IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4253 of 2015

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Shivdhyan Chaudhary Son of Late Moti Choudhary, R/o- Mohalla Nasriganj, Ramjaypal Nagar Colony, P.S. Danapur, in the district of Patna

... ... Petitioner

Versus

1. The Chairman, Madhya Bihar Gramin Bank, Meena Plaza, South of Museum, Patna.
2. The General Manager, Madhya Bihar Gramin Bank, Meena Plaza, South of Museum, Patna.
3. The Senior Manager, Madhya Bihar Gramin Bank, Head Office, Meena Plaza, South of Museum, Patna.
4. Regional Manager, Madhya Bihar Gramin Bank, Head Office, Bhabhua.
5. Sri Awadh Singh, Enquiry Officer, Senior Manager, Regular Inspection Department, Head Office, Patna

... ... Respondents

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Appearance :

For the Petitioner	:	Mr.Brajkishore Singh, Advocate Mr. Kishore Kumar Thakur, Advocate
For the Bank	:	Mr.Mahesh Narayan Parbat, Advocate Mr. Ved Prakash Srivastava, Advocate Mr. Sanjay Kumar Jha, Advocate Mr. Bhanu Prakash, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date : 29-03-2019

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

The petitioner is aggrieved by the order of punishment dated 31.10.2012 dismissing him from his service as cashier in the respondent bank. He has also assailed order dated 20.9.2014 of the Appellate Authority rejecting petitioner's appeal against order of punishment.

Charge memo dated 16.3.2011 and corrigendum thereto was served on the petitioner on 21.10.2011. Substance of the charges was that the petitioner passed/approved payments from accounts in which fictitious transactions had earlier been made. It is also alleged that petitioner made actual payment from the said accounts in which fictitious transfers had been made. The petitioner submitted his response to the show cause.

The Enquiry Officer has thereafter proceeded in the matter and submitted his enquiry report dated 17.3.2012. All the charges levelled against the petitioner has been held to be proved and enquiry report submitted to the Disciplinary Authority. The proceedings of the enquiry and report of the Enquiry Officer are Annexures 6 and 8 to the writ petition. The same are dated 17.3.2012 and 15.5.2012 respectively. The Disciplinary Authority thereafter admittedly communicated a copy of the enquiry report and gave a second show cause notice to the petitioner agreeing with the findings of the Enquiry Officer. Petitioner submitted his response to the second show cause by Annexure 9 dated 21.6.2012. Order of the Disciplinary Authority thereafter is Annexure 10 dated 31.10.2012. The Disciplinary Authority has awarded the petitioner punishment of dismissal concurring with the findings of the Enquiry Officer. He has ordered that other than subsistence allowance nothing was to be paid to the petitioner.

The petitioner being aggrieved by the said order filed his appeal before the Appellate Authority on 10.12.2012. The same has been rejected by the Appellate Authority under order dated 22.9.2014, Annexure 12.

Submission made by learned counsel for the petitioner is that the entire proceedings conducted against the petitioner suffers on account of gross violation of principle of Natural Justice. Merely on the basis of presumption and suspicion the petitioner has been punished. It is submitted that no list of documentary evidence or witness was submitted to the petitioner along with charge memo. As such right from the very inception the proceedings are bad in law. It is asserted that during the period for which the allegations have been lelvelled against the petitioner he was working as cashier. The amounts which are forming the basis of the charge have been paid by him in discharge of duty as cashier after the same were duly passed by the branch manager/competent authority. In respect of two accounts wherein he has approved the vouchers he submits that it was under authority conferred by office order issued by the branch manager. In respect of one such payment, approval of vouchers was done by the petitioner but actual payment was made by someone else, namely, Radheshyam, messenger, discharging the duty of the cashier on that particular date.

It is submitted by petitioner's counsel that the petitioner being a cashier had no option but to make payment as the same was passed by the Competent Authority. In respect of two payments which were approved by him, there can be no presumption that the fictitious transactions were made in those accounts by him as fund transfers in the accounts were prior to passing of the vouchers by the petitioner. In respect of all the charges/accounts, he had no role to play uptil stage of transfer of funds in the accounts.

He submits that even in the charge memo there is no such allegation that the petitioner has obtained user id or password from anyone and that the same has been misused for effecting the fictitious transfers. It is submitted that no clear and definite charge has been made alleging that petitioner had made the fictitious transfers. Finding of the Enquiry Officer in this respect is violative of the principles of Natural Justice, baseless and without any evidence whatsoever, to the extent that the fictitious entries/transfers in the accounts were made by the petitioner.

