IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11166 of 2014

Kari Chandra Paswan S/o Late Makhsudan Paswan Resident of Dekuli, Post Kapachhahi, P.S- Bahadurpur, District- Darbhanga.

... ... Petitioner

Versus

1. The Chairman Uttar Bihar Gramin Bank, Kalambagh Chowk, Muzaffarpur.
2. The General Manager, Uttar Bihar Gramin Bank, Kalambagh Chowk, Muzaffarpur.
3. The Chief Manager, Uttar Bihar Gramin Bank, Kalambagh Chowk, Muzaffarpur.
4. The Regional Manager, Regional Office, Uttar Bihar Gramin Bank, Darbhanga cum Inquiry Officer, Muzaffarpur.
5. The Sr. Manager (Estb.) H.O, Uttar Bihar Gramin Bank, Kalambagh Chowk, Muzaffarpur.
6. The Branch Manager Uttar Bihar Gramin Bank Bauram Branch, District- Darbhanga.

... ... Respondents

Appearance :

For the Petitioner : Mr.Amarendra Narayan
Mr. Deepak Kumar

For the Respondent Bank: Mr.Prabhakar Jha
Mr. Shankar Thakur

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 04-01-2019

Heard learned Counsel for the petitioner as well as Mr. Jha appearing for the respondent Bank.

2. The petitioner is aggrieved by he punishment awarded to him by the Disciplinary Authority under communication dated 13.4.2012, whereby and whereunder he has been dismissed from the services of the Bank in terms of Regulation 39(2)(B)(vi) of Uttar Bihar Gramin Bank Officers and Employees (Service Regulation) 2010. It has also been directed that the petitioner shall not be paid anything other than subsistence allowance for the period of suspension.

3. The petitioner has been proceeded against by Memo dated 14.5.2010. The same contains charges in Annexure 1 thereto alleging misconduct within the meaning of Regulation Nos. 17 and 19 of the Bank attracting penalty under Regulation 39.

4. Submission of the Counsel for the petitioner is that charge memo does not contain the article of imputation of misconduct and that the same does not disclose any definite charge. In order to properly appreciate the said submission this Court would reproduce extract of the allegations/charges in the charge memo, which are all identical:

Charge No. : 01: Sri Paswan in connivance with his Branch Manager Sri Bharat Kumar Choudhary made fraudulent payment in different HSS & KCC a/cs by entering the amount in Cash Payment Register/Supplementary Register without posting the amount in concerned ledgers. For example:

Date	A/c No	Amount	Date	A/c No	Amount
27.01.2009	HSS 2521	12000	18.10.2007	KCC 102	260000
12.02.2008	HSS 2830	10000	15.02.2008	KCC 102	100000
18.10.2008	HSS 3573	120000	04.01.2008	KCC 102	350000

Charge No. : 02: Sri Paswan in connivance with his Branch Manager Sri Bharat Kumar Choudhary made fraudulent payment in KCC & HSS a/cs without withdrawal/cheque. For example:

Date	A/c No	Amount	Date	A/c No	Amount
11.12.2007	KCC 155	28000	04.02.2009	HSS 3368	200000

Charge No. : 03: Sri Paswan in connivance with his Branch Manager Sri Bharat Kumar Choudhary made credit entries in different HSS a/cs in the ledger but did not account for the amount in Bank's cash. For example:

Date	A/c No	Amount	Date	A/c No	Amount
07.01.2009	HSS 2558	63000	05.07.2008	HSS 2566	48000
24.10.2008	HSS 2585	15000	15.11.2008	HSS 2598	36000
12.05.2007	HSS 2565	50000	16.06.2008	HSS 1682	100000

Charge No. : 04: Sri Paswan in connivance with his Branch Manager Sri Bharat Kumar Choudhary made payment in different HSS a/cs without sufficient balance and thus created overdraft in all such accounts. For example:

Date	A/c No	Amount	Date	A/c No	Amount
12.02.2008	HSS 2115	6160	21.06.2008	HSS 468	24000
21.06.2008	HSS 469	24000	16.07.2008	HSS 3130	11500
12.07.2008	HSS 675	24000	17.09.2008	HSS 3210	6400

Charge No. : 05: Sri Paswan in connivance with his Branch Manager Sri Bharat Kumar Choudhary has defrauded the Bank by withdrawing amount from different HSS and KCC a/cs by forged signature. For example:

Date	A/c No	Amount	Date	A/c No	Amount
31.05.2007	HSS 193	25000	31.05.2007	HSS 196	25000
19.08.2008	HSS 1382	151000	28.08.2008	HSS 3267	4800
12.04.2007	KCC 158	59000	18.10.2007	KCC 169	35000

The article of charges (Annexure 1) to the charge memo are five in number. Bare perusal of the article of charges shows that the charges are by way of example. There is no definite charge with details as to what is the misconduct alleged against the petitioner. Apart from that it is also submitted by Counsel for the petitioner that perusal of the articles of charges would reveal that the same does not contain any list of evidence, either oral or documentary, on which the charges were sought to be established.

5. Referring to the said lapse in the procedure adopted by the Bank in the proceedings conducted against the petitioner, it is submitted that non supply of clear and specific charges, or any evidence has caused grave prejudice to the petitioner. The submission is that when definite charges have not been communicated and the charges have been communicated by way of example, and that too without referring to any evidence oral or documentary, the petitioner is prevented from making any response to the allegations. The charge memo, as framed against the petitioner, does not sub serve the principles of *natural justice* and cannot be made the basis of a departmental enquiry leading to the severe consequence of dismissal from service of the Bank.

6. Counsel for the petitioner in the circumstances and in support of the aforesaid submission has rightly placed reliance upon the judgment in the case of ***Surat Chandra Chakraborty Vs. State of West Bengal*** reported in ***AIR 1971 SC 752***. Relying upon the decision of the Hon'ble Apex Court it is submitted that the charges must be accompanied by definite statement of allegation. Learned Counsel has also relied upon a judgment of the Apex Court in the case of ***Transport***

Commissioner, Madrass vs. A. Radha Krishna Moorthy reported in ***(1995) 1 SCC 332***.

7. Counsel for the petitioner has also submitted that in spite of his specific request dated 09.06.2010 for being allowed an opportunity to examine the Bank's documents before filing his response to the charge-sheet, he has not been allowed opportunity to inspect any document in the Bank. It is submitted that since the very initiation of the proceeding is by a charge memo, which is not in accordance with law, then the further consequential action are unsustainable in the eye of law and cannot be made basis of visiting the petitioner with such penal consequence. Non supply of charges strike at the root of the matter. Such a lapse takes away the very foundation of the proceedings

8. Counsel for the Bank, Mr. Jha, has submitted that that charges against the petitioner are very serious in nature. He submits that from the enquiry report it is evident that all together 45 management exhibits have been produced in the proceedings and one management witness, namely P.N.S.Chauhan, one of the Auditor who investigated the matter, has been produced as management witness. He submits that the proceeding has been conducted after giving due opportunity to the petitioner and, as such, there is no infirmity warranting any interference by this Court. He has also submitted that the standard of care & precaution and diligence required from an employee of the Bank, such as the instant petitioner, is very high. Any deviation of such standard by a bank employee should be dealt with strictly and action is required to

be taken against such person. It is also submitted that the petitioner has participated in the proceedings without raising any objection regarding non supply of documents and that the same has not been raised by him even before the Appellate Authority while filing his appeal.

9. On going through the records of the proceedings this Court would find that the charge memo, which has been issued against the petitioner, does not disclose any specific charge whatsoever. Charges have been communicated by way of example. Details of imputation and misconduct are not to be found in the charge memo or article of charges (Annexure 2). Apart from that, no details have been communicated to the petitioner of the evidence, oral or documentary, proposed to be relied upon by the respondent Bank to sustain the charges in the proceeding. Such vital lapse, at the stage of very initiation of the proceeding, itself would vitiate the entire outcome of the proceeding itself. The submission of the Counsel for the Bank that the petitioner has never objected to such lapse, cannot enure to the benefit of the Bank.

10. It is trite law that in a proceeding where charges are levelled, the same are required to be specific so as to afford adequate opportunity to the delinquent. Supply of charges by way of example, as has been done in the instant case cannot subserve the principles of natural justice. Unless a delinquent knows what the charges are, he is not in a position to respond to the same. Where the charge memo does not disclose any definite charge and allegations has

been communicated by way of example, as has been done here, it cannot be said that delinquent has been provided any opportunity to respond.

11. Charges may be serious, nonetheless have to be sustained by some evidence in the proceeding and in compliance with the prescribed procedure observing the principles of natural justice.

