Motihari now known as Uttar Bihar Gramin Bank, headquarter at Kalambagh Chowk, Muzaffarpur
4. Sri Sudhir Kumar Sinha, son of Trilok Pd. Verma, presently posted as Branch Manager, Champaran Kshetriya Gramin Bank, Raxaul, PS Raxaul, District East Champaran (Motihari)
5. Sri Ajay Kumar Nandan, son of Ganesh Pd, r/o village Phenhara, PS Phenhara, District East Champaran presently posted as Clerk cum Cashier Champaran (Motihari)
6. Sri Abhimanyu Pd. Sinha, son of Rajeshwar Pd. Sinha, r/o Village Kalupakar, PS Phenhara, District East Champaran, presently posted as Clerk cum Cashier, Motihari Branch, East Champaran (Motihari)
7. Sri Narendra Kumar Tiwari, son of Ram Karan Tiwari, r/o Village Bairia, PS Shikarpur, District West Champaran, presently posted as Branch Manager at Champaran Kshetriya Gramin Bank Bettiah Branch, Bettiah West Champaran

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Amish Kumar Mr. Jhankar Kumar Choudhary
For the Respondent/s	:	Mr.Gp7
For the Bank	:	Mr. Prabhakar Jha Mr. Mukund Mohan Jha

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 13-09-2019

Heard learned Counsel for the petitioner and the learned
Counsel for the respondent Bank.

The petitioner was posted as a Manager of the bank at
Nawada Branch in the district of West Champaran. The management



issued charge memo dated 18.7.1997 to the petitioner. The substance of the allegations in the charge memo alleged misappropriation of amounts in the various accounts in the branch. The petitioner has submitted his response to the allegations made by charge memo. Response of the petitioner is confessional in nature and is dated 23.9.2002. Considering the petitioner's confession the Inquiring Officer did not consider it necessary to proceed further with the enquiry. This Court would observe that decision of the authorities not to proceed on account of petitioner's confession cannot be in anyway said to be bad. Being conscious that confession would entail penal consequences, still petitioner has submitted his confession. The proceedings were concluded on the basis of petitioner's confession. As a result of petitioner's confession in the enquiry, he has been visited with the punishment of dismissal issued by Chairman -cum- Disciplinary Authority of the respondent Bank on 29.11.2003.

The petitioner surprisingly has preferred an appeal against the order passed by the Disciplinary Authority even though he had admitted to the charges during the course of enquiry.

Counsel for the petitioner has submitted that charges having been admitted, appeal was necessitated since the petitioner had been discriminated against in the matter of award of punishment. He draws attention of the Court towards confession submitted by the petitioner as well as contents of the appeal filed against the order of dismissal. In his written statement, in response to the charge memo containing



confession of the petitioner, as well as appeal dated 10.1.2004 he has raised specific instance of various other employees/staffs of the bank who had also been charged with similar allegations. The petitioner has throughout the proceeding relied upon the fact that the authorities while awarding punishment to the delinquent having regard to their confession had imposed punishment of withholding of annual increments or lowering their scale. In case of one of the example cited by the petitioner, in the case of Narendra Kumar Tiwari, the Petitioner has specifically asserted that his punishment was revoked and he was retained in the general cadre and thereafter granted promotion in Scale II.

Substance of the appeal filed by the petitioner was that having regard to confession of the petitioner the authorities should have considered parity in the matter of grant of punishment to the petitioner as had been awarded in others' case where there was similar allegation and when they had admitted to the charges.

Mr. Jha, appearing for the Bank, submits that due opportunity was granted to the petitioner. Nature of allegations regarding misappropriation of bank fund is very grave. Petitioner being a bank employee is not entitled to any leniency. In view of his confession no further proceedings were required and there is no issue of any procedural violation in the instant case. Relying upon a decision in the case of Ashok Kumar, vs. Chairman, North Bihar Kshetriye Gramin Bank in CWJC No. 6056 of 2006 which stands affirmed by the Division



Bench in LPA No. 1333 of 2014, he submits that the circumstances warranted imposition of punishment of dismissal against the petitioner which is due and proportionate to the nature of allegation made against the petitioner which had been confessed by the petitioner.

The submissions made by the parties have been considered by this Court. The petitioner has not alleged any procedural violation in the proceedings. He has accepted the fact that he had confessed before the authorities in respect of the allegations contained in the charge memo. The only submission which remains to be considered was whether the petitioner could have been awarded punishment greater than that which has been awarded to others against whom similar allegation of misappropriation of bank funds had been alleged and confessed to by the delinquents.

Counsel for the petitioner submits that the claim for parity with other similarly situated was made in the petitioner's written statement in response to the charge memo itself. The petitioner was expecting the authorities to maintain parity in the matter of grant of punishment. Charges being identical and in view of confession of the petitioner which was same in other cases referred to by the petitioner. Had the petitioner any doubt that the authorities in case of petitioner would be imposing severest punishment in service jurisprudence, he may not have confessed and compelled the department to bring home the charges on the basis of evidence and materials after due observance



with the procedural requirement in the enquiry. In stead of putting the onus on the department he has candidly accepted the charges.

This Court would observe whether the authorities would give same punishment or not is an issue which is best left for the authorities to decide. Decision, however, must manifest due consideration of the issue. The order of the appellate authority does not even take into consideration the various examples of others against whom similar allegations had been made and who had confessed to their guilt. It is only after the issue was considered that the appellate authority could have arrived at an informed decision by assigning reason whether the petitioner was entitled to parity in the matter of award of punishment, or otherwise.

This was the only issue before the appellate authority. The order prima facie does not show any consideration of this issue by the appellate authority. No reason whatsoever has been assigned. The appellate authority has merely recorded that ample opportunity was given to the petitioner and that punishment was proportionate to the charges confessed by the petitioner. The issue of parity has not at all been considered by assigning any reason. In this connection, this court would restate the law declared by the Apex Court repeatedly that the issue raised are required to be considered so as to obliterate scope of arbitrariness in the decision. Other than claim of parity with other similarly situated in the matter of award of punishment, no issue regarding any lapse in the enquiry has been raised by the petitioner in



the appeal. That was the only issue required to be considered and disposed of by assigning reasons which has not been done. Non assigning of reasons has been deprecated time and again by courts. Importance of assigning reasons has also been stated time and again. The decision of the apex court in the case of Kanti Associates Pvt. Ltd. vs. Masood Ahmad Khan & ors reported in (2010) 9 SCC 496 enumerates various circumstances for assigning reasons. Disposal of the petitioner's appeal would also be covered by requirement of assigning reasons contained in the decision of the Apex Court in the case of Kanti Associates (supra).

The order of the appellate authority dated 25.9.2004, sans reasons; and for the reasons indicated hereinabove is quashed. The matter is remanded to the appellate authority for decision afresh on this point after considering petitioner's claim for parity with other employees, which has been stated in the appeal as well as petitioner's response to the charge memo. The appellate authority is expected to consider petitioner's claim in accordance with law by assigning reasons expeditiously without undue delay and preferably within a period of three months from the date of receipt/production of a copy of this order.

The writ application stands allowed.

SNkumar/-

(Madhuresh Prasad, J)

AFR/NAFR	NAFR
CAV DATE	N/A
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