IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23184 of 2011

Mahesh Kumar Sinha S/o Late Lal Babu Sinha Resident of Mahallah Ambair P.O. And P.S. Biharsharif, Distt Nalanda ... ... Petitioner/s

Versus

1. The Board of Directors And The Appellate Authority, Madhya Bihar Gramin Bank, Meena Plaza, South Museum, Patna-1
2. The General Manager, Madhya Bihar Gramin Bank Meena Plaza South Museum, Patna - 1
3. The Chairman And Disciplinary Authority Madhya Bihar Gramin Bank, Meena Plaza Patna - 1
4. The Board of Directors And Appellate Authority of Nalanda Gramin Bank Now Merged With Madhya Bihar Gramin Bank Biharsharif, Nalanda
5. The Chairman And Disciplinary Authority of Nalanda Gramin Bank Null Now Merged With Madhya Bihar Gramin Bank Biharsharif, Nalanda
6. The Senior Manager Adm. Nalanda Gramin Bank Now Merged With Madhya Bihar Gramin Bank Biharsharif

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Devi Kant Jha, Advocate
For the State	:	Mr. Sita Ram Yadav, GP 16
For the Bank	:	Ms. Archana Palkar Khopde, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

Date : 01-07-2024

Heard learned counsel for the petitioner, learned counsel appearing on behalf of the respondent bank as well as learned counsel appearing on behalf of the State.

2. The present writ petition has been filed for quashing the order dated 17.11.2009 passed by the respondent no. 1 contained in letter dated 07.01.2010 communicated by respondent no. 2 vide letter dated 07.01.2010 rejecting the appeal dated 11.07.2009 of the petitioner without assigning any reason.

3. Learned counsel for the petitioner submits that the petitioner has joined service in the erstwhile bank in the year 1980 as a clerk-cum-cashier. He further submits that the petitioner was

a Branch Manager at Branch Maraura in Nalanda Gramin Bank, Biharsharif from 27.08.1990 to 09.03.1994. The bank later on merged with the Madhya Bihar Gramin Bank and subsequently merged in Dakshin Bihar Gramin Bank. He further submits that the petitioner while working as an officer at Badi Branch of erstwhile bank he was served with a show cause notice on 07.02.1995 alleging 7 points of charges enumerated in the chargesheet under the provisions of Nalanda Gramin Bank Karamchari Bind Service Regulation, 1980. The charges levelled against the petitioner were not enumerated as misconduct under said service regulation of erstwhile bank and called for explanation. The petitioner requested the authority concerned to supply the relevant documents to submit his explanation vide his letter dated 07.04.1995 but the respondent no. 5 of the erstwhile bank did not supplied the same and ordered for holding domestic enquiry vide his letter dated 16.05.1995.

4. Learned counsel for the petitioner submits that the respondent no. 5 of the erstwhile bank failed to supply the documents as requested for, the petitioner could not prepare and submit his explanation to the chargesheet. However, in absence of the documents and non-submission of the explanation the petitioner participated in the proceedings and again in the course of proceedings requested the enquiry officer to direct the Bank

Management to supply the documents duly certified by the Management of erstwhile Bank. The enquiry officer has submitted his enquiry report dated 03.08.1999 in which he has admitted that the presenting officer of the erstwhile bank failed to produce a single witness in support of the charge levelled against the petitioner and even then he gave finding the charge no. 4 is partially proved and charge no. 5 is proved. The rest of the charges i.e. 1, 2, 3, 6 and 7 are not proved. The respondent no. 5 differed with the findings of the enquiry officer with regard to the charge no.1 and 4 and without affording any opportunity to the petitioner awarded punishment as herein below:-

(i) Reduction of one annual increment in the time scale of pay with immediate effect.

(ii) Not to treat the period of suspension from 20.07.1995 to 01.02.1998 as on duty.

5. The petitioner filed an appeal before the appellate authority against the order of punishment but the appellate authority rejected the appeal without assigning any reason vide order dated 03.05.2001 communicated to the petitioner vide letter dated 15.06.2001. Aggrieved by the action of the respondents the petitioner has filed a writ petition bearing CWJC No. 4198 of 2002 challenging the order of the respondent nos. 4 and 5. The High Court after hearing the parties has been

pleased to quash the order of respondent nos. 4 and 5 vide order dated 10.01.2008.

