IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1055 of 2018

In

Civil Writ Jurisdiction Case No.11756 of 2005

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1. The Central Bank Of India represented through its Chairman having Central Office, Mumbai at Mumbai
2. The Central Bank of India, Zonal Office, Patna represented through its Zonal Manager Block, 'B' 2nd floor, Maurya Lok Complex, Dak Bunglow Road, Patna-800001
3. The Appellate Authority and the D.G.M. Central Bank of India, Zonal Office Block 'B' 2nd floor, Maurya Lok Complex, Dak Bunglow Road, Patna-800001
4. The Appellate Authority-cum Assistant General Manager, Regional Office, Jatin Chandra Road, Lalpur Chowk, Ranchi (Jharkhand) Pin- 834001
5. Sri. C.P. Pathak, Disciplinary Authority -cum -Chief Manager, Central Bank of India, Zonal Office, Patna
6. Mr. Deepak Kumar Das (as the then was) Senior Manager Central Bank of India, Patna Branch, New Dak Bunglow Road Patna-800001

... ... Appellant/s

Versus

1. Niranjan Prasad, S/o late Braj Kumar Prasad, Resident of N. Nilamyan Ganga Vihar Colony, P.S. Digha, P.O.- Digha Ghat, District- Patna.
2. Manoj Kumar, S/o not known to the writ petitioner serving as Manager in central Bank of India, Boring Road, Patna.
3. Mr. Irshad Ahmed, S/o Not known, at present posted at Central Bank of India, Muradpur Branch, Patna (At the relevant time posted as Clerk in Central Bank of India, Boring Road Branch, Patna.)
4. Smt. Poonam Rani, W/o not known to the petitioner posted at the relevant time as Clerk in Central Bank of India Boring Road Branch, Patna.
5. Sushil Kr. Mishra Head Cashier, Saving In-charge Central Bank of India, Boring Road, Branch, Patna As the then was, at Present Assistant Manager Central Bank of India, Begusarai.
6. Ashok Kumar Gupta, the Assistant Manager Saving In-charge Central Bank of India, Boring Road, Branch, Patna.
7. Smt. Anjani Kumari, W/o Not known to the petitioner, Cashier, Central Bank of India, Boring Road, Branch, Patna.
8. Ram Darshan Ram, Son of not known (at the relevant time posted as Daftari in Central Bank of India, Boring Road, Patna) at present posted as Daftari CBI, Patliputra Branch

... ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Sinha, Sr. Advocate
Mr. Ajit Kumar Sinha, Advocate
Ms. Dilkash Khan, Advocate

For the Respondent/s : Ms. Minu Kumari, Advocate
Mr. Rajendra Narain, Sr. Adv.
Mr. Umesh Kumar Roy, Advocate
Mr. Shri Prakash Srivastava, Advocate
Ms. Anu Priya, Advocate
Mr. Kunj Bihari Sharan, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 25-02-2023

The present LPA is presented by the Management Bank in questioning the validity of the order of the learned Single Judge dated 06.03.2018 passed in CWJC No. 11756 of 2005.

2. Respondent while working as a Computer Terminal Operator was subjected to disciplinary proceeding in framing 2 charges. Charges are read as under:-

"Charge Sheet

Deppt…….. No……. *Date- 30/09/2003*

ZO/DAW/03-04/192

The Attention of Sri Niranjan Prasad, CTO (under suspension), Zonal Office, Patna previously posted at Boring Road Branch, is drawn towards the Memo No. ZO/DAW/03-04/122 dated-11/08/2003 issued to him and his reply dated 01/09/2003 which has been found to be unsatisfactory. It has been, therefore, decided to hold a departmental enquiry on the following charges which constitute gross misconduct as laid down in para 5 (j) of (DAP) dated 29.04.2002.

(1) While posted at Boring Road Branch, Sri Niranjan Prasad on 20/11/2002, scanned a fake signature of the a/c holder, Late S.N. Sinha of HSS a/c C-3, to facilitate fraudulent withdrawals of a total sum of Rs. 38,800/- only

on different dates.

Details as per below:-

Sr. No.	*Date*	*Amount Withdrawal*
1	*20/11/2002*	*Rs. 5,000/-*
2.	*22/11/2002*	*Rs. 7,000/-*
3.	*25/11/2002*	*Rs. 10,000/-*
4.	*28/11/2002*	*Rs. 7,000/-*
5.	*30/11/2002*	*Rs. 9,800/-*
	Total	*Rs. 38,800/-*

It is made clear here that Sri Prasad scanned the signature on the date of posting of first withdrawal slip by him. He also posted third and fifth withdrawal himself and got other two withdrawals posted by other staff members. He then destroyed all the five withdrawal slips.

Thus Sri Prasad, swindled the deceased customer's money for his pecuniary benefits. This act of Sri Prasad is prejudicial to the interest of the bank. Bank is likely to incur loss due to him.

