IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8568 of 2019

==

Manoj Kumar Choudhary, S/o Shri Lal Babu Choudhary Resident of Kahartoli,Chowk Shikarpur,P.O. Begumpur,P.S. Chowk,Patna City,Dist.- Patna

... ... Petitioner/s

Versus

1. State Bank of India through the Chairman,State Bank of India,Corporate Centre,Madam Cama Road,Nariman Point,Mumbai-400021.
2. The Chief General Manager and Reviewing Authority,State Bank of India,Local Head Office,West Gandhi Maidan,Patna-800001
3. The General Manager (Network-I) and Appellate Authority,State Bank of India,Local Head Office,West Gandhi Maidan,Patna-800001
4. The Deputy General Manager, (B and O) and Disciplinary Authority, State Bank of India,Zonal Office,J.C. Road,Patna
5. The Regional Manager, State Bank of India,RBO,Patna

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Bipin Krishna Singh, Adv
For the Respondent/s	:	Ms. Namrata Mishra, Adv
		Ms. Archana Jha, Adv

==

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 12-09-2023

1. Matter has been listed today for certain clarifications. Learned counsels for the parties have appeared and minor clarifications have been addressed.

2. The writ application has been filed for quashing of the order of the disciplinary authority dated 16-8-2017, whereby and whereunder the petitioner has been awarded punishment of

"CENSURE" in terms of Rule 67(a) of the State Bank of India Officers' Service Rules (for short "SBIOSR"). The period of suspension has also been directed to be treated as "NOT ON DUTY".

3. The petitioner has also sought quashing of the order dated 18-10-2017, whereby and whereunder the General Manager has rejected the appeal filed by the petitioner against of order of punishment.

4. The petitioner's review has also been rejected under order dated 29-05-2018, refusing to interfere with the punishment order. This order passed by the reviewing authority is also put to challenge in the instant proceedings.

5. The petitioner was a Service Manager. He has been proceeded against on the basis of a charge-memo dated 18-03-2017. The charges were two folds, with respect to charges alleged to have been committed in between 10/11-11-2016, i.e. immediately after demonetization of Specified Bank Notes (SBN) Rs. 500/- and Rs. 1,000/- was announced.

6. The first charge was that the petitioner violated Reserve Bank of India (RBI) guidelines/instructions and permitted third party to make deposits in other accounts without any authorization and without observing Know Your Customer

(KYC) formalities.

7. The second charge alleged violation of RBI guidelines/instructions on issuance of draft through cash deposit. It is alleged that the petitioner permitted issuance of draft through cash deposit by fictitious persons on various dates frequently. Without ascertaining KYC, he authorised and signed the draft/s.

8. With respect to first charge, the petitioner took a stand before the inquiry officer that there was no specific instruction in the RBI guidelines dated 8-11-2016, requiring the Service Manager to verify signatures, authority letter or KYC of depositors. He also took a stand that after receipt of the RBI guidelines dated 8-11-2016, i.e., regarding demonetization, a meeting was convened of the Preventing Vigilance Committee (PVC) on 9-11-2016 itself.

9. At the meeting of the PVC, it was resolved that the "TELLER" receiving cash deposits, would verify the signature of the depositor and in case of third-party deposit, would obtain an authorization of the account holder and the KYC. As per resolution of the PVC, it was incumbent upon the "TELLER" to verify these facts; and not the Service Manager. The petitioner, being Service Manager, was not responsible for verifying the signature of the third-party depositor or obtaining authorization or KYC.

10. The Bank, on the other hand, has stated that in view of the RBI guidelines dated 8-11-2016 and the PVC dated 9-11-2016, each and every depositor’s signature was to be verified by the officials to confirm that the depositors themselves deposited the cash in their accounts.

