IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8254 of 2014

Raj Kishore Chaudhary Son of Sri Deo Narayan Chaudhary Resident of Mohalla- Kolhuwarawa, Ward no. 2, Gali No. 3, P.O- Motihari, Police Station- Motihari (Town), District- East Champaran (Motihari)

... ... Petitioner

Versus

1. The Chairman Uttar Bihar Gramin Bank, Muzaffarpur.
2. The General Manager, Uttar Bihar Gramin Bank, Muzaffarpur.
3. The Regional Manager, Uttar Bihar Gramin Bank, East Champaran, (Motihari) **... Respondents**

Appearance :

For the Petitioner	:	Mr. Bindhyachal Singh, Advocate
		Mr. Ram Binod Singh, Advocate
For the Bank	:	Mr. Prabhakar Jha, Advocate
		Mr. Shankar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date : 04-01-2019

Heard learned counsel for the petitioner as well as learned counsel for the Bank.

2. The writ petition has been filed for quashing of the enquiry report dated 19.7.2013 communicated to the petitioner under letter dated 19.8.2013 bearing no. HO/DAD/06/13-14/No.389. The enquiry report has found the petitioner guilty of three out of four charges levelled against him in the charge memo dated 13.4.2011.

3. In the charge memo there were four charges:-

> Charge no.1 was that the petitioner in connivance with Md. Jamaluddin, Office Assistant, with *mala fide* intention, got Rs. 2668.50 deposited from loanee Godawari Devi on 26.4.2010 in Kishan

Credit Card (KCC) Account no. 245. It is alleged that at the time the deposit was made already the account was having a credit balance of Rs10129.50. It it thereafter alleged that the No Dues Certificate was issued in favour of Godawari Devi on 27.4.2010, however her loan account was not closed on 27.4.2010.

Charge no.2 was that one Raj Kumar Jha s/o Upendra Jha complained that the KCC loan Account No.815 has fraudulently been disbursed in his name by the chargesheeted officer (the petitioner) and that the loan amount has been embezzled by him.

Charge no.3 was a similar complaint made by another KCC loanee Upendra Jha.

Charge no.4 is the charge that the petitioner is indulged in corrupt practices by accepting illegal gratification in sanctioning and disbursement of KCC loan from the beneficiaries. In this case, he is alleged to have connived with a bank assistant.

4. The petitioner pursuant to the charge memo submitted his reply. Same is Annexure 2. He has denied and falsified all the allegations levelled against him. After submission of petitioner’s response Enquiry Officer has conducted the proceedings and enquiry report dated 19.7.2014 has been submitted whereby charge nos. 1, 2 and 4 have been found true.

5. Charge no. 3, i.e., alleging fraudulent disbursement of loan amount in the name of one Sri Upendra Jha has been found not true. The Enquiry Officer has found the said charge not proved as the allegationist Sri Upendra Jha was not produced nor any complaint of said Upendra Jha was produced in the course of enquiry. As such, it was held that the management representative failed to substantiate charge no.3.

6. In respect of charge no.1, the petitioner has submitted his response stating that the pre-existing credit balance in the loan account of Godawari Devi was the amount deposited by the Insurance Company and that since Godawari Devi was willing to deposit the amount outstanding in her loan account under *bona fide* intention he got the amount deposited so that the amount deposited by the Insurance Company in her loan account could be returned to the Insurance Company. He has submitted that the Kishan Credit Card (KCC) Account no. 245 of Godavari Devi was not closed as the petitioner was awaiting for specific instruction from the Regional office or the Head office for respective adjustment entries, in respect of amounts deposited by Insurance Company.

7. In respect of charge no.2, the petitioner has pleaded before the Enquiry Officer in the course of the proceedings that the allegationist Raj Kumar Jha was already having a Housing Savings Account (HSS) No. 5277 along with his photo identity card and Signature card in the Raghunathpur branch of the Bank. He has also pleaded before the Enquiry Officer that the allegation of Raj Kumar Jha regarding photograph of Prakash Jha (his brother) having been used for fraudulent disbursement of loan has not been verified as the document of MSTP Loan Account No. 213 and KCC Account No. 245 in the name of his brother was available with the branch. In respect of such evidence being available in the branch which clearly could have establish whether or not the photograph on the KCC loan Account No. 815 was that of Raj Kumar Jha. However, the Enquiry Officer has not bothered to examine or verify the same.

