IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13008 of 2012

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Arun Kumar Sinha S/O Late Tarani Prasad Middle Management Grade-Ii, Samastipur Kshetryia Grameen Bank, Mahammadipur Branch, District- Samastipur Bihar

... ... Petitioner/s

Versus

1. Samastipur Kshetriyia Grameen Bank and Ors
2. The Board Of Directors and Appellate Authority Samastipur Kshetryia Grameen Bank, Samastipur Distri
3. The Chairman-Cum- Disciplinary Authority, Samastipur Kshetryia Grameen Bank, Samastipur, District-
4. The Enquiry Officer, Samastipur Kshetyia Grameen Bank, Head Office, Samastipur, District- Samastipu
5. The Manager, Vigilance, Samastipur Kshetryia, Grameen Bank, Head Office, Samastipur, District- Samastipur

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Munna Pd Dixit with Mr. S.K. Dixit Mr. Sanjay Kumar Choubey Mrs. Swastika & Mr. Shailendra Kumar
For the Respondent/s	:	None

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

4 21-12-2019 The petitioner has put to challenge an order dated 15.07.2011, passed by the Chairman of Samastipur Kshetriya Gramin Bank, Samastipur whereby, acting as disciplinary authority he has imposed upon petitioner a penalty of reduction of pay at the initial stage of Pay Scale of MMGS-II ,i.e. Rs. 19,400/- with effect from 15.07.2011. The appeal, which was preferred by the petitioner before the Board of Directors of the Bank has been dismissed by the impugned order dated

01.09.2011. The petitioner at the relevant point of time, was working in the Bank in Management Grade Scale-II.

2. It must be noted at the very outset that this writ application was filed on 23.07.2012 and when the matter was taken up on 31.07.2012, four weeks' time was sought for filing counter affidavit. Till date no counter affidavit has been filed. There is no representation on behalf of the Bank. In such circumstance, the Court does not have any other option but to proceed with the averments made in the writ application, treating them to be uncontroverted as the matter has remained pending for more than seven years.

3. A disciplinary proceeding was initiated against the petitioner under Samastipur Kshetriya Gramin Bank (Officers and Employees) Service Regulation, 2001 (hereinafter referred to as 'the Regulation') with the charges relating to sanction of loans without following the procedure prescribed by the Bank and failure to discharge his duties as an officer of the Bank, leading to certain accounts become non-performing assets (NPA). The charge-sheet has been brought on record by way of Annexure-1 and relates to the petitioner's posting in three different Branches, namely, Dihuli Angarghat Branch, Musrigharari Branch and Bajidpur Branch. In respect of Dihuli

Angarghat Branch, it is alleged against him that he had disbursed loans to employees of Desi Chikitsa Office, Samastipur and one teacher of Basic School by violating Bank's laid down instructions because neither the salary was paid to such employees through the Branch nor they were the residents of the area of operation of the Bank. It was, accordingly alleged that he sanctioned loan with ulterior motive, which might cause huge loss to the Bank. In respect of Musrigharari Branch, it is alleged against him that he sanctioned loan in favour of one Ganesh Ghee Udyog with a limit of Rs. 1.00 lac Composite Loan on 14.10.2005, without assessing the credit worthiness of the borrower and no record for pre-sanction and post disbursement was found in the records. Claim for margin money from KVIC was also not lodged. The said account subsequently became NPA. Similarly, in case of M/S New Calcutta Tailoring and Dress Materials, the petitioner had sanctioned a loan of Rs. 25,000/- in the month of February, 2004, which was declared NPA in the month of March, 2005. The same Unit was sanctioned a fresh loan of Rs. 1.00 lac on 30.08.2005. After sanctioning the limit of Rs. 1.00 lac to the existing NPA account, the SCC (Swarojgar Credit Card) a/c., was closed on 08.09.2005 without recovering the full interest amount. The new account also turned NPA, having no stock in the shop. Details of certain amounts have been given in respect of third charge relating to Musrigharari Branch and it has been alleged that because of lack of follow up, 39 SGSY units financed by the petitioner became NPA during his tenure. In respect of Bajidpur Branch, the details of 19 Cash Credit (CC) accounts have been given which became NPA during his tenure. In addition, it has been alleged that he sanctioned NTG loans on third party guarantee and the guarantees were taken from those cash credit borrowers whose accounts was already NPA in the Bank's Branch. There are other charges like execution of blank documents of SHG (Self Help Group) applicants were found in the petitioner's custody.

4. The petitioner had submitted his written statement of defence, a copy of which has been brought on record by way of Annexure-2 to the writ application. The enquiry officer submitted his report on 17.12.2010 and recorded his finding and found all the charges against the petitioner proved except 5th item of the allegation in relation to Bajidpur Branch. The disciplinary authority accepted the report of the enquiry officer to the extent he had found the charges proved against the petitioner but in respect of the 5th item relating to Bajidpur

Branch, he recorded his disagreement as according to him, lapses on the part of the petitioner stood proved, because necessary steps to inform respective applicants regarding deficiencies in their applications/documents for correction were not taken by the petitioner in the case dealt in item No.5.

5. The petitioner was put on second show cause notice through letter dated 06.04.2011 issued by the Chairman of the Bank-cum- disciplinary authority. The petitioner submitted his reply dealing with each and every finding recorded by the enquiry officer and the disagreement in respect of 5th item of Bajidpur Branch, in his reply to the second show cause notice. The petitioner's reply to the second show cause notice is available on record by way of Annexure-8 to the writ application. The disciplinary authority, subsequently passed final order in the departmental proceeding on 15.07.2011 which is there at Annexure-9 of the writ application. The petitioner preferred an appeal under Rule 48 of the Regulations before the Board of Directors-cum- appellate authority, which has been dismissed by an order dated 01.09.2011 (Annexure-10).

