IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6748 of 2011

==

Ashok Kumar Sinha, S/o Sri Ramanand Prasad Sinha, Resident of 203, Annapurna Apartment, Loha Singh Lanoe, Behind Old Petrol Pump Kadamkuna, P.S. - Kadamkuan, District & Town, Patna.

... ... Petitioner/s

Versus

1. State Bank Of India through Chief Manager, Local Head Office, West Gandhi Maidan, Patna
2. Chief General Manager-cum Appellate Authority, State Bank of India, Local Head Office, West Gandhi Maidan, Patna-800001
3. The General Manager-cum-Appointing Authority State Bank of India, Local Head Office, Patna
4. Deputy General Manager-cum Disciplinary Authority, State Bank of India, Zonal Office, Muzaffarpur (Bihar)
5. Regional Manager, Region-I, State Bank of India, Administrative Office, Muzaffarpur.
6. Chief Manager (Domestic Enquiry) cum Inquiring Authority, State Bank of India, Local Head Office, Patna
7. The Branch Manager, State Bank of India, Agriculture Development Branch (A.D.B.) Samastipur.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Arvind Kumar Tewary, Advocate
For the S.B.I.	:	Mr. S.D. Sanjay, Sr. Advocate
		Mr. Alok Agrawal, Advocate
		Mr. R.R. Tiwari, Advocate

==

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 28-03-2019

Heard learned counsel for the petitioner and learned counsel for the State Bank of India.

In this case, the petitioner is challenging the order 14.12.2009 passed by the General Manager-cum-Appointing Authority, as contained in Annexure-1, whereby and whereunder he has dismissed the petitioner from service in terms of Rule 67 (j) of the SBI Officers Service Rules and the period of suspension will be treated i.e. not on duty and further in terms of Rule 4(6) (a) of the Payment of Gratuity Act, entire gratuity amounting to Rs.

16,05,130.06 has been forfeited. Against that order, the petitioner filed an appeal before the Chief General Manager-cum-Appellate Authority, who has rejected the appeal by speaking order vide Memo No. 1643 dated 03.07.2010 (Annexure 2).

The short facts of this case is that the petitioner was appointed as Probationary Officer in the year 1984 and lastly, he remained in service holding the post of Deputy General Manager (Credit) and Officiating Manager (PB) of Samastipur Branch of State Bank of India. While he was posted in the said Branch for the period from 05.08.2003 to 27.05.2006, it was found, he has committed serious financial irregularities which constitute misconduct in terms of State Bank of India Officers' Service Rules and after the identification of irregularities, he was put under suspension under contemplation of departmental proceeding. In the meantime, the DGM, Muzaffarpur lodged a criminal case against the present petitioner for the alleged offence and in pursuance thereof, the CBI lodged RC Case No. 17A/2006 (Special Case No. 14A/2006) registered for offences under Section 120B, 420, 409, 467, 468 and 471 of the Indian Penal Code and Section 13 (2) read with Sections 13 (1) (c) (d) of the Prevention of Corruption Act. Similarly, another case i.e. RC Case No. 18A/2006 (Special Case No. 15A/2006) was also registered by the CBI on 30.06.2006 against the petitioner and two others. The

Deputy General Manager (Vigilance), Muzaffarpur while inspecting the books of accounts of Samastipur Main Branch of SBI found that there was a huge fraudulent of transaction of Rs. 50,55,620.00 apart from other misconduct. For the serious and gross misconduct, apart from two criminal cases, the disciplinary proceeding was initiated against the petitioner in terms of Rule 68(1) of the State Bank of India Officers Service Rules and vide letter no. DGM/M/DPS No. 26/897 dated 23.03.2007, a charge sheet against the petitioner including the articles of charges with the statement of allegation and list of documents were served upon him (Annexure 3).When the notice was issued, the petitioner was under judicial custody, his wife has informed the Bank that her husband was in Jail in connection with RC Case No. 18A/2006, so he was not in a position to participate in the disciplinary proceeding. After releasing from jail custody on 18.07.2008, the letter no. DGM/M/DPS No. 26/897 dated 23.03.2007 was served upon him and whereafter he replied the said letter vide letter dated 21.11.2008 whereby he has denied all charges levelled against him and requested to defend himself either personally or through his counsel. The Bank appointed Mr. G. P. Yadav, Chief Manager as Inquiry Officer and Shri Vidya Bhushan Tiwari, Deputy Manger as Presenting Officer and he was defended by Sri Anil Kumar Verma, defence counsel. In the inquiry proceeding, the petitioner participated through his defence counsel. In the proceeding, large number of documents have been filed to substantiate the allegation, were exhibited as well as both sides have examined their witnesses. The Inquiry Officer considered documentary and oral evidence brought, out of 20 charges, 18 were found to be proved and two charges i.e. charge nos. 11 and 12 were partially proved. He was served the inquiry report which the petitioner replied and after consideration of the reply, a detailed speaking order has been passed by the Disciplinary Authority, which has been affirmed by the Appellate Authority.

