

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3740 of 2015

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Devendra Marandi son of late Shri Bishu Marandi resident of Flat No. 427.LCC Building , A.P. Colony, Gaya P.S. - Rampur, Dist. - Gaya.

... .. Petitioner/s

Versus

1. The State Bank Of India through the Chairman, State Bank of India, Corporate Centre, Madam Cama Road, Nariman Point, Mumbai 400021
2. The Chief General Manager, State Bank of India, Local Head Office, West Gandhi Maidan , Patna-8000
3. The General Manager , Network -I, State Bank of India, Local head Office , West Gandhi Maidan , Patna
4. The Deputy General Manager , State Bank of India, Zonal Office, J C Road, Patna- 800001
5. The Regional Manager , State Bank of India, Regional Business Office, Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Bipin Krishna Singh, Advocate
For the Respondent/s : Mr.Kaushlendra Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 08-03-2019

The petitioner was posted as Service Manager at Sherghati Branch of the respondent Bank. Recognizing his capabilities to discharge greater responsibilities he was assigned duty of Branch Manager at Imamganj Branch on 22.09.2011. Subsequently on 26.09.2012 he was relieved from the said Branch and posted at Gaya Branch.



2. Alleging certain irregularities in finance and disbursement of KCC loans on the basis of fake certificates and other connected allegations he was placed under suspension and a charge memo dated 07.03.2014 was served on him. Charges were in relation to his tenure at Imamganj Branch between 27.09.2011 to 22.09.2012. Altogether there were 14 charges in the charge memo. Sum and substance of the charges were reckless financing and other connected lapses. The charges carried a very severe stigma.

3. Petitioner submitted his reply to the charge memo (Annexure 7). He pleaded innocence. It was his case that the controlling office had set out a target for sanction of 1000 Kissan Credit Card Loans. The petitioner was also told that confirmation of the sanctioned loans would be accorded later. Before the Enquiry Officer petitioner pleaded that he has never violated any norms or rules for sanction of loans and sought to be exonerated from the charges. The Enquiry Officer proceeded to enquire into the charges. It is the petitioner's case that the proceedings were conducted by the Enquiry Officer ignoring his submissions. It is also his case that though there was no substantive evidence/witness, the Enquiry Officer held charge no. 1,5,7,8,10,11 and 13 to be proved. He concluded allegations



nos. 2,3,6,12 and 14 as partly proved and allegation nos. 4 and 9 as not proved.

4. Copy of the enquiry report was forwarded to the petitioner by the Deputy General Manager, BMO under communication dated 16.05.2014. The petitioner was called upon to submit his representation with regard to the findings of the Enquiry Officer. In response thereto petitioner submitted a second show cause (Annexure 9). The second show cause submitted by the petitioner on 26.05.2014 is an elaborate second show cause wherein the petitioner has referred to various documents and drawn attention of the Disciplinary Authority to various flaws in the proceedings before the Enquiry Officer. He has submitted before the Enquiry Officer that allegation with respect to loans being sanctioned on the basis of fake land possession certificates, has wrongly been held as proved by the Enquiry Officer since none had appeared in support of the land possession certificates. He has also pleaded before the Enquiry Officer that the concerned Circle Officer under his letter dated 09.03.2013 (DEX7) has confirmed issuance of land possession certificates. The same Circle Officer however subsequently denied issuance of the same land possession certificates. In such circumstances non-examination of the Circle Officer in the



enquiry proceedings was fatal to the findings of the Enquiry Officer. He has also highlighted the fact that all applications were sponsored by the Circle Office under its seal and signature as is evident from the Application Received Disposal Register of the Branch (DEX5). These are few instances of the issues raised by the petitioner in his detailed and elaborate response to the second show cause. Submissions, in substance is that findings of the Enquiry Officer are illegal as conclusions are based on no evidence ; and without considering the evidence produced by the petitioner in the proceedings.

5. This Court would find that the detailed and elaborate response to the second show cause notice submitted by the petitioner which has been submitted point wise and is running into seven printed pages has not been considered by the Disciplinary Authority.

6. Purporting to act under Rule 68.3 (iii) the Disciplinary Authority by order dated 15.07.2014 has proposed a major penalty (removal from service) under Rules 67 of the State Bank of India Officers Service Rules (SBIOSR). The period of suspension was to be considered as being not on duty. The Disciplinary Authority has also proceeded to propose forfeiture of gratuity to the extent of alleged loss caused to the Bank



amounting to Rs. 1.93 cores only. By the said order the petitioner has been directed to appear before the Disciplinary Authority against the proposed penalty. After receipt of response to second show cause from the delinquent, the Disciplinary Authority was to form an opinion whether to impose a minor penalty as contemplated under Rule 67 or that a major penalty was to be imposed on the petitioner.

7. This Court considers it appropriate to reproduce relevant extract of Rule 68.3 of the SBIOSR which is as follows:

“(iii) If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in rule 67 should be imposed on the officer, it shall, notwithstanding anything contained in sub-rule(4), make an order imposing such penalty.