6. Mr. M.P. Dixit, learned counsel appearing on behalf of the petitioner has submitted, with reference to specific averments made in the writ application, that no witness was

ever called to substantiate the charge nor any document was placed before the enquiry officer and proved, in accordance with the procedure prescribed. He has submitted that the documents which were marked exhibits were without examination of its custodian, which resulted into serious prejudice to the petitioner. He has submitted that since the witnesses to establish those documents were not examined during the departmental enquiry, the petitioner did not have the opportunity to cross-examine such witnesses for eliciting truth from them. He has further argued that in any event, the order of the disciplinary authority does not disclose any application of mind inasmuch as he has not at all dealt with petitioner's explanation in his reply to the second show cause notice, illumining as to why the findings of the enquiry officer should not be accepted by him. He has contended that the order of the disciplinary authority does not at all disclose application of mind and similarly, grounds taken by the petitioner in his memo of appeal to assail the order of the disciplinary authority, have not been considered by the appellate authority in the impugned order passed on 01.09.2011.

7. He has submitted, with reference to the statement made in paragraph 17 of the writ application, that most of the loan accounts, alleged to have become NPA, have been closed

after full recovery and in respect of the accounts, which are yet to be closed, the Bank is still realizing interest as per the norms of the Bank and, therefore, the said accounts cannot be treated as non-performing assets, as can be verified from the accounts statement. He has also argued that unless it is shown that an employee of the Bank acted with malice or in violation of specific instructions/guidelines issued by the Bank or he defied any specific order, he cannot be held to be guilty of misconduct. He has contended, with reference to the statement made in paragraph 20 that the authorities missed to notice that the loan amount of the accounts, which are being treated to be non-performing assets have already been recovered from the parties concerned and is being shown under heading 'profit' to the Bank against interest earning. In paragraph 23, it has been stated that no proceeding/meeting of the Board of Directors were held on 21.02.2012 and the reference of the meeting of the Board of Directors on the said date in the order of the appellate authority is incorrect.

8. I reiterate here that since the Bank has chosen not to controvert the statement made in the writ application, the Court is left with no other option but to proceed with the case on the basis of the averments, which have been made in the writ

application.

9. I have carefully examined the impugned order of disciplinary authority and I find substance in the submission made on behalf of the petitioner that it does not disclose application of mind. Along with the impugned order dated 15.07.2011, a so-called speaking order was attached, which is part of Annexure-9. Except for what the disciplinary authority had recorded in his second show cause notice, the final order passed by the disciplinary authority does not disclose any discussions on the materials in the departmental enquiry nor does it discuss the explanation of the petitioner submitted in response to the second show-cause notice along with which a copy of the enquiry report was supplied to him, why the report of the inquiry officer should not have been accepted. The speaking order has total eight paragraphs. The only discussion of the disciplinary authority on the merits of the allegation/charge and the petitioner's explanation is in paragraph 6, which reads as follows:-

> "6. Now, therefore, after considering the record of the enquiry and the facts and circumstances of the case, the undersigned has come to the conclusion that Shri Arun Kumar Sinha, MMGS-II was very negligent in discharging his duties and

failed to discharge his duties with honesty. Integrity and due diligence. Due to such acts of Shri Sinha Bank suffered a lot. Out of total 09 (nine) charges levelled against Shri Sinha, 08 (eight) charges have been proved by the enquiry officer, to which I also agree. However, regarding the 05th charge related to Bajidpur branch I do not agree with the opinion of the Enquiry Officer and in my opinion, lapses on the part of Shri Sinha is proved because necessary steps to inform respective applicant regarding deficiences in their application/document for correction were not initiated by Shri Sinha in that case. Further in the case of charge No.1, related to Musrigharari Branch, due to gross negligence of Shri Sinha subsidy (marin money) amount of TL A/S No. 78 of M/s Ganesh Ghee Ydyog, was not claimed from KVIC”

10. I also finds substance in the submission made on behalf of the petitioner that the impugned decision of the appellate authority said to have been taken in its meeting on 21.02.2012 suffers from the same vice of non-application of mind.

11. In my opinion, the petitioner had right to satisfy the disciplinary authority that the finding arrived at by the enquiry officer should not be accepted by the disciplinary authority and the disciplinary authority had a corresponding duty to consider the petitioner's representation against the findings of the enquiry Officer. The said requirement, in my view is an integral part of the principles of natural justice. On the contrary, I find from the so called speaking order of the disciplinary authority as has been quoted above, that a formality of showing consideration of the representation of the petitioner has been done. The disciplinary authority had a duty to record, even briefly, why the explanation submitted by the petitioner against findings of the enquiry officer were not acceptable to the disciplinary authority, which he has miserably failed to perform.

12. The orders of the disciplinary authority dated 15.07.2011 and that of the appellate authority communicated on 16.04.2012 on the basis of the meeting held on 21.02.2012 are, hereby, quashed.

13. The petitioner's specific plea that there was no meeting of the Board of Directors was held on 21.02.2012 having not been denied, has to be accepted as uncontroverted. Further, the petitioner has explained in his pleadings in the writ

application how he could not be held guilty of the charges and the accounts which are treated as non-performing assets are generating interest for the Bank, which have not been denied. On the basis of the said uncontroverted facts, it has been argued on behalf of the petitioner that no misconduct is made out in the absence of any finding of motive or intentional breach of any specific instruction or guideline of the Bank, it is directed that the consequences of quashing of the impugned orders shall follow.

14. This application is, accordingly, allowed.

15. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

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