6. Learned counsel for the petitioner submits that the in compliance of the order of the Hon'ble Court dated 10.01.2008 passed in CWJC No. 4198 of 2002, the respondent no. 3 served a letter dated 04.12.2008 with a copy of enquiry report dated 03.08.1999 and called for comments from the petitioner within 15 days. The petitioner submitted his comments vide his letter dated 13.12.2008. The respondent no. 3 after receiving the reply from the petitioner sent a letter dated 29.01.2009 for proposed punishment and called for comments from the petitioner. The respondent no. 3 sent a letter dated 13.02.2009 proposing punishment and called for comments by 02.03.2009. The petitioner informed the respondent no. 3 that since he was not held guilty of charges, there was no question of awarding punishment and no comments was needed to the proposed punishment. The respondent no. 3 vide his letter dated 26.03.2009 intimated the petitioner that in the last para of page no. 9 of the Memo dated 13.02.2009 the name of Sri Arbind Kumar was inadvertently typed and it should be read as Sri Mahesh Kumar Sinha and extended time for submission of reply by 27.04.2009. The petitioner has submitted his reply to the memo dated 26.03.2009 of the proposed punishment in detail but the respondent no. 3 did

not considered the reply of the petitioner and vide his order dated 29.05.2009 confirming the punishment of the respondent no. 5 of erstwhile bank dated 12.06.2000 and once again awarded the same punishment.

7. The petitioner preferred an appeal before the appellate authority stating therein that the findings of the disciplinary authority that the charges are being based on documents is therefore, against the law laid down by the Hon'ble High Court as well as Hon'ble Apex Court. It is stated that the Circular No. 4 of 1990 dated 16.02.1990 and Circular No. 74 of 1990 dated 30.07.1990 did not specifically debarred that assets should not be supplied to the borrowers from the supplier other than the supplier listed in the circular approved by DRDA. In this case the borrowers brought the quotations which were duly approved by the purchaser committee members including the office of the Block Office and DRDA Nalanda and assets were supplied by the above said committee and the committee members duly signed it. Hence, there was no irregularity in supplying the assets in face of the approval of the purchase committee members. But the appeal of the petitioner was rejected vide order dated 07.01.2010 without assigning any reason as to how the points raised in the said appeal was not satisfactory and the same was passed in violation of the principles of natural justice for the reason that the respondent no.

1 (appellate authority) failed to afford an opportunity of hearing before rejection of appeal as per the law settled by the Apex Court.

8. Learned counsel for the petitioner submits that the respondents have taken instance that all the charges are document based and as such there is no necessity to examine or cross examine the witnesses physically. He further relied upon the paragraph nos. 6 and 7 of the judgment reported in **2000 (3) PLJR 10** (Kumar Upendra Singh Parimar Versus B.S.Co-opt. Land Dev Bank Limited) which are quoted hereinbelow;

> *"6. It has been urged by the respondents that the charge sheet along with evidence was served on the petitioner and the petitioner was requested to see the D.V. file on 20.9.91 and 15.6.92. A shadow file was shown and a copy of the same was made available to him. It has been stated that since the original D.V. files were in the custody of the police in connection with the police case, therefore, the petitioner was advised to see the original file by contacting the police officer. It is further stated that the petitioner did not file any application giving the list of documents or the list of witnesses to get them examined in the proceeding. About the non-examination of the witnesses in the enquiry, it has been stated in the counter affidavit that the departmental proceeding is not a judicial trial, and there is no necessity to follow strictly the law of evidence in such a proceeding.*
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> *7. The respondents further urged that in the instant case charges are based on documents and the authenticity of such documents are not challenged. Therefore, no witnesses need be examined. About payment of subsistence allowance, the stand taken in the counter affidavit is that the*

> *petitioner has not co-operated in the departmental proceeding. He did not appear on the date fixed, and for giving him notice to appear in the proceeding the enquiry officer has to make publication in the daily newspaper."*

9. Learned counsel for the petitioner further submits that appellate authority has relied upon L and A Circular No. 18 of 1989 dated 12.10.1989 and Circular No. 36 of 1988 dated 28.10.1988 while holding the petitioner guilty. It would be clear from the chargesheet itself the the documents were not supplied to him along with the chargesheet. He relied upon the judgment reported in 1999 2 SCC 10 (Kuldeep Singh vs. Commissioner of Police and ors.). The Hon'ble Apex Court held that the enquriy officer did not sit with an open mind to hold an impartial domestic enquiry which is an essential component of principle of natural justice as also that no opportunity contemplated in Article 311(2) of the Constitution of India. And in the aforesaid judgment it was held that the reliance on the documents which was not mentioned in the chargesheet could not be relied on or even recorded by the disciplinary authority.