12. In the instant case, no evidence whatsoever has been communicated to the petitioner in support of the allegations. The fact that he has not objected to the same, cannot justify the findings arrived at by the Enquiry Officer. Even if the delinquent chose not to respond to the charge memo, charges have to be brought home by the employer on the basis of some document or oral evidence on record of the proceedings to sustain the charges.

13. When no clear and specific charge has been communicated and when no list/details of evidence communicated to the petitioner, it is impossible for the Enquiry Officer also to know which charge is to be considered. In the circumstance even the department is not aware of what charges are to be established, and on what basis.

14. In such circumstance the department/authority would have unbridled and unfettered discretion to hold the petitioner guilty of whatever charge he may desire as long as it is of the same nature as has been communicated by way of example/illustration, which would only lead to an arbitrary decision.

15. Forty-five management exhibits, have been mentioned in the enquiry report and evidence of one Sri P.N.S.Chouhan, one of the

Auditor, have no bearing to the charges made against the petitioner. The list of 45 management exhibits have merely been recorded in the enquiry report as a list of exhibits. Which document has been proved by which witness? How the same are connected with the charge? Has not been dealt with by the Enquiry Officer. The list of the management exhibits have been noted and in the very next paragraph after every charge it has been stated that the defence representative did not produce any exhibits to counter the charges.

16. Failure of the delinquent to counter the charges has thus been made the basis for holding the charges proved. Findings of the Enquiry Officer thus suffer from a fatal flaw. None of the charges have been held proved on basis of any evidence. It is trite law that it is for the department/person alleging, to bring home the charge with reference to some evidence on record in support thereof. Onus cannot be shifted on the delinquent to produce evidence in support of his innocence. This Court would refer to a decision of the Apex Court in the case of A Savariar Vs Secretary, Tamil Nadu Public Service Commission and anr. reported in 20013 Lab IC 1680, relevant portion is being quoted, which is as follows:-

> *15. On behalf of the Commission oral evidence is said to have been adduced to substantiate the allegations leveled against the appellant but neither the report of the Enquiry Officer nor the orders passed by the Controller of Examinations or the Chairman of the Commission make a mention of that evidence and none of them relied upon the same for recording a finding that the*

> *appellant had arrogated to himself the powers of his superiors and unauthorisedly appointed Invigilators. As a matter of fact, Enquiry Officer simply referred to the statement of the appellant, analysed the same and concluded that Charges No. 1, 2, 4 and 6 have been proved against him. It is thus evident that the inquiry report was not prepared in consonance with Rule 17(b)(i) of the Rules.*
>
> *16. xxxxxxxx xxxxxxxxxx xxxxxx*
>
> *17. The learned Single Judge and the Division Bench of the High Court failed to notice the aforesaid fatal flaw in the orders passed by the Controller of Examinations and the Chairman and decided the matter by assuming that even though the Commission had not adduced any tangible evidence to prove the charges against the appellant, the same stood proved because of the weakness of his defence.*
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> *18. In Delhi Cloth and General Mills Company v. Ludh Budh Singh (1972) 1 SCC 595, this Court held that it is the primary duty of the person making the allegations to establish the same by producing evidence and not for the delinquent to produce negative evidence to prove his innocence.*

17. Copies of even the 45 management exhibits which have been referred to in the enquiry report, have not been served on the petitioner. Stand has been taken in para 6 of the counter affidavit, where the Bank has made averment that 45 management exhibits and one witness were produced in the proceedings to prove the charges. However, there is no assertion that the documents were ever made

available to the petitioner before reliance was placed on the same in the proceeding.

18. In absence of definite allegation, as in the instant case, this Court would conclude that the petitioner was denied any opportunity of defending himself by reason of the charges being altogether vague and indefinite/ by way of examples.

19. For all reasons indicated hereinabove, this Court is of the opinion that procedure adopted by the authorities conducting the proceedings against the petitioner is grossly unfair and in violation of principles of natural justice.

20. In the result, the writ petition is allowed. The order of the Disciplinary Authority dated 13.4.2012 (Annexure 7) is quashed. The petitioner would be entitled to reinstatement with all consequential benefits. The order, however, would not preclude the respondents from proceeding against the petitioner after communicating charge memo afresh disclosing definite imputations of misconduct and articles of charges and list of oral/documentary evidence in accordance with law.

(Madhuresh Prasad, J.)

SNkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
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