Provided that where the Disciplinary Authority is of the opinion that the penalty to be imposed is any of the penalties specified in clauses (e), (f),(g),(h) & (j) of rule 67 and if it is lower in rank to the Appointing Authority in respect of the category of officers to which the officer belongs, it shall submit to the Appointing Authority its recommendations regarding the penalty that may be imposed. Records



of the enquiry specified in Clause (xxi) (b) of sub rule (2), shall also be submitted to the Appointing Authority in respect of penalties to be imposed under clauses (f), (g), (h), (i) & (j) of rule 67. The Appointing Authority shall make an order imposing such penalty as it consider in its opinion appropriate. ”

8. From the Rule it is clear that before forming such an opinion the Disciplinary Authority under Rule 68.3 (iii) was required to record its findings on all or any of the articles of charges. Same has not been done in the instant case. In order dated 15.07.2014 no such findings have been recorded by the Disciplinary Authority/Appointing Authority. He has merely recorded as follows :

“.....Upon due consideration of the records of the enquiry and your submissions thereon, I propose to impose major penalty of “Removal from Service”, in terms of Rule no. 67(i) of SBIOSR. The period of suspension will be treated as such i.e. not on duty. Considering the loss incurred by the Bank as brought out in allegation no. xiv, I propose for forfeiture of your gratuity under section 4,6(a) of Gratuity Act in its entirety but not exceeding the loss amounting to Rs. 1.93 crore only. You are hereby called upon



to appear before the undersigned on 18/7/14 at 1.00 PM at my office for a personal hearing and/or make submissions as to why the proposed penalty should not be imposed on you.”

9. Without recording any findings whatsoever in respect of any of the articles of charges, petitioner has been communicated proposed penalty under Rule 67 (i) referred to above.

10. On 01.08.2014 the petitioner has been visited with the order of punishment issued by the Disciplinary/Appointing Authority. Petitioner has been awarded the penalty (removal from service). For the period of suspension he has been considered as being not on duty. Gratuity equivalent to alleged loss of Rs. 1.93 crore has been directed to be forfeited. Even at this stage while issuing the order of punishment the Disciplinary Authority has not considered the various plea raised by the petitioner in his response to the second show cause. The Disciplinary Authority has merely recorded the charges and findings of the Enquiry Officer/Enquiring Authority and concluded as follows :

“I agree with the findings of the Inquiring Authority and hold the charge as proved.

3. I have gone through the allegations against



the official, the findings in the enquiry report and his submissions made before me during the course of Personal hearing on 28.07.2014. Considering the facts of the case with independent application of mind and in view of the nature and gravity of the lapses proved against Shri Devendra Marandi, JMGS-I (U/S), I impose upon him the penalty of “Removal from service”, in terms of Rule No 67 (i) of SBIOSR. The period of suspension will be treated as such i.e. not on duty. Considering the loss incurred by the bank as brought out in allegation no. XIV, I order for forfeiture of his gratuity under section 4(6)(a) of the payment of gratuity act in its entirety but not exceeding the loss amounting to Rs. 1.93 crore.”

11. Action of the Disciplinary Authority manifests total non- application of mind. None of the plea raised by the petitioner has been considered and no reason whatsoever has been assigned on the basis of any evidence whatsoever to reject the detailed and elaborate point wise petitioner’s response to second show cause notice. Such a conclusion of the Disciplinary Authority without any reasons in support of the decision and without recording any findings, to say the least is arbitrary and unfair. The specific mandate of Rule 68.3(iii) of the State Bank of India Officers Service Rules (SBI OSR) is that the



Disciplinary Authority is to record its findings on all or any of the articles of charges prior to arriving at an opinion, as to which penalty is to be imposed on the delinquent. In the instant case no findings whatsoever has been recorded by the Disciplinary Authority/Appointing Authority. Order by the Appointing /Disciplinary Authority, and as such the same is in violation of Rule 68.3(iii) of the State Bank of India Officers Service Rules (SBIOSR).

12. The procedure adopted by the Disciplinary/Appointing Authority and the two orders proposing the punishment and imposing the punishment on 15.07.2014 and 01.08.2014 respectively are also without any reasons in support of the conclusion. Whether the petitioner's response to second show cause notice was considered or not could manifest only by assigning reasons. In the absence of reasons the decision of the Disciplinary/Appointing Authority can only be said to be arbitrary and unfair. Importance of assigning reasons has been reiterated and emphasized by Courts repeatedly. This Court would refer to decision of the Apex Court in the case of **Kranti Associates (P) LTD. v. Masood Ahmed Khan** reported in **(2010)9 SCC 496**. The order of punishment therefore, is unsustainable as being violative of procedure prescribed in



State Bank of India Officers Service Rules (SBI OSR) as well as for non-assigning of reasons. Order of the Disciplinary Authority dated 15.07.2014 and 01.08.2014 are hereby quashed.

13. The petitioner against the order of the Disciplinary Authority had approached the Appellate Authority (Chief General Manager of the Bank). Petitioner's appeal has been rejected and order of the Disciplinary Authority has been affirmed. Order of the Appellate Authority also suffers from same vice of non-assigning or reasons. None of the points raised by the petitioner has been considered. Even otherwise the order of the Appellate Authority dated 20.10.2014 has the effect of affirming order dated 01.08.2014 of the Disciplinary Authority which already has been held to be legally unsustainable and quashed. In the result order of the Appellate Authority must also collapse. The order of the Appellate Authority dated 20.10.2014 is also quashed.

14. Matter is remitted to the Disciplinary Authority/Appointing Authority to consider the petitioner's plea raised in his response to second show cause in accordance with law by a reasoned and speaking order. Petitioner as a result of quashing of the order should be reinstated and treated as under suspension.



15. The writ petition stands allowed.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	