11. The findings of the inquiry officer in respect of the first charge was that seven out of eight accounts, wherein the deposits have been alleged by third-party without any verification, were current accounts/proprietary firm accounts and the deposit slips contain signature of the proprietors itself. The eighth account was a saving bank account and in respect of the deposit made therein, KYC and authority letter was obtained on a later date. Allegation no. 1 was thus found to be not proved.

12. In respect of the second allegation, it was specific stand of the petitioner before the inquiry officer that there was no separate instruction requiring obtaining of KYC while issuing of drafts, at the relevant time. There was also no instruction prohibiting issuance of drafts against SBN of any denomination. The Second charge therefore that the petitioner has violated the guidelines for issuance of Draft/s through cash deposits is unsustainable.

13. The Bank, however, took a plea that issuance of drafts through cash deposits was in violation of the RBI guidelines dated 8-11-2016.

14. The finding of the inquiry officer with respect to charge No. 2 was to the effect that there was no clear instruction regarding issuance of drafts in the RBI guidelines dated 8-11-2016. As long as the drafts were below Rs. 50,000/-(fifty thousand) they were issued as per earlier practice prevalent in the branch. Even at the PVC, dated 9-11-2016, no fresh instruction has been issued in this regard. He has thus held charge No. 2, also to be not proved.

15. The disciplinary authority did not agree with the findings of the inquiry officer.

16. The disagreement was communicated to the petitioner and the petitioner was allowed an opportunity to make his submissions/representation on the findings of the disciplinary authority contained in the communication dated 11-7-2017. The petitioner submitted his response on 12-7-2017. He reiterated his response taken before the inquiry officer, noted above.

17. The disciplinary authority thereafter, by his communication dated 16-8-2017, has imposed the punishment of "CENSURE" in terms of Rule 67(a) of the SBIOSR. The petitioner's suspension has been revoked with immediate effect and it has been directed that period of suspension, i.e., "29-12-2016 to 16-8-2017" has been treated as "NOT ON DUTY".

18. This Court, after considering the material on record and hearing the parties finds that the communication dated 16-8-2017 is proclaimed to be a "SPEAKING ORDER". From perusal of the same, however, it is more than obvious that the decision of the disciplinary authority does not contain any reasons in support of the conclusion, and suffers from the vice of non application of mind. The disciplinary authority has just recorded his conclusion without any basis with respect to both the charges.

19. With respect to charge No. 1, the conclusion of the disciplinary authority is as follows:

> "*I partially agree with the submission made by the official since no new facts have been brought by him. Rather he should have acted more diligently while discharging his duties as Service Manager during demonetization period while following the GOI/RBI guidelines.*"

20. And with respect to charge No. 2, the conclusion reads as follows:

> *"I partially agree with the submission made by the official since no new facts have been brought by him. Rather he should have acted more diligently while discharging his duties as Service Manager during demonetization period while following the GOI/RBI guidelines."*

21. He thereafter proceeds to record that since both charges have been partially proved, the petitioner has failed to discharge his duties with utmost devotion and diligence, and has acted in a manner highly prejudicial to the Bank's interests. He thereafter goes on to record the article of charges to be proved.

22. The order, therefore, apart from showing non application of mind and lack of consideration, also is self-contradictory. In the same breath, the disciplinary authority in the earlier part of the communication data 16-8-2017 records a finding of both charges being partially proved, whereas, in the end of the order, he records that the article of charges stands proved.

23. On the face of it, the conclusions are otherwise bad also, since findings of the inquiry officer, favourable to the petitioner, have been reversed without referring to any material/evidence adduced in the inquiry in support of the charges/allegations. The findings thus are also without any basis whatsoever and perverse.

