

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.895 of 2015

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Mahmood Alam son of Late SK. Reyayat Hussain resident of village
Bhawanipur Police Station Sikta District-West Champaran.

... .. Petitioner

Versus

1. The Uttar Bihar Kshetriya Gramin Bank through its Chairman, Head Office
Kalambagh Chowk, Muzaffarpur, Bihar
2. The General Manager, Uttar Bihar Kshetriya Gramin Bank, Head office,
Kalambagh chowk, Muzaffarpur
3. Inquiring Authority cum senior Manager, Uttar Bihar Kshetriya Gramin Bank,
Head quarter Kalambagh Chawk, Muzaffarpur

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Dhananjay Kumar Mr. Bimlesh Kumar Pandey
For the BANK	:	Mr.Prabhakar Jha Mr. Shankar Kumar Thakur & Mr. Umesh Kumar Dubey

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 18-01-2019

Heard learned Counsel for the petitioner and the learned
Counsel for the Bank.

2. Under charge memo dated 13.4.2011 the petitioner,
who was at that time working as Branch Manager, Raghunathpur
Branch of the respondent Bank, was proceeded against on various
charges alleging reckless financing done by him. After initiation
of proceedings, it is submitted by Counsel for the petitioner that on
account of certain illness he was prevented from appearing in the
proceeding. He raised his plea of illness, but he was directed by
the Enquiry Officer on 4.11.2013 to submit a certificate from the



Civil Surgeon in respect of his illness. He submits that certificate of illness (Annexure 4) was communicated to the Head Office of the Bank by the petitioner on 18.12.2013 by communication (Annexure 6 of the writ petition). In spite of such communication having been made by the petitioner in respect of the certificate issued by the office of the Civil Surgeon, the authorities have proceeded with the enquiry *ex parte*. He submits that in the facts and circumstances he has been denied opportunity of appearing before the Enquiry Officer and, as such, the order 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 and Employees Service Regulation) 2010, issued against the petitioner by the Disciplinary Authority on 25.1.2014, is not sustainable in law.

3. It is submitted that the petitioner has been visited with such grave penal consequence even though he has not been allowed opportunity to appear in the proceedings as the authorities have proceeded *ex parte* against the petitioner in spite of the medical certificate advising three months bed rest having been communicated by the petitioner on 18.12.2013.

4. Submission of Counsel for the petitioner is that there has been miscarriage of justice in the procedure adopted by the



respondent Bank. The petitioner alleges violation of principles of natural justice in the proceedings conducted against him and on such ground he assails the order of his removal and the appellate order dated 22.9.2014 passed by the Appellate Authority rejecting the petitioner's appeal against the punishment awarded by order of the Disciplinary Authority by order dated 25.1.2014.

5. In order to ascertain the facts, record of proceedings were directed to be obtained by Counsel for the respondent Bank for being examined in the instant proceeding. Mr. Jha has appeared with the Proceeding Book. A counter affidavit has also been filed in the matter.

6. In order to appreciate whether the petitioner has been deprived of the opportunity of appearing in the instant proceeding certain relevant dates have to be taken note of. The dates have been elaborated in the order passed by the Appellate Authority. The same has been looked into by this Court by referring to the Proceeding Book which has been brought by Counsel for the respondent Bank. The dates mentioned in the appellate order as well as the counter affidavit filed by respondent Bank reflects the proceeding as has been maintained in the Proceeding Book which has been produced by Counsel for the respondent Bank today.



7. This Court would find that after issuance of charge memo on 13.2.2011 the proceedings have lingered for roughly two and half years. The proceedings were conducted on 20 sittings spread out through the said period of two and half years. Repeated intimations have been sent to the petitioner. The petitioner has appeared in the proceeding only on six sittings. On other dates, as it is apparent from the Proceeding Book, he has appeared late and on specific date only his defence representative has appeared without the petitioner.

8. In course of enquiry 46 management exhibits have been produced and five Management Witnesses have been examined. The proceedings have continued from 14.6.2011 up till 16.12.2013. The proceedings show total non participation by the petitioner on various dates as has been elaborated in the counter affidavit as well as the order of the Appellate Authority.

