IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19441 of 2015

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Braj Kishore Thakur Son of Late Ramnandan Thakur resident of Shekhpur, Muzaffarpur, P.S. Ahiyapur, Distt.- Muzaffarpur

... ... Petitioner/s

Versus

1. State Bank Of India Through The Chairman State Bank Of India and Ors
2. The Chief General Manager and Appellate Authority, State Bank of India, Local Head Office, West Gan
3. The General Manager Network and Appellate Authority, State Bank of India, Local Head Office, West
4. The Deputy General Manager OandC , NW - I and Disciplinary Authority, State Bank of India, Adminis
5. The Regional Manager, Sttate Bank of India, RBO, Muzaffarpur

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bipin Krishna Singh, Advocate
	:	Mr. Kundan Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Sanjiv Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT
Date : 24-06-2024

Heard Mr. Bipin Krishna Singh, learned counsel for the petitioner and Mr. Sanjiv Kumar, learned counsel appearing on behalf of the State Bank of India.

2. The present writ petition has been filed for the following reliefs;

> ***(a) for quashing of the order dated 31.10.2012 containing in letter number VIG/Gen/GPS/180 signed by the General Manager & Appointing Authority whereby and where under the petitioner***

has been awarded the punishment of 'Reduction of five (5) stages in time scale of pay for a period of five (5) years with further direction that the officer will not earn increments during this period and on expiry of such period, the reduction will have the effect of postponing his future increment in terms of Rule 67(f) of SBI Officer Service Rules as also that 'the period of suspension will be treated as such, i.e. not on duty;

(b) for quashing of the order of the Appellate Authority containing in letter bearing number A&R/HR/4985 dated 29.10.2013 whereby and where under the Appellate Authority has dismissed the appeal of the petitioner and confirmed the order of the General Manager & Appointing Authority;

(c) for quashing of the order of Reviewing Authority as conveyed vide letter bearing number RBO/GEN/477/24 dated 22.05.2015 as though submission of review petition is not a statutory requirement but the petitioner had

availed the same in order to get justice within the organizational set-up but the same authority also has failed to apply its mind and has refused to interfere with the punishment order;

(d) for considering the petitioner for promotion to next higher grade since when it became due as has been granted to other similarly circumstanced officer in the same case.

3. Learned counsel for the petitioner submits that the petitioner joined the service of State Bank of India as Agriculture Assistant in December 1989 after being successful in the written competitive examination and interview. The petitioner was promoted to officer cadre in Junior Management Grade Scale 1 after written examination and interview in March 2008. The petitioner was posted at ADB Muzaffarpur of the respondent-bank as Field Officer when a fraud of Rs. 12.50 Crore was perpetrated by miscreants on 10.05.2011 by hacking the system and the petitioner was placed under suspension vide letter number DGM-O&C/NW-I/Muz-31 dated 25.05.2011 and explanation was called from the petitioner vide letter dated 15.06.2011 on four counts :

i) You allegedly reset the password of

Sri Sudhakar Sinha (User ID-4193008) for his being maker of the above referred fraudulent transaction.

ii) You did not ensure the basic instructions of Bank for maintaining secrecy of password due to which this incident was allowed to happen under your User ID- 3428419.

iii) You did not ensure compliance of mandatory instructions for VVR Checking on regular basis.

iv) You did not ensure whether your user ID was deactivated during the period when you were on leave or deputation.

4. Learned counsel for the petitioner further submits that the petitioner was behind bars on 23.05.2011 on the basis of FIR No.176/2011 dated 11.05.2011 so the petitioner could submit his reply to the explanation letter vide his letter dated 06.02.2012 only after he was released on bail and in his reply he denied the aforesaid charges. The respondent-authorities did not take cognizance of cogent and valid explanation of the petitioner and a charge-sheet under cover of letter dated 19.04.2012 was served on the petitioner wherein following four allegations were levelled against the petitioner.

