

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20730 of 2010

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Manik Besra S/O Sakal Besra R/O Mohalla New Colony, Thakurganj, P.S.-
Thakurganj, Distt.- Kishanganj

... .. Petitioner/s

Versus

1. The State Bank Of India and ORS Seventh Floor, Local Head Office, State Bank Of India, West Gandhi Maidan, Patna
2. The Deputy General Manager O and C, Nw-1- Cum Appellate Authority, Disciplinary Proceeding Cell State Bank Of India, Administrative Office, J.C. Road, Patna
3. The Assistant General Manager Admin-Cum-Disciplinary Authority, Disciplinary Proceeding Cell State Bank Of India, Administrative Office, Purnia
4. The Assistant General Manager Region Iii State Bank Of India, Zonal Office, Purnia
5. The Branch Manager, S.B.I. Adb Sitamarhi-Cum-Enquiry Office State Bank Of India Administrative Office, Purnea
6. The Branch Manager-Cum-Presenting Office State Bank Of India, Administrative Office, Purnia
7. The Branch Manager State Bank Of India Thakurganj Branch Distt.- Kishanganj

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Aditya Narain Singh, Advocate Mr. Kundan Kumar Sinha, Advocate
For the S.B.I.	:	Mr. Binod Bihari Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 03-08-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioner has prayed for
following reliefs:-

**“1. That this is an application
for issuance of a writ in the nature of
certiorari for quashing of the order dated
16/26.06.2010 (signed on 26.6.2010) passed
by Assistant General Manager (Admin.)-
cum-Disciplinary Authority, disciplinary
Proceeding Cell, State Bank of India**



Administrative office, Purnia, whereby and whereunder, the Disciplinary Authority has imposed a penalty upon the petitioner of “Removal from Bank’s service with superannuation benefits as would be due otherwise and without disqualification from future employment” under para 6(b) of memorandum of settlement dated 10.04.2002 on disciplinary action for workmen staff with forfeitures of payment of gratuity to the extent of Rs. 40,000/- in terms of section 4 Sub-section 6(a) of the payment of Gratuity Act, 1972.

As well as for quashing of the order passed by the Deputy General Manager (O&C, NW-1) (Appellate Authority) State Bank of India Disciplinary Proceeding Section, Administrative Office J.C. Road, Patna dated 12.10.2010, whereby and whereunder the Appellate Authority has set aside the order of Disciplinary Authority and partially modify the punishment order the same as under “Removal from service with superannuation benefits i.e. person and or/provident fund and gratuity as would be due otherwise under the rules and Regulations and without disqualification from future employment under Clause 6(d) of Memorandum of settlement on Disciplinary Action procedure for workman staff dated 10.4.2002 with immediate effect”

Both the orders one being passed by the Disciplinary Authority on 17/26.06.2010 and other by the Appellate Authority dated 12.10.2010 supported by the speaking order of the respective dates.”

3. The petitioner was subjected to parallel proceedings in respect of certain alleged misdeeds which is stated to have been committed by the petitioner. In the criminal proceedings, ‘B’ report was filed on 30.11.2007 and it was accepted on 27.03.2010 whereas in the disciplinary proceedings



petitioner was punished while imposing the penalty of removal from service.

4. Feeling aggrieved and dissatisfied with the order of removal from service, the petitioner submitted appeal. In the appeal, appellate authority has modified the penalty order while affirming removal penalty and further ordering that petitioner is entitled to certain service benefits including monetary benefits. Still aggrieved by the order of the disciplinary authority and appellate authority, petitioner has presented this petition.

5. Learned counsel for the petitioner submitted that punishment order suffers from non-consideration of petitioners various contentions urged in the reply to the second show cause notice dated 26.05.2010. It is further submitted that appellate authority has also not considered the petitioner's memorandum of appeal in true spirit as there is not even reference to the contention raised by the petitioner in his memorandum of appeal and discussed and rejected. In other words, it is submitted that both the disciplinary and appellate authority's orders are unreasoned. It is also submitted that in not considering the petitioner's each of the contention raised by him in the reply to the second show cause notice which would amount to empty formality in issuance of show cause notice and seeking explanation from the petitioner.

6. Per contra, learned counsel for the respondent



resisted the aforesaid contention of the petitioner and submitted that having regard to the charges and the charges were proved in enquiry. The disciplinary authority need not elaborately consider in his order if he has taken note of enquiring officer's report that suffice. It is further submitted that appellate authority has also considered the view of the disciplinary authority and found that there is no merit in the memorandum of appeal preferred by the petitioner.

7. Heard learned counsels for the respective parties.

8. Undisputed facts are that the petitioner was subjected to parallel proceedings on alleged certain misdeeds stated to have been committed. In the criminal proceedings in view of filing of the 'B' report on 30.11.2007 and its acceptance on 27.03.2010 the criminal proceedings stands closed. In respect of disciplinary proceedings second show cause notice was issued on 26.05.2010 asking the petitioner to submit his explanation within a period of two weeks. Even though petitioner had not sought for extension of time to submit his reply beyond the time limit stipulated. However, the disciplinary authority while passing order with reference to dated 17/26.06.2010 referred to the petitioner's reply to the second show cause notice. However, there is not even a single contention has been dealt by the disciplinary authority. No doubt, disciplinary authority need not elaborately consider each



and every contention. At least, in brief, a gist of the reply to the second show cause notice was required to be considered by the disciplinary authority for the reasons that object of issuance of second show cause notice and receipt of explanation procedure would be defeated if it is not considered. Therefore, the disciplinary authority should have, in brief, examined the petitioner's reply to the second show cause notice. Therefore, there is non-application of mind by the disciplinary authority in not considering the contention of the petitioner as against second show cause notice.