9. On 7.10.2013 for the first time the plea of illness was raised by the petitioner. Thereafter on 17.10.2013, 28.10.2013, 19.11.2013 and 30.11.2013 the petitioner has not appeared in the proceedings. On 30.11.2013 in view of continued non participation/absence of the petitioner an order has been issued by the Enquiry Officer for conducting the proceedings *ex parte*. This order has been communicated to the petitioner by registered post.



10. Thereafter on 5.12.2013, 6.12.2013 and finally on 16.12.2013 proceedings have been conducted. On all the three dates even after communication of the proceedings being *ex parte* neither the petitioner nor the defence representative has attended the enquiry proceedings. From the Proceeding Book it is also apparent that no communication has been received by the authorities of any certificate issued by the Civil Surgeon, West Champaran. Even the communication dated 18.12.2013 (Annexure 6) by which it is submitted by the petitioner's Counsel that certificate has been communicated, does not contain any details of the certificate which has been issued. Even the authority, from which the certificate has been issued, has not been mentioned in the communication, let alone details of certificate or the period for which the Civil Surgeon, West Champaran had allegedly advised the petitioner bed rest. After 30.10.2013 again the petitioner has sent a communication dated 18.12.2013 (Annexure 5 to the writ petition) communicating the certificate issued by the Civil Surgeon West Champaran. The certificate is said to be dated 29.11.2013. However, in the list of enclosures appended to Annexure 5 there is no reference of such certificate dated 29.11.2013. Another fact which is apparent from petitioner's communication dated 30.12.2013 is that he was in knowledge of the proceedings being



conducted *ex parte*. At the very top in the subject of the said letter he has mentioned as follows:-

विषय— प्राकृतिक न्याय के विरुद्ध एवं विरोध आग्रह के बावजूद ailing
cso की अनुपतिस्थिति में Ex party विभागीय जॉच कार्यवाही
चलाना।

11. The petitioner on 20.1.2014 has thereafter been afforded opportunity for submitting his written submission. Similar opportunity was granted to the Department also. Even after such opportunity, the petitioner has not filed his written submission before the Disciplinary Authority. Accordingly the order of punishment has been imposed upon the petitioner.

12. Another submission advanced by Counsel for the petitioner is that in respect of same charges the petitioner has been acquitted in the criminal/vigilance case. Details of such acquittal, however, have not been submitted by Counsel for the petitioner. Whether the charges were same and what is the nature of acquittal has not been brought to the notice of this Court. Whether in view of acquittal in the criminal proceeding, the petitioner would be entitled to exoneration in the proceedings initiated on the basis of charge memo dated 13.4.2011, could only be concluded by examining the issues in detail. The petitioner has not shown that he has made any endeavour to convince the authorities that he is



entitled for exoneration in the instant proceedings in view of the conclusion in the criminal case.

13. From the facts and circumstances taken note of it is quite evident that the petitioner cannot be permitted to raise the plea of non compliance of principles of natural justice. During entire proceedings, which continued for about two and half years over 20 sittings, he has not availed of the opportunity afforded to him by the authority. Even certification of his illness requiring three months bed rest has not been placed before the inquiring authority. In spite of opportunity given by the Disciplinary Authority by letter dated 8.1.2014 he has not submitted any submission before the Disciplinary Authority against the findings of the Enquiry Officer. 46 managements exhibits and five management witnesses were examined during course of enquiry. Clearly the petitioner has chosen not to avail of the opportunity granted to him in the proceedings.

14. Before the Appellate Authority the petitioner appeared in person on 14.5.2014. However, he has merely submitted that he had nothing to explain in the matter except what was contended in the appeal. Specific assertion to this extent has been made in para 12 of the counter affidavit which has not been



denied or disputed by the petitioner as no rejoinder has been filed in respect of such averment.

15. Law in this regard is well settled. He, who chooses not to avail of the opportunity granted in a proceeding, cannot be permitted to raise the plea of violation of procedure or principles of natural justice.

16. The petitioner having failed to avail of the opportunity granted to him on several occasions right from the stage of the proceeding before the Enquiry Officer till the Appellate Authority, is not in a position to raise the plea of denial of principles of natural justice or that the proceedings were not conducted in accordance with law.

17. For the reasons indicated hereinabove this Court would observe that the writ petition is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J.)

SNkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20.02.2019
Transmission Date	N/A