1. You unauthorisedly did resetting of the password of Sri Sudhakar Sinha (User ID-4193008), maker of fraudulent non-home RTGS transaction of Rs.12.50 crores on 10.05.2011, who was on deputation on that day. You thus facilitated perpetration of a fraud of Rs.12.50 crores.

2. You grossly violated the Bank's IT Policy and IS Security Policy as well as laid-down instructions thereby exposing the Bank to grave risk.

3. You did not carry out checking of VVRs in the Branch.

4. Due to your above acts of omission and commission, a net loss of Rs.2.01 crores has been caused to the Bank.

Articles of Charge is as follows: While posted as Field Officer at ADB Muzaffarpur Branch during the period 25.01.2011 to 25.05.2011, you failed to discharge your duties with utmost devotion, diligence, integrity and honesty and acted in a manner highly prejudicial to the Bank's interest in violation of Rule 50(4) of State Bank of India Officers' Service Rules. The enquiry proceedings were initiated against the petitioner and the Enquiry Officer held allegation numbers 1, 3 and 4 as 'partly proved' and the allegation number 2 as 'proved'. The petitioner has been victimized by the respondent bank for a cyber crime perpetrated by miscreants which the respondent bank could not ward off because it could not devise measures to counter the *modus operandi* of the miscreants and only after frauds involving large sums were perpetrated, the respondent-bank could come out with a few measures like introduction of bio-metric system and wooden cover for keyboards which are simple in nature and should have been thought of much in advance by its vaunted IT specialists sitting in safe confines of its corporate centre.

5. Learned counsel for the petitioner submits that the Enquiry Officer has not applied his mind at all in holding the allegation number 1 to be partly proved as the allegation is unequivocal and unambiguous that the petitioner had reset the password of another officer, Sri Sudhakar Sinha whereas even a new entrant in the respondent-bank knows that a single person cannot reset the password of any other employee. Thus the allegation itself is erroneous and holding the same to be 'partly proved' shows that the Enquiry Officer has not applied his mind at all or is not aware of the basics of system and procedures of the respondent bank. It is pertinent to point out that the Enquiry

Officer himself has observed in his finding on page 8 of the enquiry report it was not substantiated that the CSO did the resetting in person' and even after such observation holding the allegation to be partly proved and the Enquiry Officer has held the allegation no. 2 to be proved as the allegation relates to gross violation of IT policy and IS security policy as well as laid down instructions of the respondent-bank. The submissions of prosecution and observations of the Enquiry Officer in his findings clearly show that the allegation has been dealt with keeping in mind only the resetting of password of another officer, Sri Sudhakar Sinha and no other facet of IT policy and IS security policy has been dealt with. In the circumstances, it is a repetition of allegation number 1 and if the Enquiry Officer has held allegation number 1 to be partly proved then how he himself has held the allegation number 2 as proved is beyond comprehension and with respect to allegation no.3 the enquiry officer has found that allegation to be partly proved which suggest that he has not applied mind and he has also not adhered to the basic tenet of law that charges/allegations must be ignored on the basis of evidence adduced during the enquiry. The allegation has not specified the dates/VVRs which the CSO did not check"; "Prosecution has referred to some dates, ie.