Petitioner's counsel further submits that the payments have admittedly been made to the genuine account holders.

Learned counsel appearing for the bank, on the other hand, submits that the procedural requirement and safeguard have been duly observed in conduct of the proceedings. The petitioner has been given due and adequate consideration by the Enquiry Officer, Disciplinary Authority as well as the Appellate Authority. He submits that the petitioner's plea regarding non-supply of documents with the charge memo is unsustainable and baseless. Referring to the two show cause submitted by the petitioner it is pointed out that the petitioner in the enquiry proceedings has in fact placed reliance on management exhibits. He submits that it is only after the exhibits were made available to the petitioner that petitioner could have relied upon the same. It is also pointed out that had there been such lapse, the normal conduct is that the petitioner would have pointed out the same to the authorities during the proceedings which he has never done as is apparent from the records. It is the submission of the counsel for the respondent bank that the findings are based on sufficient material. Petitioner cannot escape the responsibility and liability of the acts attributed to him in view of the fact that in respect of some of the charges the date on which the payment have been authorized and made, there was no superior authority in the branch other than the petitioner.

The circumstances clearly suggests that the petitioner has committed misconduct which has been alleged against him. Findings of the authority are in accordance with the prescribed procedure as well as after due consideration of material before the authority. He submits that in some of the charges there is explicit charge and finding against the petitioner of having passed the vouchers and making payments.

During arguments, it is admitted by the parties that amounts alleged to have been fictitiously transferred have in fact been recovered.

On going through the charges it is clear that there was no clear and definite charges against the petitioner of having made any fictitious transfer in the accounts. Charges are in respect of passing some of the payments from the accounts in which fictitious transfers had already been made, and of actual payments from such accounts.

In addition to the said charges, contained in the charge memo, the Enquiry Officer has returned a finding that petitioner was part of a conspiracy for effecting the fictitious transfer in the accounts. The Enquiry Officer has even concluded that the petitioner has obtained the user id and after doing so effected a series of transfer in conspiracy with the account holders and misappropriated the amounts. Such a finding has been returned in respect of Charge No. 2 (Kha). Clearly the finding is a general and sweeping finding, not confined to Charge No.2 (Kha). The finding is also without any allegation or charge against the petitioner of having obtained a user id and misappropriation in conspiracy with account holders. The charges were only alleging either passing of payments or actual payments by the petitioner working as a cashier. The fictitious transfer which allegedly preceded the passing of payments was not alleged in the charge memo.

The findings therefore to this extent which have been recorded by the Enquiry Officer are without any charge. Since there was no such charge, this Court would conclude that findings were arrived at without conducting any enquiry in respect of the said charge of having obtained user id and abusing the same in conspiracy with account holders for misappropriation of money from the account. The findings without any charge memo or any enquiry, are clearly unsustainable in law. In this connection this Court would refer judgment of the Apex Court in the case of **M. V. Bijlani vs. Union of India & ors** reported in **(2006) 5 SCC 88**. Such illegal findings of the Enquiry Officer have been accepted by the Disciplinary Authority and on the basis of such findings the petitioner has been awarded a major punishment of dismissal from service.

The punishment therefore, which has been awarded in view of the additional findings of the Enquiry Officer, for which no enquiry was conducted and for which no charge memo had been issued, are unsustainable. Since the additional findings of the Enquiry Officer are illegal and without any basis, order of punishment dated 31.10.2012 which is in respect of such findings, therefore is clearly unsustainable and is hereby quashed.

Matter thereafter has travelled to the Appellate Authority at the instance of the petitioner. The Appellate Authority has rejected the appeal of the petitioner. The same is merely an affirmation of the illegal order passed by the Disciplinary Authority. Order of the Appellate Authority dated 20.9.2014 in view of quashing of the order of punishment must also collapse. The order of the Appellate Authority is also quashed.

As as result of quashing of the punishment, the matter is remitted to the Disciplinary Authority to proceed at the stage after submission of enquiry report by issuing second show cause in accordance with law. Petitioner is directed to be reinstated in service if he has not reached the age of superannuation. Since he has not worked for such a long period this Court will direct that he be paid 50% of back wages.

The writ petition stands allowed.

(Madhuresh Prasad, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	NA
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