

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19222 of 2011

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Rajendra Kumar Son Of Sri Sunil Kumar Jaiswal Resident Of Near Bhagera
Ashram, Madhuban Colony, Kurji, Patna

... .. Petitioner/s

Versus

1. The State Bank Of India through General Manager, NW-1, State Bank Of India, Local Head Office, Patna
2. The Deputy General Manager (O and C, NW-1), State Bank Of India, Local Head Office, Patna
3. The Assistant General Manager Administration, State Bank Of India, Administrative Office, Judge's Court Road, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Mrigank Mauli Mr. Prince Kumar Mishra Mr. Sanket
For the Respondent/s	:	Mr.Kaushlendra Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 24-02-2020

Heard counsel for the petitioner and counsel for the respondents-Bank.

Writ petition has been filed seeking quashing of punishment of dismissal without notice with immediate effect with stipulation that the petitioner is not to be treated as on duty during the period of suspension.

Petitioner has been deprived of all emoluments except subsistence allowance for the period of suspension. The order of dismissal is dated 10.03.2010. The same was assailed in appeal



and appeal of the petitioner has been rejected on 24.09.2010. Both the orders are under challenge in the instant writ proceedings.

Petitioner was working as clerk-cum-cashier in the respondents-Bank. The authorities proceeded against him under charge memo dated 14.11.2007. The charges were alleging some discrepancy mentioned in the amount and figure in the withdrawal forms submitted by certain customers which had been allowed or passed by the petitioner.

Allegation is that undue withdrawals had been facilitated by the petitioner and alleging as such petitioner is proceeded against for gross misconduct and disciplinary action in terms of Memorandum of Settlement on Disciplinary Action Procedure for Workmen dated 10.04.2002.

Petitioner's counsel submits that enquiry was in gross violation of principle of natural justice. Adequate opportunity for meeting the charges was not allowed to the petitioner and that entire proceedings were suffered from various procedural latches.

Counsel appearing for the State Bank of India submits that the proceedings were conducted against him in accordance with law and charge memo was issued. Petitioner was allowed opportunity before Enquiry Officer and only after charges were established in a duly constituted proceedings and the petitioner



was visited with penalty under the order of competent Disciplinary authority dated 16.02.2010.

Submission is that at best, complain of the petitioner would fall under industrial dispute and as such petitioner should be relegated remedy under the Industrial Disputes Act.

Court has considered the rival submissions of the parties.

Counsel representing the petitioner has drawn the attention of the court towards the order of dismissal dated 16.02.2010. Para 3 of the same records as follows:-

*“I have perused the Enquiry Report, EPR, Prosecution brief, Defence brief, your submission on the enquiry report and other papers/ document of the case. It has been established that you have failed in discharging your duties with utmost honesty, integrity, devotion and diligence. After independent application of mind to the facts and the circumstances of the case I am of the view that the ends of justice would be met adequately if, the penalty of **DISMISSAL WITHOUT NOTICE** inflicted upon you in terms of Paragraph 6 (a) of Memorandum of Settlement on Disciplinary Action Procedure for workmen dated 10.04.2002. The **period of suspension** will be treated as such i.e. **NOT ON DUTY**. Tentatively, I order accordingly”.*

It is submission of petitioner's counsel that the order is cryptic shows total non-application of mind and has been issued



without showing any consideration of the petitioner's response to second show cause notice.

Prima facie irresistible conclusion is that the same is non-speaking order and does not contain any reason in support of the decision.

Petitioner has also availed the appeal remedy against the said order. Appeal of the petitioner has met the same fate as the same has also been rejected by an equal cryptic order as the order of the Disciplinary authority. The order of the appellate authority dated 24.09.2010 reads as follows:-

“ I have gone through the charges leveled, E.P.R. Enquiry Report, order of the D.A and your submission on the order of the Disciplinary Authority. I do not find that the order of punishment is in violation of rule of natural justice in terms of Memorandum of Settlement on Disciplinary Action Procedure for Workmen dated 10.04.2002. You have not put forward any new point to extenuate your lapses. Thus, I do not find reason to set aside the order passed by the Disciplinary Authority under Memorandum No. DPS/AGM(Admin.)/ 70 dated 10.03.2010.

I, therefore, decline this appeal and uphold the punishment awarded by the Disciplinary Authority, i.e. Dismissal without Notice with immediate effect and treating the suspension period as “Not on Duty.”

I order accordingly.

Please acknowledge receipt of this Memorandum.”



Both the orders referred to by counsel for the petitioner *exfacie* manifest total non-application of mind. Both the orders without any reason in support of the decision show total non-consideration of the petitioner's second show cause and memo of appeal respectively.

The manner in which the authorities have passed the orders rendered the opportunity of second show cause as well as appeal be futile. The whole purpose of submitting his show cause or appeal stands frustrated. When an authority passing or dealing with quasi judicial function discharged the duty of consideration in such a manner, the order is clearly unsustainable in the eye of law.

In this connection, this court would refer decision of the Apex Court in the case of Kranti Associates Private Limited and another vs. Masood Ahmed Khan and others reported in (2010) 9 Supreme Court Case page 496. Importance of assigning reason has been reiterated time and again by Courts.

On the touchstone of legal settled proposition, the order of Disciplinary authority dated 10.03.2010 as well as order of Appellate authority dated 24.09.2010 are clearly unsustainable and accordingly, both the orders dated 10.03.2010 and 24.09.2010 passed by the Disciplinary authority and Appellate authority are hereby quashed.



Matter is relegated to the Disciplinary authority to take decision afresh considering second show cause submitted by the petitioner by reasoned and speaking order.

In view of retirement of the petitioner recently on 31.12.2019 this court has granted eight weeks' time for disposing of show cause submitted by the petitioner by Disciplinary Authority by reasoned and speaking order from the date of receipt/production of a copy of this order.

Writ petition stands allowed to the aforesaid extent.

s.hassan/-

(Madhuresh Prasad, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.03.2020
Transmission Date	NA