03.05.2011, 04.05.2011, 05.05.2011, 06.05.2011, 07.05.2011 and 09.05.2011 on which rosters were done but has not produced VVRs of these dates to substantiate the allegation against the petitioner and the enquiry officer held that the allegation no.4 as partly proved in a presumptive manner and from a bare perusal of the enquiry report it appears that the evidence adduced to substantiate the same and submissions of prosecution and defense he has functioned as a quasi judicial functionary but while making his pronouncement in respect of the allegation he has functioned as an agent of the management rather than as a quasi judicial functionary and the Enquiry Officer has found the charge also to be partly proved despite observing 'Loss has not been quantified in Prosecution plea nor has he pleaded/evidenced categorically what were the acts constituting in failure of devotion and diligence and which acts were constituting failure in honesty and integrity and how' and the present case is a case of no evidence and the Inquiring Authority himself came to the conclusion on the basis of the presumption and without following the principles of natural justice that the allegation against the petitioner is proved. The the enquiry report was forwarded to the petitioner under cover of letter number DGM(B&O)/MZ/DPS/32/342 dated 21.08.2012 which suggest that the Disciplinary Authority did not agree with the findings of the enquiry officer in respect of allegation numbers 1 and 4 and the article of charge and has held them to be proved and from a bare perusal of the aforesaid letter dated it appears that the Disciplinary Authority has not given any cogent reason for disagreeing with the report of enquiry officer and his observations are mere ipse dixit or based on conjectures and surmises. The disciplinary authority is empowered to disagree with the findings of the enquiry officer but then he is required to give his own findings and cogent reason for disagreement of the enquiry officer. But from a bare perusal of the disagreement note of the discliplinary authority has not given any cogent reason for disagreements and has simply ruled the relevant aspects as irrelevant. The petitioner has submitted his submissions in respect of the enquiry report vide his letter dated 14.09.2012 to the Deputy General manager & Disciplinary Authority but the submissions of the petitioner were not taken cognizance of and the General Manager and Appointing Authority vide letter dated 15.10.2012 advised the petitioner about the tentative penalty of reduction to the minimum of scale and fixing the salary at the minimum of JMGS-I i.e. Rs. 14,500/- per month for a period of five years in terms of Rule 67(f) of the SBIOSR. Further the period of suspension will be treated as such, ie not on duty proposed to be inflicted upon him and gave him an opportunity to appear before him and show cause as to why the said punishment be not inflicted upon him. The petitioner appeared before the General Manager & Appointing Authority on 18.10.2012 and made his submissions wherein he pleaded innocence and prayed for exoneration from the allegations/charges levelled against him and the authority concerned and the authority concerned moderated the proposed punishment to some extent and vide letter dated 31.10.2012 inflicted punishment of 'Reduction of five (5) stages in time scale of pay for a period of five (5) years with further direction that the officer will not earn increments during this period and on expiry of such period, the reduction will have the effect of postponing his future increment' in terms of Rule 67(f) of SBI Officer Service Rules' upon the petitioner. The General Manager & Appointing Authority in his aforesaid letter has alleged that the petitioner had failed to discharge his duties as Field Officer, ADB Muzaffarpur during the period 25.01.2011 to 25.05.2011 with utmost devotion, diligence, integrity and honesty and acted in a manner unbecoming of a Bank officer and highly prejudicial to the Bank's interest in violation of Rule 50(4) of

State Bank of India Officer Service Rules (SBIOSR). Rule 50(4) of the State Bank of India Officers Service Rules (SBIOSR) which suggests 'Every officer shall, at all times, take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank official'.

6. Learned counsel for the petitioner further submits that the Inquiring Authority has clearly held that the prosecution had not 'pleaded/ evidenced categorically what were the acts constituting in failure of devotion and diligence and which acts were constituting failure in honesty and integrity and how' and, as such, imposing penalty on the basis of such charge amounts to imposition of penalty without giving opportunity to defend to the delinquent/petitioner and the petitioner aggrieved by the order of the General Manager & Appointing Authority filed an appeal with the Chief General Manager & Appellate Authority vide his letter/representation dated 12.12.2012 wherein he pointed out the deficiencies in the punishment order as also to the clean chit given by the Central Bureau of Investigation who had been entrusted with the task of investigating the case and the Central Bureau of Investigation stated in its report that the bank officers, namely, Mahesh Dass,

Sudhakar Sinha and BK Thakur whose passwords have been used for the fraudulent RTGS transaction by A-1 Nitin Raj have no role to play in the conspiracy as well as the commission of the crime'. The Authority without application of mind dismissed the appeal of the petitioner vide letter dated 29.10.2013. The Appellate Authority has not taken cognizance of CBI's clean chit to the officers stating that the charge-sheet filed by the CBI was sub-judice and has observed that the petitioner should have changed his password regularly to obviate its misuse by others in which he failed and thus violated Bank's IS Security Policy. In this regard, it is submitted that the respondent bank prescribes changing of password by its officials/employees at monthly intervals and nothing has been brought on record by the respondent bank to prove that the petitioner did not adhere to the same. Thereafter, the petitioner submitted his representation before the reviewing authority on 22.08.2014 in the bank after the authority has rejected the appeal of the petitioner but the reviewing authority also failed to apply its mind and refused to interfere with the order of the Appellate Authority.

