

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12438 of 2014

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C.S. Das @ Chandra Shekhar Das, Son of Late Bajrangi Das, Resident of Cemetery Road, Near Dy. S.P. Office, P.S. Jamalpur, District-Munger, Lastly posted as J.M.G. Scale – 1, State Bank of India.

... .. Petitioner/s

Versus

1. State Bank Of India through the Chief General Manager, Patna Circle, Local Head Office (L.H.O.), West Gandhi Maidan, Patna.
2. The Chief General Manager, State Bank of India, Patna Circle-cum-Appellate Authority, State Bank of India, Patna Circle, Patna.
3. The General Manager (Vigilance)-cum-Appointing Authority, State Bank of India, Local Head Office, Patna Circle Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bipin Krishna Singh, Advocate
For the Respondent/s	:	Mr. Kaushalendra Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 04-01-2019

Heard counsel for the petitioner and the respondent Bank.

2. Writ petition has been filed for quashing of order of punishment dated 26.07.2012, as contained in reference no. VIG./Gen/G.S./180 issued and passed by the office of respondent General manager & Appointing Authority (Annexure 7) in the Departmental proceeding initiated against the petitioner whereby and whereunder the petitioner has been dismissed from his service and whereby the period of suspension of petitioner's service has also been directed to be treated as "Not on duty" as also the order dated 23.10.2013 passed by the respondent Chief General Manager-cum-Appellate Authority as contained in letter



no. A&R/HR/5125 dated 07.11.2013 and communicated to the petitioner through the letter no. RBO-IV/MADH/HRAK/1570 dated 31.01.2014 issued from the Regional Business office, Region-IV of State Bank of India, Madhubani (Annexure-9) whereby and whereunder the Appellate Authority rejected the service appeal of the petitioner preferred against the order of punishment dated 26.07.2012 and for other consequential benefits.

3. A charge memo was communicated to the petitioner dated 02.09.2011 containing statement of allegations pertaining to the period when the petitioner was posted as an Accountant at the Pratap Gang Branch from 18.11.2008 to 12.11.2009. The allegations made in the charge memo are as follows :

“Statement of allegations
against Shri C.S. Das. JMGS-I
(U/S), Accountant, Pratapganj
Branch (from 18.11.2008 to
12.11.2009)

1. You received cash payments worth Rs. 9.00 lacs from the SWO, Shri Deep Prakash Gupta who made the payments in respect of 18 SB accounts. These payments were proceeds from respective 18 fake KCC accounts of Rs. 50,000/- each credited to these SB accounts on 05.06.09. (details as per List-A)
2. You did not check the VVR of 05.06.09 and thus you



failed to detect and bring to notice of your superiors, the fraudulent transfer of Rs. 9.00 lacs from the 18 fake KCC accounts to respective SB accounts as in (1) above.

3. You did not check the VVR of 25.03.09 and thus failed to detect and bring to notice of your superiors, the fraudulent transfers of Rs. 6.50 lacs from the 13 fake KCC accounts to respective SB accounts. (details as per List-B)

4. You did not ensure entry of the missing 13 and 18 relative fake KCC vouchers of 25.03.09 and 04.06.09 respectively in the Missing Voucher Register.

5. Due to your above acts of omission and commission, Bank has suffered a loss of Rs. 15.44 lacs.”

4. Broadly the charge memo can be divided into two parts. The first part is that the petitioner had received the proceeds of 18 fake KCC (Kissan Credit Card) accounts for Rs. 50,000/- each totaling Rs. 9 lacs. The modus of such transaction is that the proceeds have been deposited in the Saving Bank Accounts and from there one Deep Prakash Gupta who happens to be the cashier of the Bank had made the payment to the petitioner. The second part of the allegation i.e., charges 2 to 5 is of not checking the Voucher Verification Reports (for short ‘VVR’) in respect of the transaction conducted on such a date. In respect of the allegations regarding non-checking of the



VVR the petitioner's counsel has submitted that due to various reasons such as non-generation of reports on time due to faulty printer and for other substantial reasons he could not check the VVR on time. There is an admission to such lapse having been committed by him though attributed to certain allegedly justifiable reasons.

5. Counsel for the petitioner however, has submitted that even if the allegations without admitting to the same are taken to be true, at best they would constitute negligence and cannot constitute misconduct so as to inflict a punishment on the petitioner or conduct a proceedings for the same.