9. The appellate authority's order is also unreasoned one for the reasons that in the memorandum of appeal petitioner has raised certain contentions, whereas not even a single contention has been considered. On the other hand in para 2 and 3 it is held as under:-

“2. The appeal made by Shri Besra, Sr. Asstt. Against the aforesaid penalty was put up to me alongwith other relates papers.

I have addressed all the issues raised by the appellant in his appeal dated 10.08.2010 and also gone through the charges leveled, E.P.R., Enquiry Report, Order of the D.A. and submission of the C.S.E. 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. Besides, the C.S.E. has not put forward cognizable reasons to extenuate his lapses. However, I find merits in the points raised by the appellant in respect of



the following:

i) The speaking order of the Disciplinary Authority is silent on the date of effect of the order.

ii) Arriving the amount of loss does not seem to be correct. Thus, the punishment imposed is not in consonance with the clause 6(b)

iii) G E Q D report is not mentioned in the list marked as PEX and also not produced during the course of Enquiry Proceedings.

iv) As per charge-sheet, the referred Account No. is 01190005083, whereas the documents produced in the Enquiry relate to A/C No. 01190005085.

3. Accordingly, I set aside the above penalty imposed upon Shri Besra and partially modify the same as under:

“Removal from Service with superannuation benefits, i.e. Pension and / or Provident fund and gratuity as would be due otherwise under the Rules and Regulations and without disqualification from future employment under clause 6(d) of Memorandum of Settlement on Disciplinary Action Procedure for Workmen staff dated 10.04.2002” with immediate effect.”

Reading of the aforesaid para 2 and 3 suffice that there is non-application of mind on behalf of the appellate authority.

10. Learned counsel for the petitioner submitted that in the light of appellate authority's observation in para 2 (192-IV) he has pointed out IV that the production of account number and documents are relating to a different account number which is not in terms of the charge-memo. Perusal of the article of charge read



with the statement of imputation, there is reference to the account number which has been cited by the appellate authority. Therefore, the aforesaid contention of the petitioner stands rejected.

11. In view of these facts and circumstances, order of the disciplinary and appellate authority dated 16/26.06.2010 and 12.10.2010 stands set aside and the matter is remanded to disciplinary authority to pass a fresh and reasoned order after due consideration of each of the contention raised by the petitioner as against second show cause notice. (reply to the second show cause notice) and proceeded to pass appropriate orders in accordance with law.

12. Disciplinary authority is hereby directed to reinstate the petitioner or to place him under suspension in the light of Apex Court's decision rendered in the case of ***Managing Director, ECIL V. B. Karunakar*** reported in ***(1993) 4 SCC 727*** read with ***Chairman-cum-Managing Director, Coal India Limited & Ors. V. Ananta Saha & Ors.*** reported in ***(2011) 5 SCC 142*** para 46 to 50 reads as under:

“46. In the last, the delinquent has submitted that this Court must issue directions for his reinstatement and payment or arrears of salary till date. Shri Bandhopadhyay, learned Senior Counsel appearing for the appellants, has vehemently opposed the relief sought by the delinquent contending that the delinquent has to be deprived of the back wages on the principle of “no work-no pay”. The delinquent had



been practising privately i.e. has been gainfully employed, thus, not entitled for back wages. Even if this Court comes to the conclusion that the High Court was justified in setting aside the order of punishment and a fresh enquiry is to be held now, the delinquent can simply be reinstated and put under suspension and would be entitled to subsistence allowance as per the service rules applicable in his case. The question of back wages shall be determined by the disciplinary authority in accordance with law only on the conclusion of the fresh enquiry.

47. It is a settled legal proposition that the result of the fresh enquiry in such a case relates back to the date of termination. The submissions advanced on behalf of the appellants that the result of the enquiry in such a fact situation relates back to the date of imposition of punishment, earlier stands fortified by a large number of judgments of this Court and particularly in *R. Thiruvirkolam V. Presiding Officer, Punjab Dairy Development Corpn. Ltd. V. Kala Singh and Graphite India Ltd. V. Durgapur Projects Ltd.*

48. In *ECIL V. B. Karunakar and Union of India V. Y.S. Sadhu*, this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the enquiry afresh from the stage where it stood before the alleged vulnerability surfaced. However, for the purpose of holding fresh enquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages, etc. is determined by the disciplinary authority in accordance with law after the fresh enquiry is concluded.

49. The issue of entitlement of back wages has been considered by this Court time and again and consistently held



that even after punishment imposed upon the employee is quashed by the court or tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the court/tribunal keeping in view the facts in their entirety as no straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases. Even if the delinquent is reinstated, it would not automatically make him entitled to back wages as entitlement to get back wages is independent of reinstatement. The factual scenario and the principles of justice, equity and good conscience have to be kept in view by an appropriate authority/court or tribunal. In such matters, the approach of the court or the tribunal should not be rigid or mechanical but flexible and realistic. (Vide U.P. SRTC V. Mitthu Singh, Akola Taluka Education Society V. Shivaji and Balasaheb Desai Sahakari S.K. Ltd. V. Kashinath Ganapati Kambale.)

50. In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh enquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled to subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs.”

13. If the disciplinary authority feels that the petitioner should be taken back to service or to keep him under suspension in that event a decision shall be passed within a period of one month from the date of receipt of this order. The



intervening period from the date of removal till passing of a fresh order by the disciplinary authority is to regulate depending upon the outcome of the fresh order to be passed. In that regard also, the disciplinary authority is directed to pass suitable order. Above exercise shall be completed within a period of six months.

14. Accordingly, the present petition stands disposed of.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.08.2022
Transmission Date	