(2) After getting transfer from Boring Road Branch, Sri Prasad visited the branch and unauthorisedly operated the Computer system by logging into it with ulterior motives.

He logged into the system on 28/12/2002 from 12:50:41 hours to 12:52:04 hours and on 29/01/2003 from 13:53:55 hours to 14:00:56 hours. The above acts of Sri Prasad is prejudicial to the interest of the bank. Sri Prasad should note that the Departmental Enquiry against him will be conducted by Sri D.K. Das, Senior Manager, Zonal Office, Patna has been appointed enquiry officer. Sri U.K. Saha, Dy. Manager Kadamkuan Branch has been appointed as Management Representative to present the case on management behalf.

The date time and place of the departmental enquiry will be communicated to him by the said enquiry officer. At the enquiry Sri Prasad will be permitted to be defended by a representative of a Registered Union of Bank employee of which he is presently a member. At the enquiry he should keep himself ready with all the oral and documentary evidences which he may likely to produce on his behalf. For his defence he will be allowed to cross examine the witness/es produced by the management during the enquiry proceeding. He should inform the Enquiry Officer, the name of his defence representative, if any, and the witness/es he *intends to produce on his behalf at the enquiry. He is further, informed that if he fails to produce himself at the enquiry at the date, time and place fixed by the Enquiry Officer, the Enquiry will be held ex-parte and findings of the Enquiry Officer will be conclusive and binding upon him.*

Sd/-
(C.P. Pathak)
Disciplinary Authority
To,
Sri Niranjan Prasad,
CTO, (U/S)
Central Bank of India, DPIO Cell,
Zonal Office, Patna."

3. Respondent is stated to have filed reply, however, it is disputed by the Appellant. Inquiry was held against the aforementioned charges and the Equiring Officer has given his finding in the report that both the charges were proved. Based on the Enquiring Officer's report, disciplinary authority proceeded to impose the penalty of compulsory retirement on 10.12.2004.

4. Feeling aggrieved by the order of penalty, respondent preferred appeal in which he had suffered order on 02.08.2005 in the result respondent filed C.W.J.C. No. 11756 of 2005 and it was allowed by the learned Single Judge on 06.03.2018, hence, the present L.P.A. by the Bank.

5. Learned counsel for the Appellant-Bank submitted that charges levelled against the respondent were proved in the manner known to the law. Therefore, the learned Single Judge has

committed error in holding that finding was perverse. Further, the disciplinary Authority has taken note of MEX-7 which is stated to be report of Mr. Jitendra Kumar (Computer Engineer) which is not part and parcel of departmental enquiry. The Enquiring Officer has not referred to MEX-7. On this point, learned counsel for the appellant submitted that the Enquiring Officer has taken note of the documents which were made available to him. Therefore, there is no error committed by disciplinary authority insofar as relying on Exhibit MEX-7. It is further submitted that respondent had fraudulently withdrawn money of bank customer (a dead person) while forging his signature through scanning and it is a serious charge. The other charges relating to login with password by the respondent after his transfer on two occasions. Once he had been transferred from a particular branch he was not supposed to utilize the password and login the system. On this charge Exhibit 11.1 is suffice to prove that he had logged in without authority.

6. Per-contra, learned counsel for the respondent resisted the aforementioned contentions and supported the order of the learned Single Judge. He vehemently contended that along with the charge memo, the appellant was required to furnish statement of imputation, list of documents and list of witnesses. However, it was not made available to the respondent. Further, the disciplinary authority has relied on extraneous document, namely, MEX-7

which was not part and parcel of enquiring officer's report. In other words, MEX-7 has not been analyzed either by proving the relevant charge read with the examination and cross-examination of the author of that document, namely, Sri. Jitendra Kumar (Computer Enginner). Further, if the disciplinary authority is taking note of Exhibit MEX-7 and it has not been taken note of by the inquiring officer, in such an event one has to draw inference that disciplinary authority is disagreeing with the inquiring officer's report with reference to material. If it is so, the disciplinary authority should have resorted to issuance of show cause notice to the extent that he is disagreeing with the inquiring officer's report and he intents to rely on MEX-7 and to examine and cross-examine Sri. Jitendra Kumar (Computer Engineer) or the matter should have been referred back to the inquiring officer to commence the enquiry from the defective stage. Such steps have not been taken by the disciplinary authority thereby respondent has been denied opportunity of his say on Exhibit MEX-7. Therefore, there is no infirmity in the order of the learned single Judge.

7. Heard learned counsel for the respective parties.

8. Undisputed facts are that respondent-Niranjan Prasad was subjected to disciplinary proceedings while framing two article of charges. The inquiry was concluded in proving the alleged

charges. Based on the Inquiring Officer's report disciplinary authority proceeded to impose the penalty of compulsory retirement and it was affirmed by the Appellate Authority. The learned Single Judge set aside the penalty of compulsory retirement while allowing CWJC No. 11756 of 2005. The appellant presented the LPA while questioning the order of the learned Single Judge dated 06.03.2018 passed in CWJC No. 11756 of 2005.