10. Learned counsel for the petitioner submits that from perusal of the chargesheet that there is allegation that there was violation of Circular No. 36 of 1988 the petitioner has controverted the same. Now in the enquiry report the enquiry officer for the first time recommended for violation of Circular

No. 36 of 1988 and in view of the aforesaid judgment (Kuldeep Singh vs. Commissioner of Police and ors.) the case of the respondents is not in accordance with the rule of the departmental proceeding and the appellate authority also did not considered the contention of the petitioner and the whole proceeding is based upon the wisenest of the respondent authority and they have predetermined to punish the petitioner. He further relied upon the paragraph nos. 23 and 24 of the judgment passed in **CWJC No. 7641 of 2004** passed on 23.08.2012 which are quoted hereinbelow;

> *"23. So far the order of the appellate authority dated 13.05.2001 communicated to the petitioner vide letter dated 15.06.2001 (Annexure 1) is concerned, it is quite apparent that it has not at all considered the aforesaid points as well as other points raised by the petitioner in his memorandum of appeal and a vague, cryptic and unconsidered order has been passed by the appellate authority, which cannot be sustained in the eye of law, specially when the disciplinary authority had also failed to consider the points raised by the petitioner in its impugned order dated 31.01.2000 (Annexure 1/1).*
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> *24. The law is well-settled that when an appeal is disposed of on merit, the impugned order merges in the order passed by the appellate authority and hence if one is found to be illegal, the other also has to be set aside, specially when the points, involved at both the stages, were exactly similar. In this connection, reference may be made to a decision of the Apex Court in case of **Sharda Singh vrs. State of Uttar Pradesh and others, reported in (2009) 2 SCC (L&S) 665.**"*

11. He further relied upon the paragraph nos. 3 and 4 of the judgment reported in **1998 (3) PLJR 413** (Brij Nandan Sinha Versus State of Bihar) which is quoted herein below;

> *“3. Only grievance of the Petitioner in this writ application is that for filing written statement in the departmental proceeding initiated against the Petitioner by order, contained in air filing written suested the conducting officer to supply seven papers, details of which have been given in the petition filed by the Petitioner before enquiry officer on 15.7.1998, but the same have not been supplied to him as yet.*
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> *4. In my view, prayer is reasonable and must be granted. In view of these facts, Shri Tilak Raj Gauri, Under Secretary-cum-Enquiring Officer, Finance Department, Government of Bihar, Respondent No. 3, is hereby commanded to supply the aforesaid papers to the Petitioner within a period of one month from the date of receipt/production of a copy of this order by the Petitioner before Respondent No. 3, so that the Petitioner' may file written statement before the enquiry "officer. The enquiry officer shall not take any step in the disciplinary proceeding, so long he does not furmish the aforesaid papers to the Petitioner. With the aforesaid direction, the writ application is, thus, disposed of.”*

12. Learned counsel appearing on behalf of the Bank submits that the petitioner while posted at Branch Office, Muraura committed several serious loan and routine irregularities violating the bank’s norms and abusing his official position. A chargesheet dated 07.02.1995 was served upon the petitioner and he was asked to submit his reply of the said chargesheet within 15 days and after giving due opportunity to the petitioner the

impugned order was passed in accordance with rule and there is no infirmity in the impugned order and the petitioner was given reasonable opportunity to defend his case and the respondent bank was fair and partial to the petitioner in holding departmental enquiry for aserting the veracity of charges attributed against the petitioner and the respondent bank has given adequate opportunity to the petitioner to defend his case and with respect to the documents which was demanded by the petitioner were not supplied to him as they were not relevant and were demanded with sole intention to delay the enquiry. However, several other relevant documents as demanded by the petitioner were made available to him during enquiry proceeding and the proceeding charges against the petitioner were based on documentary evidence so there was no necessity to examine or cross examine the witnesses physically and in the quasi judicial proceeding is not mandatory to prosecute by adducing total evidence where charges are totally based on documentary evidence. Having regard to the rival submissions of the party, it would be clear that relevant documents were not supplied to the petitioner, no witnesses were examined in the present case and even the author of the documents was not examined.

13. In view of the aforesaid and settled principle of law, the order dated 17.11.2009 is hereby set aside and the writ

petition stands allowed. The respondent bank is directed to pay all the consequential benefits to the petitioner within a period of 8 weeks from the date of production/receipt of copy of the order and if the respondent bank fails to pay the consequential benefits within the aforesaid time, the interest at the rate of 7% per annum be charged on all the consequential benefits and the petitioner will be made entitled from the date of dismissal till the date of actual payment.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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