8. Other than the self serving allegation of Raj Kumar Jha and his denial of having availed the facility of KCC loan outstanding in his name, there is nothing on record on basis of which charge no.2 has been held to be proved by the Enquiry Officer. Charge no.2 has thus been held to be proved without any evidence whatsoever in support of the conclusion. It has also been held to be proved without taking into consideration the relevant material which was available in the records of the bank such as the documents including the signature card available in other loan account of the allegationist Raj Kumar Jha, namely his HSS Account No. 5277 in the same branch. The documents of MSTP Account No. 213 and KCC Account No. 245 of his brother Prakash Jha has also not been considered by the Enquiry Officer before arriving at the conclusion that charge no.2 was proved. These facts are also evident from the original records of the proceedings which have been produced by learned counsel appearing for the bank.

9. In respect of charge no.4, findings of the Enquiry Officer are glaring example of total abdication of duty by the Enquiry Officer in discharging his quashi- judicial adjudicatory functions while dealing with such vital rights regarding entitlement of the petitioner to continue in service or before inflicting such severe punishment of dismissal from service.

10. Charge no.4, as has been indicated above, is a general allegation of indulging in corrupt activities and of accepting illegal gratification from the loan applicants and their beneficiaries. The enquiry report which has been submitted in respect of such charge has held the petitioner to be guilty of the said allegation. The findings however are not based on any evidence whatsoever. The Management Representative, in order to prove this general allegation, has produced altogether 17 exhibits. These exhibits are papers in relation to the records of various loan accounts of the KCC loanees and some complaints made by them. One auditor who received the complaints has also been examined, none of the complainants have been produced or examined in course of enquiry. Whether the complaints were actually made or whether the allegations were supported by the complainants has not even been looked into by the Enquiry Officer. On the contrary, this Court would find from perusal of the enquiry report that affidavits have been produced by altogether 5 alleged complainants wherein they have in fact denied the allegations/complaints made by them. In support of such denial one of the complainants was produced in the proceedings. Thus there was no evidence whatsoever in support of the allegations made by various complainants as well as charge no.4 being based on such complaints.

11. One defence witness who has appeared to deny the complaint filed by him has also been disbelieved merely on surmises. The Enquiry Officer has presumed that his denial is not genuine because he was not stable in answering the question put before him by the Management Representative. The management has failed to produce any evidence in support of charge no.4 also. Other than alleged weakness of defence has made basis of holding charge no.2 to be proved.

12. It is trite law that weakness of the defence cannot be made ground to hold a delinquent guilty as it is for the department to bring home the charges on basis of documentary as well as oral witness. This Court would find in respect of charge nos. 2 and 4 that there is no evidence available on the record to substantiate the findings of the charges being proved.

13. Since charge nos. 2 and 4 are unsustainable and charge no.3 has been found not proved the only charge which if at all remains is charge no.1 regarding non-closure of the account of KCC loanee Godavari Devi. In respect of this allegation, it is submitted by Mr. Singh, learned counsel appearing for the petitioner that no allegation of personal gain has been attributed against the petitioner in the said charge and at best it is a negligence or lapse which the chargesheeted officer has sought to substantiate by taking a plea that he was waiting for instruction from the Regional Office/Head Office.

14. Such submission is seriously disputed by learned counsel appearing for the Bank. It is submitted by him that non-closure of the loan account of Godavari Devi in spite of the fact that the amount of Rs.2668.50 has already been deposited by her has occasioned a loss to bank.

15. This Court would refrain from going into the said lapse, whether the same would constitute misconduct/charge or should be considered to be, at best negligence or failure in discharging duty. This aspect of the matter has to be examined by the respondent bank itself, in view of the nature of order being passed in the proceedings.

16. Since there is no evidence on record in respect of charge no. 2 & 4 as held herein above, conclusions in the enquiry report in respect of said charges is unsustainable in law. Order of punishment dated 19.10.2013, issued by the Disciplinary Authority inflicting punishment of “removal from service which shall not be a disqualification for future employment in terms of Regulation 39(1)(b)(iv) of Uttar Bihar Gramin Bank (Officers & Employees) Service Regulation, 2010”, is therefore quashed as the same is founded on the illegal enquiry report. As a result of quashing of the order of punishment subsequent order of the Appellate Authority is also unsustainable. The petitioner therefore would be entitled to reinstatement with all consequential benefits.

17. This Court however would leave to open to the authorities to proceed against the petitioner from the stage after submission of charge memo dated 13.4.2011 in accordance with law.

18. It would also be open to the respondents to take a decision whether they would consider allegations made in charge no.4 to constitute any misconduct and take steps accordingly.

19. The writ petition is allowed in the terms indicated above.

(Madhuresh Prasad, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	NA
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