

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13719 of 2006

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Harish Chandra Das son of Late Dwarika Das resident of vilage Sukhrauli
P.S. Piro District Bhojpur

... .. Petitioner/s

Versus

1. The General Manager (PRS), Central Bank of India, Chandermukhi,
Narain Point, Mumbai
2. The Deputy Genral Manager, Central Bank of India, Club Road,
Muzaffarpur
3. The Zonal Manager, Central Bank of India, Panipuri Bihar, National
Highway, Gobarshahi Chowk, Muzaffarpur
4. The Senior Manager, Central Bank of India, Juran Chapra Branch,
Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.T.N. Matin, Sr. Advocate Mr. Kumar Madhurendra, Advocate
For the Respondent/s	:	Mr.

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 15-11-2019

Writ petition has been filed seeking quashing of order dated 06.04.2004 whereby petitioner has been removed from service. The order dated 13.03.2006 passed by the appellate authority affirming punishment is also impugned in the instant proceedings.

Petitioner at the relevant time was posted as Branch Manager in the respondents-Bank, Rustumpur Branch. He was proceeded against for six charges by charge memo dated 20.11.2003. The same are being re-produced.



1. *He financed 32 loan a/cs under SCDC without observing the system and procedure of such loan.*

2. *He financed 135 loan a/c's under SGSY without observing the system and procedure of such loans.*

3. *He financed 6 PMRY loan a/c's without observing the system and procedure of such loan.*

4. *He financed 4 tractor loan a/c's without observing the system and procedure of such loan.*

In all the above cases he made the loan without observing lending nor norms haphazardly and thus has abused his official position.

5. *He abused his official position by indulging himself in pecuniary gains by less disbursement of loan to the borrowers by taking their thumb impressions on higher amount. Such act has also been accepted by him. Due to his such act the loanees have filed an FIR with Police Station against him and also made the complaint with the Regional Office, Muzaffarpur.*

His such act with malafide intention has tarnished the image of the bank.

6. *He was present in the office on 22.10.2001 but with ulterior motives by abusing his official position, he cut/erased his initials from the office record showing that day his leave”.*

Finding of the Enquiry Officer was subsequently considered by the Disciplinary Authority and order of punishment dated 06.04.2004 has been issued removing the petitioner from service. The Disciplinary Authority has awarded specific punishment in respect of all six charges. The charge-wise penalty imposed against the petitioner is as follows:-



“Charge No.1: Reduction of pay by six stages in time scale of pay with cumulative effect for three years under Regulation 4 (f) of CBIOE(D&A) Regulation, 1976.

Charge No.2: Removal from service which shall not be a disqualification for future employment under Regulation 4 (i) of CBIOE(D&A) Regulation, 1976.

Charge No.3: Reduction of pay by six stages in time scale of pay with cumulative effect for three years under Regulation 4 (f) of CBIOE(D&A) Regulation, 1976.

Charge No.4: Reduction of pay by six stages in time scale of pay with cumulative effect for three years under Regulation 4 (f) of CBIOE(D&A) Regulation, 1976.

Charge No.5: Removal from service which shall not be a disqualification for future employment under Regulation 4 (i) of CBIOE(D&A) Regulation, 1976.

Charge No.6: Reduction of pay by two stages in time scale of pay with cumulative effect for one year under Regulation 4 (f) of CBIOE(D&A) Regulation, 1976”.

Having concluded as above a consolidate penalty has been issued under Regulation 4 (i) of Central Bank of India, Officers Employees (D&A) Regulation, 1976 and the petitioner has been removed from service. The same has been held not to be a disqualification for future employment. Petitioner has thereafter gone in appeal. The order of the appellate authority is dated 13.03.2006.

Learned Senior Counsel for the petitioner submits that appellate authority has taken note of the grave infirmity in the



manner in which charge has been held to be proved. However, having done so, he has not interfered with the punishment awarded by the Disciplinary Authority. Emphasis is made in respect of charge nos.2 and 5 of the charge memo.

Charge no.2 related to credit facility to a party under **Swarna Jayanti Gram Swarojgar Yojna (SGSY)** without observing the system and procedure of the Bank as given in the statement of imputation of misconduct.

While considering this charge, Disciplinary Authority had recorded an additional conclusion also to the effect that sanction in respect of 135 loan accounts was beyond target and without seeking approval from the regional office. Such a finding was recorded without there being any charge in this respect.

Referring to the decision of the apex court in the case of **M.V. Bijlani vs. Union of India and others reported in (2006) 5 SCC 88**, it is submitted that findings which are at variance with the charge and for which no enquiry was conducted cannot be sustained. Unless there is a specific charge and opportunity granted to the delinquent to specify his defence in respect thereof, no finding can be recorded. Submission to this extent weighed before the appellate authority in favour of the petitioner. The appellate authority has held as follows:-



“As regards, the matter regarding discussing the charge of allowing loan beyond target by Inquiring Authority, I agree with the contention of appellant, this charge was not incorporated, in the Charge Sheet and the same should not have been discussed by Inquiring Authority in his findings submitted to Disciplinary Authority from the orders of Disciplinary Authority, I find that he has not given any cognizance in this regard”.

