

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20047 of 2010

Rabindra Nath Shrivastava, S/o Late Ram Sewak Sahay, Resident of Mohalla Adarsh Colony, Bettiah P.O. and P.S. Bettiah, District-West Champaran.

... .. Petitioner/s

Versus

1. The Central Bank of India through the Zonal Manager, Zonal Office of the Central Bank of India at Muzaffarpur, P.O.-Muzaffarpur, Distt.-Muzaffarpur.
2. The Zonal Manager, Central Bank of India, Zonal Office at Ahmadabad, Gujrat.
3. The Regional Manager, Central Bank of India, Regional Office Jam Nagar, Gujarat.
4. The Assistant General Manager, Central Bank of India, Lal Darwaja Ahmadabad, Gujrat.
5. Chief Manager, Central Bank of India, Zonal Office, Muzaffarpur, Distt.-Muzaffarpur.
6. The Zonal Manager, Central Bank of India, Zonal Office, Guwahati, Assam.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shakti Suman Kumar, Advocate
For the Respondent/s	:	Mr. Ajay Kumar Sinha, Sr. Advocate Miss Dilkash Khan, Advocate

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

Date : 07-12-2022

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

"For direction against the order dated 25.02.2010 passed by the appellate authority presently posted as Zonal Manager, Central Bank of India, Guwahati Zonal Office (Respondent No. 6) as contained in Annexure-4 whereby and whereunder the appeal preferred by the petitioner has been dismissed and the order dated 29.12.2008 passed by the Regional Manager, Central Bank of India,



*Regional Office Jamnagar
(Respondent No. 3) as contained in
Annexure-2 whereby and
whereunder the punishment of
"Removal from service which shall
not be a disqualification for future
employment" and the prayer herein
is for the issuance of an appropriate
writ in the nature of a writ of
certiorari for quashing the aforesaid
orders with all consequential
benefits."*

Petitioner while working as Manager at Kehunia Branch, West Champaran he was subjected to disciplinary proceedings in framing six charges on 06.11.2006. The petitioner has denied the alleged charge while submitting his explanation on 24.08.2007. Disciplinary authority was not satisfied with the petitioner explanation. Therefore, he proceeded to appoint inquiring and presenting officer. In the inquiry, the inquiring officer held that the charges levelled against the petitioner were proved. To that effect report was submitted to the disciplinary authority on 11.09.2007. Thereafter, disciplinary authority proceeded to issue second show cause notice on 22.09.2007 for which petitioner is stated to have submitted his reply on 04.10.2007. Disciplinary authority proceeded to impose punishment of dismissal from service on 17.12.2008. Feeling aggrieved and dissatisfied with the order of the disciplinary authority he had preferred memorandum of appeal on 02.02.2009



in which he has suffered order even at the hands of appellate authority on 25.02.2010. Hence, the present writ petition.

Learned counsel for the petitioner submitted that in support of the alleged charge six documents and three witnesses have been cited. None of the three witnesses have been examined. On the other hand, extraneous person by name Mr. A.K. Jha-MW 1 was cited as witness during the pendency of the disciplinary proceedings by the inquiring authority. Further, it is submitted that disciplinary authority has not considered each of the contention raised by the petitioner in his reply. Similarly, the appellate authority has not considered each of the contention raised by the petitioner. In support of non-examination of witnesses learned counsel for the petitioner relied on Hon'ble Apex Court decision in the case of **Roop Singh Negi vs. PNB & Ors** reported in **(2009) 2 SCC 570**.

Learned counsel for the respondent-bank was asked to secure the original records in order to ascertain various issues like how new witness Mr. A.K. Jha-MW 1 had come into picture of the inquiry proceedings. It is stated that due to shifting of various offices from one place to another place records were not available and they are misplaced. Therefore, he is not in a position to produce the records in the present matter.



On the other hand, learned counsel for the respondent-bank resisted the aforesaid contentions of the petitioner and submitted that in terms of the charge memo the disciplinary authority reserves the right to act and/or delete in and/or from the above list of documents and witnesses during the course of departmental inquiry. In support of this he has not produced any material except the fact that extraneous witness namely Mr. A.K. Jha-MW 1 has been cited in support of the alleged charge. Having regard to the alleged charge there is no infirmity in the order of the disciplinary and appellate authority.

Heard learned counsels for the respective parties.

Matter is of the year 2010. Having regard to the contention of the petitioner this Court has asked respondent-bank to furnish original records relating to disciplinary proceedings in order to ascertain as to how Mr. A.K. Jha-MW 1 has been cited as witness in the inquiry. There is no order of the disciplinary authority insofar giving effect to clause mentioned in the article of charges relating to addition and deletion of documents/witnesses. Respondent-bank have not retained the disciplinary proceedings records even though they are aware of the pendency of the present petition since the year 2010. On the other hand, it is a case of non-examination of three cited witnesses namely (1) Sri K.K. Baitha,



Branch Manager, Kehunia Branch, (2) Sr. R.A. Rai, Asstt. Manager, Regional Office, Motihari (3) Sri S.P. Gupta, Spl. Assistant, Kehunia Branch. Mr. A.K. Jha has been cited as witnesses in the absence of any order of the disciplinary authority to add witness in the inquiry on behalf of the departmental version. This was also not taken note of by the appellate authority which is required to consider the memorandum of appeal whether disciplinary authority has observed/adhered to the various provisions of regulations under the Central Bank of India Officer Employees (Discipline & Appeal) Regulations 1976.

Disciplinary authority examined seven documents before imposition of penalty. Item no. 7 is relating to submission of petitioner dated 03.10.2007 against findings of inquiring authority. There is no iota of the consideration of the petitioner contention cited in his statement dated 03.10.2007. Further, appellate authority has failed to take note of each and every contention of the petitioner. Non-examination of cited witnesses would vitiate inquiry proceedings in the light of Hon'ble Supreme Court decision in the case of **Roop Singh Negi** (supra). Since the petitioner has made out *prima facie* case so as to interfere with the disciplinary and appellate authority order dated 17.12.2008 and 25.02.2010. Having regard to the allegations levelled against the



petitioner were serious in nature and it is a case of remand for further inquiry from the defective stage. At the same time, the respondent-bank have not retained the records and they have misplaced. In such circumstances remanding the matter and deciding the inquiry proceedings afresh from the defective stage is not warranted and it is also impracticable. Further, it is noticed that as on the date of presentation of the present writ petition the petitioner was aged about 56 years and matter is being taken up for final hearing after twelve years and in order to give quietus to the litigation in modifying the penalty of removal from service to that of compulsory retirement. No doubt, writ court cannot modify the penalty. At the best writ court can set aside the penalty order if the conscience of the Court warrants or shocks the conscience of the Court in such circumstances Court can modify the penalty order. It is to be noted that respondent have not retained the records even for modification of the penalty by the disciplinary authority in the event of remanding the matter. Therefore, this Court exercising power to modify the penalty to removal from service to that of compulsory retirement.

Accordingly, the order of the disciplinary authority and appellate authority is modified to the extent that the order of the removal from service to that of compulsory retirement and it



would be w.e.f. the date of order of disciplinary authority from 17th December, 2008. The concerned respondent is hereby directed to extend all monetary benefits which were due to the petitioner in the light of the modification of penalty order from removal to that of compulsory retirement. In this regard, necessary calculation shall be made and the same shall be disbursed in favour of the petitioner within a period of three months from the date of receipt of this order.

With the aforesaid observations, the present writ petition stands disposed off.

(P. B. Bajanthri, J)

Vikash/-

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