24. This Court would also consider that it is trite law that assigning of reasons is a necessity in an order having penal consequences. It is only if the reasons are assigned that it would be possible to ascertain as to what crossed the mind of the authority imposing a penal consequence. In absence of any reasons, the opportunity granted by issuance of charge; and hearing at the inquiry, becomes a meaningless exercise and such an order would not subserve the principle of natural justice. Such order without assigning reasons also renders the conclusion to be arbitrary. It is also trite law that non-arbitrariness is a necessary concomitant of the rule of law and an arbitrary decision is violative of Article 14 of the Constitution of India. In this Connection, this Court would refer to para 48 of decision of the Hon'ble Apex Court in the case of ***Kumari Shrilekha Vidyarthi & Ors. v. State of U.P & Ors.*** reported in ***(1991) 1 SCC 212.***

25. It is also by now settled that an order of the disciplinary authority without reference to any material whatsoever is unsustainable.

26. It is further to be observed that the disciplinary authority in the impugned order of punishment has recorded finding regarding both charges being partially proved. In the same order, so as to sustain the award of the punishment in question, has also recorded that the charges stand proved. Such self-contradictory findings are unsustainable and to say the least, are perverse. The findings of the disciplinary authority are clearly unsustainable in law, as also in fact, as it is without reference to any material whatsoever.

27. The petitioner's appeal has also been met with similar fate. The appellate order dated 18-10-2017 is also unsustainable as it does not show any consideration of the petitioner's appeal, and is without assigning any reasons. The cryptic manner in which the appellate authority has concluded to reject the petitioner's appeal has rendered the remedy of appeal to be a futile exercise. After recording the entire submissions of the petitioner, the appeal has been rejected by recording the conclusion which reads as follows:

> *"5. My observation in respect of his submissions in the appeal petition:*
>
> *(a.) <u>For allegation no. (i):</u> The appellant has*

not put forward any new notable point in his appeal petition which could extenuate his lapses. The submission made by the appellant does not absolve him of his responsibility.

(b.) For allegation no. (ii): The appellant has not applied his normal prudence to enquire from his seniors / Controllers before issuance of drafts during demonetization period. The submissions made by the appellant do not mitigate his lapses.

Charge: The appellant failed to discharge his duties with utmost devotion and diligence in violation of Rule 50(4) of State Bank of India Officer's Service Rules.

6. On independent application of my mind and having considered the case in its entirety, the records and submissions of the appellant, I am of the opinion that the appellant's submissions do not merit consideration. The appellant failed to counter the allegations levelled against him with any convincing new fact. He did not discharge his duties with utmost devotion, diligence. I do not find any justification to interfere with the penalty of "Censure" under Rule

67(a) of SBIOSR and the period of suspension be treated as such i.e. not on duty imposed by Deputy General Manager (B&O) & Disciplinary Authority order dated 16/08/2017. I, therefore, reject the appeal and order accordingly."

28. From perusal of the order of the appellate authority, it is also obvious that the appellate authority has proceeded to consider the petitioner's appeal as if it was an opportunity for the petitioner to counter the allegations leveled against him by bringing on record new facts. Such premise in the order of the appellate authority is perverse.

29. There is no requirement that a delinquent is required to bring on record new facts in the appeal so as to dispel the charges. The petitioner, based on the facts/material on record was assailing the order of the disciplinary authority as being unsustainable because the department had not discharged its onus for bringing home the charges in the departmental proceeding.

30. The petitioner thereafter has preferred the review. The same has also been rejected by an order dated 29-05-2018. The conclusion of the reviewing authority is a verbatim representation of the illegal conclusion of the appellate authority, extracted above, and therefore is also unsustainable in the eyes of law.

31. In view of the consideration above, the Court finds that the conclusions of the disciplinary authority, appellate authority and reviewing authority, being without any material basis, perverse and without assigning any reasons are legally unsustainable. The Court would thus conclude that the order of the disciplinary authority dated 16-08-2017, order of the appellate authority dated 18-10-2017, as well as order of the reviewing authority dated 29-05-2018 are hereby quashed.

32. The writ petition is allowed with consequential benefits.

(Madhuresh Prasad, J)

SUMIT/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.10.2023
Transmission Date	NA