

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5874 of 2011

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Bibeka Nand Thakur, son of Parma Nand Thakur, resident of Radha Rani Sinha Road, Rodda Colony, Adampur, Bhagalpur, P.S.- Adampur, Town and District- Bhagalpur.

... .. Petitioner

Versus

1. The UCO Bank, through its Chairman and Managing Director, having its Head office at – 10, B.T.M. Sarani, Kolkata – 700 001.
2. The Assistant General Manager-cum-the Appellate Authority, UCO Bank, Zonal Office, S.K. Tarafdar Road, Adampur, Bhagalpur namely, Amit Mitra.
3. The Chief Officer-cum- the Disciplinary Authority, UCO Bank, Zonal Office, S.K. Tarafdar Road, Adampur, Bhagalpur namely Mr. A.K. Verma.
4. The Enquiry Officer namely Dr. P.K. Mishra, the then Senior Manager, UCO Bank, Baunsi Branch, District- Banka.
5. Mr. Indrajeet Narayan Singh, the then Branch Manager, Birbanna Branch, now at Zonal Office of UCO Bank, Bhagalpur.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Purushottam Kumar Jha, Advocate
For the Respondent/s : Mr. Ranjeet Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 27-03-2019

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

2. Before going to the merit of the case, it has to be recorded that after substantial argument from both the sides, learned counsel for the petitioner has made a prayer for withdrawal of the case with a liberty to move before the Industrial Tribunal under the Industrial Tribunal Act, which was objected by learned counsel for the Bank having submitted that when the observation was going against the petitioner, then



learned counsel for the petitioner made a prayer for withdrawal of the case.

3. As the matter of fact both sides have argued in detail, it will not be prudent for this Court to allow the petitioner to withdraw this petition with a liberty to move before the Industrial Tribunal. Hence, this Court is going to decide the case on merit.

4. In the present case, the petitioner is challenging the order dated 30.03.2010 (Annexure-23) passed by the Chief Officer-cum- Disciplinary Authority, UCO Bank, whereby and where-under the petitioner has compulsorily been retired with superannuation benefits i.e. pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules and Regulations prevailing at the relevant time and without disqualification from future employment. Against the aforesaid order, the petitioner filed an appeal before the Assistant General Manager-cum- Appellate Authority, UCO Bank, who passed the order dated 03.01.2011 (Annexure-29), whereby and whereunder the Appellate Authority rejected the appeal of the petitioner.

5. The petitioner was initially appointed as Peon,



promoted to the post of clerk and at the relevant time the petitioner was holding the post of Head Cashier, Birbanna Brahmpur Branch situated in the district of Bhagalpur. While the petitioner was working as Head Cashier, a complaint was made against him by the Branch Manager that on 09.03.2009, making allegation that he had approached the Branch Manager in the afternoon for leave. As two Cashiers -cum- Clerks were already on leave the Branch Manager refused to grant the leave, whereupon, the petitioner lost his temper, cried in a higher pitch, started abusing in filthy language using derogatory words “तेरी माँ को चोदो, तेरी बहन को चोदो”. When the incident was happening, Sri Dayanand Poddar and Sri Kailash Mehtar were present.

6. The Branch Manager informed this incident to the Chief Officer-cum-Disciplinary Authority, who addressed a letter to the present petitioner dated 30.06.2009 giving description of the incident of using filthy language. Whereupon, the petitioner filed his reply dated 13.07.2009, wherein he has stated that all the allegations are false and fabricated. He further stated that Sri Indrajit Narayan Singh, the Branch Manager was involved in the financial irregularities and compelling the present petitioner to report him in wrong doing, which he refused to do so and on that account, this allegation, in



connivance, has been made against him.