6. As regards other allegation of receipt of Rs. 9 lacs from the fake KCC accounts, the counsel for the petitioner has taken this Court through the proceedings of the enquiry which are on record in the reply to the counter affidavit filed on behalf of the petitioner. The Enquiry Officer in course of the proceedings has relied upon statements made by three witnesses in support of the allegations. The three witnesses are PW 1. Kapildeo Marik, PW 2 Vinay Kumar, PW 3 Ali Abhas Khan. The statement of all the three said witnesses are on record in the instant proceedings. As regards PW 1 the enquiry report reveals that no question was even put to him regarding the



alleged receipt of 9 lacs rupees by the petitioner. The questions were put to Vinay Kumar PW 2 but in his statement he has said that he has come to know about the allegations at a later stage and that he was not aware of the same. He has supported the allegations by stating as follows :

“Sir, I had heard in the branch that the fraud as said above was done through him.”

7. The 3rd witness brought by the management namely, Ali Abhas Khan as per submission of the petitioner was relieved from the Pratap Ganj Branch in April, 2009 itself. The alleged payment of Rs. 9 lacs received from false KCC accounts is for a subsequent period between 12.06.2009 to 15.06.2009. This is an admitted position. The statement of Ali Abhas Khan is also on record in the enquiry report. He has supported the allegations by saying that he came to know of this fraud at the later stage.

8. From perusal of the statements made by the three PWs on which reliance have been placed while holding charge no. 1 proved against the petitioner, it is apparent that none of them have deposed in support of charge no. 1. The findings in respect thereof based on the basis of the statement of the three PWS, is therefore, perverse and legally unsustainable. The other submissions made by the petitioner's counsel is that the Cashier



namely, Deep Prakash Gupta who is alleged to have handed over the payment of Rs. 9 lacs to the petitioner has never been examined in the course of the proceedings.

9. On perusal of the records, submissions of the counsel for the petitioner appears to be correct. Only a written statement of the Deep Prakash Gupta, the then Cashier in support of allegation no. 1 has been taken note of by the Enquiry Officer while holding charge no. 1 proved. The said Deep Prakash Gupta has not even appeared to support the said statement. None appearance of Deep Prakash Gupta in support of the written statement has resulted in the petitioner being deprived of his vital opportunity to cross-examine the said Deep Prakash Gupta.

10. In view of the findings recorded hereinabove the order of dismissal dated 26.07.2012 issued by the General Manager -cum-Appointing Authority is grossly illegal and unsustainable in as much as by no stretch of imagination, even on the preponderance of probability charge no. 1 could not have been held to be proved by the Enquiry Officer as there was no evidence whatsoever in support of the charge, as has been taken note of herein above.

11. Counsel for the respondent Bank has vehemently



opposes the petitioner's prayer and submissions. He has submitted that though the Disciplinary Authority and Appellate Authority had both allowed the petitioner opportunity to appear in person and place his case, he has chosen not to appear. Petitioner's counsel has submitted that due to illness of his son and for justifiable reasons he was prevented from appearing before the authorities. He had made his application for adjournment but the same was not accepted and as such he cannot be held liable for non-appearance on the date fixed in the matter.

12. Once charges have been levelled and such a serious consequence such as dismissal from service is to be inflicted upon an employee, the authorities would be required to bring home the charges with reference to some material on record. Only the deposition of the three witnesses taken note of herein above as well as written statement of cashier Deep Prakash Gupta has been relied upon in the enquiry. As taken note of herein above the same cannot be said to constitute any evidence so as to hold charge no. 1 proved even applying the standard of preponderance of probability.

13. For the reasons indicated herein above, the order of punishment dated 26.07.2012 as well as the order passed by the



Chief General Manager-cum-Appellate Authority affirming the petitioner's dismissal on 07.11.2013 is also unsustainable and is hereby quashed.

14. The petitioner has also filed the review before the reviewing committee by communication dated 08.01.2015. The same has also been rejected. In view of quashing of the order of punishment the same is also unsustainable.

15. Since this Court has not interfered with the findings in respect of the other charges, this Court would direct the authorities to take a decision as to whether they proposed to proceed against the petitioner for charge no. 1 in accordance with law. In case they so decide they may do so. Otherwise it would be open to the respondent Bank to revise the order of punishment having regard to the fact that findings of charge no. 1 being proved has been found to be unsustainable by this Court.

16. Writ petition stands allowed to the extent indicated herein above.

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