Having done so, the appellate authority has not interfered with the extreme consequence of removal from service. Since extreme penalty was awarded by the Disciplinary Authority taking into consideration two allegations which were held to be proved against the petitioner in respect of charge no.2. The moment one of the allegations regarding sanction beyond target was gone, it was only natural that the appellate authority as a consequence, should have reconsidered quantum of punishment.

It is also submitted by learned senior counsel for the petitioner that charge was in respect of 135 loans. Conclusion that 135 loans were sanctioned by the petitioner without observing system and procedure of the Bank and on basis of blank document, have been held proved by producing documents in respect of two accounts out of 135, namely management exhibit 1 and management exhibit 2.

Management witness no.1 and management witness no.2 have supported the case on basis of only these two documents. The



evidence in support of charge no.2 has been taken note by the appellate authority as being on record and duly supported by the said two management witnesses at pages 10 and 21 of the enquiry proceedings. Annexure 20 at page 10 in the enquiry proceedings shows that evidence was brought in respect of sanction accorded in favour of Shyam Babu Rai. At page 21 the evidence has been produced in respect of sanction of loan to loanee namely, Ballam Thakur.

By producing evidence in respect of only these two loan accounts, the Disciplinary Authority's conclusion that the petitioner had committed irregularity in sanction of 135 accounts has been accepted by the appellate authority. The conclusion in respect of remaining 133 loan accounts is without any basis. In respect of remaining 133 accounts also some material was required to be produced by the bank in the enquiry.

This court is conscious of the fact that issue in hand is one arising out of departmental proceedings. Nonetheless by now it is axiomatic that conclusions, though on the standard of preponderance of probability, are required to be founded on some material. From the order of the Disciplinary Authority as well as Appellate Authority, it is apparent that while dealing with charge no.2 in respect of 135 accounts, evidence has been brought on



record only in respect of two loan accounts of Shyam Babu Rai and Ballam Thakur. Such finding of the Disciplinary Authority has been affirmed by the appellate authority, though appellate authority has recorded that evidence on record in the enquiry was only in respect of two loanees. Such a conclusion, in the opinion of this court is perverse.

The Appellate Authority has further gone to shift onus of disproving this allegation upon the petitioner by recording that he has not produced any evidence in support of his contention that only two cases were produced in support of said charge.

Once charge has been levelled in respect of 135 accounts, it was for the respondents-Bank to bring home the charges on basis of some material. The conclusion in respect of charge no.2 of the appellate authority is as follows:-

“While going through MEX-1, MEX-2(i.e. Loan A/c of Sri Shyam Babu Rai and Shri Ballam Thakur) it is observed that:-

The documents are blank and incomplete.

Health certificates not found with the respective loan files.

I further observe that in answer to question no.4 & 5 on page no. 10 and 21 of the enquiry proceedings, MW-1, MW-2 have also confirmed that the loan documents are blank and incomplete and health certificates not found with the respective files.



The appellant could not produce any evidence in support of his said contention as such, I do not agree with these averments of the appellant.”

Such findings of the appellate authority are legally unsustainable. Punishment awarded in respect of charge no.2 also is legally unsustainable.

In respect of charge no.5, learned senior counsel for the petitioner submits that same was arising out of an FIR bearing Raghapur P.S. case no. 38/2002. It is submitted by learned senior counsel for the petitioner that proceeding in respect of Raghapur P.S. case no. 38/2002 has been quashed by order dated 14.07.2010 passed by this court in Cr. Misc. no. 12586/2004.

Referring to the decision of the apex court in the case of **Capt. M.Paul Anthony vs. Bharat Gold Mines Ltd & ors reported in (1999) 3 SCC 679 and G. M.Tank vs. State of Gujrat & ors reported in (2006) 5 SCC 446**, it is submitted that when criminal prosecution forming the basis of charge no.5, itself has been quashed, authorities are required to reconsider the punishment awarded in respect of charge no.5. The said development however, has been placed on record in these proceedings on 10.09.2018. Authorities have yet not had an opportunity to reconsider punishment awarded in respect of charge



no.5 in the background of the order dated 14.07.2010 passed in Cr. Misc. no. 12586/2004.

In respect of punishment awarded for other charges, no submission has been advanced on behalf of the petitioner. Therefore, this court would not consider and examine the same.

It is only in respect of charge nos. 2 and 5 that punishment of removal has been awarded by the authority. Therefore, in light of conclusion recorded hereinabove, this court would consider it appropriate to remit the matter to the appellate authority for awarding a lesser punishment.

This court is remitting the matter for lesser punishment since extreme punishment of removal on account of findings of this court in respect of charge no.2 is not sustainable in the eye of law. This court has already held that there was no material in respect of charge no.2. Further extreme penalty was awarded in respect of charge no.5. On account of quashing of the criminal case forming the basis of charge no.5, and conclusion in respect thereof, said punishment also requires a re-look having regard to the judgment of apex court in the case of **Capt. M.Paul Anthony and G. M.Tank (Supra)**.

The appellate authority, after considering the matter, should award a lesser punishment having regard to the aforesaid



conclusion and communicate its final decision to the petitioner within a period of three months from the date of receipt/production of a copy of this order.

Writ petition stands allowed to the extent indicated hereinabove.

(Madhuresh Prasad, J)

s.hassan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.02.2020
Transmission Date	NA