7. The Disciplinary Authority was not satisfied with the explanation, a formal charge-sheet dated 16.09.2009 was issued, whereafter the petitioner again submitted reply dated 03.10.2009, in which he reiterated that he has wrongly been framed in this case as the Branch Manager was demanding Rs.25,000/- for passing the bill of T.A. and D.A. which he was entitled for discharging the duty at Bajani branch of the Bank, but he refused to pay the same and on that account he has falsely been implicated in this case. This time the petitioner has given additional ground of demand of Rs.25,000/-, earlier it was not there. The explanation of the petitioner did not satisfy the Disciplinary Authority and he was asked to face the departmental proceeding. Dr. Prabhat Kumar Mishra was appointed as Inquiry Officer and Sri Santosh Kumar Mishra was appointed as Presetting Officer. The petitioner participated in the inquiry proceeding and made a prayer for appointment of defence representative, namely, N.M. Choudhary, Organizing Secretary of INTU, on objection of the Presenting Officer the prayer of the petitioner was rejected. Again the petitioner has made a prayer for appointment of Raj Kumar Jha, staff member of the Punjab National Bank to be the defence representative,



but was also not allowed to defend the present petitioner. Whereafter, again the petitioner made a prayer for allowing Sri Omkar Prasad Singh, advocate, as defence representative, but again the Disciplinary Authority rejected the prayer of the petitioner and thereafter the petitioner decided to defend his case himself. Record discloses that the petitioner did fully participate in the inquiry proceeding as he has cross-examined the witnesses by putting number of questions. During the inquiry, the petitioner has taken plea of *alibi* that at the time of incident he was not there as has wrongly been framed in the present case and has not misbehaved and used filthy language against the Branch Manager. Supporting witnesses were also examined and cross-examined by the petitioner and the record attached by the present petitioner itself discloses that large number of questions were put by the petitioner to three witnesses, who were examined in support of the prosecution.

8. Thereafter, the Inquiry Officer submitted the inquiry report, recording a finding that the charges were found proved against the petitioner, having recorded that the petitioner has misbehaved with his Branch Manager and used filthy language against him. Copy of the Inquiry Report was served upon the petitioner, which he replied, making a plea that he has



been framed in the present case on account of personal grudge of the Chief Officer. The Disciplinary Authority after considering the reply of the petitioner, pass the order against him. The Appellate Authority also did not interfere with the order of the Disciplinary Authority.

9. Learned counsel for the petitioner submits that the petitioner has been proceeded departmentally on account of personal grudge of the Branch Manager as well as the Chief Officer-cum- Disciplinary Authority as the Branch Manager himself was involved in the financial irregularities and the petitioner had made a complaint to the higher authorities about the manner of working in the Branch. It has further been submitted by learned counsel for the petitioner that the petitioner is a victim of the act of the Disciplinary Authority as at the time of incident the petitioner was not present there. At the same time, there are discrepancies between the statement of the witnesses, who have been examined in support of the prosecution.

10. Whereas, learned counsel for the Bank has submitted that the petitioner was given full opportunity to participate in the proceeding and there is no irregularity committed in the decision making process. He further submits



that the charges are so serious in nature, no normal person can use such type of words against his senior, on that account he has been proceeded departmentally. He next submits that after receipt of the inquiry report the petitioner was given personal hearing by the Disciplinary Authority as well as by the Appellate Authority and thereafter orders have been passed.

11. In the judicial review 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. 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. Reliance can be placed on the decisions rendered in the case of *the Administrator, Union Territory of Dadra & Nagar Haveli vs. Gulabhia M. Lad* reported in 2010(5) SCC 775; *Union of India and Ors. v. Manab Kumar Guha* reported in (2011) 11 SCC 535 and *Union of India and others vs. P. Gunasekaran* reported in 2015 (2) SCC 610. In all the decisions the Hon'ble Supreme Court has decided the scope of judicial review in what circumstances the Court would interfere with the order under



judicial review and specifically held that if there is no illegality committed in the decision making process and the person has been given fair opportunity to defend himself, in such circumstance, normally the Court should not interfere while exercising the power under judicial review unless the findings are so perverse and the order of punishment is so outrageous defiance of logic. Reliance can also be place on the decision of the Hon'ble Supreme Court in the case *B.C. Chaturvedi vs Union Of India And Ors* reported in *AIR 1996 SC 484*, wherein the Hon'ble Supreme Court has delineated the parameter of Judicial review.

12. From the record, it appears that the petitioner has used very filthy language against the Branch Manager and this Court is of the view 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 this writ petition, accordingly, the same is dismissed.

(Shivaji Pandey, J)

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