Learned counsel for the petitioner submits that the inquiry has not been conducted in a proper manner on the ground that for the same allegation, two persons, namely, V.K Jha, Branch Manager, ADB and Mr. S.K. Sinha, Accountant were also proceeded for the identical charges. So in terms of Rule 68 (6), there should be a joint inquiry and wrongly, they have conducted a separate inquiry against each delinquent. He has further submitted that rest two persons were inflicted the punishment other than the dismissal, but in the case of the petitioner, they have taken a different yardstick and dismissed him from the service. It has been submitted that when the charges were same, in such a situation, the punishment should also be the identical, which violates the Articles 14 and 16 of the Constitution of India, whereas learned counsel for the Bank has submitted that the petitioner was holding the very high post and he was in-charge of the Branch and rest two persons were his subordinates. The loan documents were recovered from the residence of the present petitioner, which is very serious in nature, which has been explained by the petitioner that as the condition of the Branch was very bad, with the consent of the Chief Manager, he has taken the records in his residence.

This case was adjourned for 26.03.2019 vide order dated 14.03.2019 for bringing the records relating to the rest two persons to examine the claim of the petitioner of identity of charge, but even after grant of adjournment, the petitioner failed to produce their charge sheet to examine as to whether they were served identically charge sheeted, whereas the Bank in its counter affidavit in paragraph 38 has taken a plea that the charges made against the petitioner *vis-a-vis* the two other persons were/are not the identical, they are at variance, so he cannot claim the parity in treatment. In such circumstances, this Court is not in a position to adjudicate about the identity of the charges between the petitioner and the rest two persons. The charges, which have been found to be proved, are very serious in nature that itself shows the manner he had discharged his duty.

In the present case, only two procedural irregularities have been pointed out by the petitioner, of clubbing together of the two proceedings as well as he was not served the show cause on the quantum of punishment.

In the judicial review, this Court would not act as a Court of Appeal and will not re-appreciate the materials which have already been examined by the Disciplinary Authority or the Appellate Authority. This Court has to see the decision making process not the decision and it has to be examined whether the petitioner was given fair opportunity to defend himself in the departmental proceeding and whether the materials available on record indicating the proof of the charges. Reliance can be placed on the decisions rendered in the cases of ***Regional Manager, U.P. SRTC, Etawah and Ors. Vs. Hoti Lal & Anr. reported in 2003 SC 1462***, ***State Bank of India and Ors. Vs. Narendra Kumar Pandey reported in 2013 (2) SC 740***, ***State Bank of India and Ors. Vs. Ramesh Dinkar Punde reported in 2006 (7) SCC 212 and Union of India & Ors. Vs. P. Gunasekaran reported in (2015) 2 SCC 610***. In all the decisions, the Hon'ble Supreme Court has decided the scope of a judicial review in what circumstances, the Court can interfere with the order under judicial review and specifically held that if no illegality has been committed in the decision making process and the person has been given fair opportunity to defend himself, in such circumstances, normally the Court should not interfere with the order under judicial review unless the findings are so perverse and the order of punishment is so outrageous defiance of logic. Reliance can also be placed on the decision of the Hon'ble Supreme Court in the case of ***B.C. Chaturvedi Vs. Union of India and Ors. Reported in AIR 1996 SC 484*** wherein the Hon'ble Supreme Court has delineated the parameters of judicial review.

From the records, it appears that the charges are very serious in nature which have been found to be proved against the petitioner which has been approved by the Appellate Authority. So, this Court is of the view that the punishment which has been awarded to the petitioner is not so outrageous defiance of logic. Hence, this Court does not find any merit in the present writ application and, accordingly, the same is dismissed.

(Shivaji Pandey, J)

V.K.Pandey/
S. Katyayan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	16.04.2019
Transmission Date	N.A.