9. The learned counsel for the appellant in support of LPA submitted that the learned single Judge has committed error in not appreciating that the charges were proved in the manner known to the law. Therefore, he has committed error in interfering with the penalty order. It is also submitted that respondent has fraudulently withdrawn the money of a dead person as on the date of alleged fraudulent transactions and he further logged in without authority of law when he was transferred from the concerned branch. These are two charges which are serious in nature that too in respect of financial institution like appellant-Bank having fiduciary relationship with its customers and who have reposed their trust in the appellant- Bank. Therefore, there is no infirmity in imposition of penalty of compulsory retirement.

10. The learned counsel for the appellant's contention is entirely on merits. Ordinarily Courts would not interfere on merits

in a disciplinary proceeding. In the present case, insofar as charge No. 1 is concerned, perusal of the finding of the Inquiring officer it is crystal clear that it is a case of no evidence. Insofar as charge no. 2 is concerned, even though evidence is available to the extent that Exhibit MEX-11.1, which suffice to prove that respondent had illegally logged in on those particular two days cited in the charge memo. Therefore, charge No. 2 is rightly proved.

11. Even though charge no. 2 is held to be proved, however, on legal issue the appellants have not made out a case for the reasons that respondent has not been made available material information while furnishing charge memo. He has not been provided statement of imputation, list of documents and list of witnesses. In this regard, appellant-Bank have not produced any material to show that they have provided documents. In this regard, it is necessary to take note of Apex Court decision in the case of ***Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and others*** reported in ***2001(1) SCC 182.*** Para 22 reads as under:-

> ***"22. The sixty-five page report has been sent to the Managing Director of the Nigam against the petitioner recording therein that the charges against him stand proved — what is the basis? Was the enquiry officer justified in coming to such a conclusion on the basis of the charge-sheet only? The answer cannot possibly be in the affirmative; if the records have been considered, the immediate necessity would be to consider as to who is the person who has produced the same and the next***

issue could be as regards the nature of the records — unfortunately there is not a whisper in the rather longish report in that regard. Where is the presenting officer? Where is the notice fixing the date of hearing? Where is the list of witnesses? What has happened to the defence witnesses? All these questions arise but unfortunately no answer is to be found in the rather longish report. But if one does not have it — can it be termed to be in consonance with the concept of justice or the same tantamounts to a total miscarriage of justice. The High Court answers it as miscarriage of justice and we do lend our concurrence therewith. The whole issue has been dealt with in such a way that it cannot but be termed to be totally devoid of any justifiable reason and in this context a decision of the King's Bench Division in the case of Denby (William) and Sons Ltd. v. Minister of Health [(1936) 1 KB 337 : 105 LJKB 134 : 154 LT 180] may be considered. Swift, J. while dealing with the administrative duties of the Minister has the following to state:

"I do not think that it is right to say that the Minister of Health or any other officer of the State who has to administer an Act of Parliament is a judicial officer. He is an administrative officer, carrying out the duties of an administrative office, and administering the provisions of particular Acts of Parliament. From time to time, in the course of administrative duties, he has to perform acts which require him to interfere with the rights and property of individuals, and in doing that the courts have said that he must act fairly and reasonably; not capriciously, but in accordance with the ordinary dictates of justice. The performance of those duties entails the exercise of the Minister's discretion, and I think what was said by Lord Halsbury in Sharp v. Wakefield [1891 AC 173 : 60 LJ MC 73 : 64 LT 180 (HL)] (AC at p. 179) is important to consider with reference to the exercise of such discretion. He there said:

' "Discretion" means when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not

according to private opinion: Rooke case [(1598) 5 Co Rep 99b, 100a] ; according to law, and not humour. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office ought to confine himself."

12. The principle laid down in the aforementioned decision of the Apex Court is that statement of imputation, list of documents and list of witnesses were to be provided to the charged employee. The principle laid down by the Apex Court in the above cited decision is aptly applicable to the case in hand.

13. The disciplinary authority has exceeded his jurisdiction in relying on extraneous material like Exhibit MEX-7 which is not part and parcel of Enquirying officer's report. If the disciplinary authority is relying on extraneous material in that event respondent was entitled to have benefit of notice and other formalities including examination and cross-examination of the author of Exhibit MEX-7, namely, Shi. Jitendra Kumar (Computer Engineer)

14. In the light of these facts and circumstances, the appellant-Bank has not made out a case so as to interfere with the learned Single Judge order.

15. The appellants are hereby directed to count the service

from the date of compulsory retirement till normal retirement, if he was in service and that date may be taken into consideration for the purpose of extending retiral benefits only. The same shall be considered and monetary benefits shall be calculated and disbursed within a period of three months from the date of receipt of this order.

16. Accordingly, the L.P.A stands dismissed and order of the learned Single Judge is affirmed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Balmukund/-
DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.03.2023
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