7. Learned counsel for the petitioner further submits that as per Reserve Bank of India guidelines in regard to reporting of cases of fraud to Police/CBI at the material time, all

the cases of fraud involving Rs.1.00 crore or above were required to be reported to the CBI and cases involving less than Rs.1.00 crore were required to be reported to the local police. But, in the present case the authority disregard to the RBI guidelines and also divert attention from their own control function failure the senior officers got lodged an FIR with the local police who do not have any expertise in investigating such crimes. the fraud was perpetrated from outside the bank premises so presence in the branch or being on deputation on the material day is not relevant, particularly as the CBI in its report observed that Sanjay Raj and Shashi Bhushan had observed the passwords of Mahesh Dass & BK Thakur respectively and passed on the same to A-1 Nitin Raj Verma for executing the fraudulent RTGS transaction.A-3 Monis Pervaizz also had observed the password of Sudhakar Sinha Bank Officer in furtherance of the conspiracy. The CBI further submitted that 'Resetting was done to mislead the enforcement agencies from arriving at the truth'. The Disciplinary Authority cannot discriminate while imposing punishment when all of them are involved in the same incident. In the present case another officer, Sudhakar Sinha whose password had been used for making the fraudulent RTGS transaction, has been let off with minor penalty of 'Censure' and has also been promoted to next higher grade after expiry of the rigour period despite the fact that his password was also observed by the miscreants and the exercise of resetting was done only to mislead the enforcement agencies from arriving at the truth whereas stringent punishment has been imposed on the petitioner without any fault on his part. The petitioner has been victimised as the Enquiry Officer, the Disciplinary Authority, the Appellate Authority and the Reviewing Authority have acted in a partisan manner to victimise the petitioner. At the cost of repetition the petitioner submits that the country's premier investigating agency, CBI which was entrusted with investigation of the case belatedly, observed in its report 'the bank officers namely Mahesh Dass, Sudhakar Sinha and B K Thakur whose passwords have been used for the fraudulent RTGS transaction by A-1 Nitin Raj have no role to play in the conspiracy as well as the commission of the crime' but the Appellate Authority and the Reviewing Authority did not take any cognizance thereof before confirming the penalty imposed by the Disciplinary Authority.

8. Learned counsel for the petitioner relied upon a judgment in the case of ***Chandradip Sinha Vs. the State of Bihar & Ors., report in 2000 (3) PLJR 64***, referring paragraph

nos. 3 & 5 which are quoted hereinbelow;

> ***3. After the order of this Court the appellant was given a detailed show cause notice, which was produced as Annexure-18 in the writ petition, dated 11-5-96. It is not disputed before us that the appellant filed his show cause replying to the allegations made against him which is Annexure-19 to the writ petition, and after consideration of the same the impugned order imposing punishment was passed on 23-11-1996, which is Annexure-1 to the writ petition. We have perused the said order. and we find that it suffers from the same infirmity, as the earlier order. Though some facts have been mentioned, particularly those relating to earlier proceeding before this court, there is hardly any consideration of the plea that may have been set up by the appellant in his defence. A mere perusal of the order does not even give an indication as to whether the appellant admitted his guilt or whether he disputed the allegations made against him. It is not expected***

that the disciplinary authority should write a judgment in the same manner as courts do, but an order imposing a punishment under Rule 55-A of the Rules must at least disclose application of mind by the disciplinary authority to the facts of the case and the reasons for the conclusion reached, even though they may be stated briefly.

5. We are not called upon to say at this stage that the disciplinary authority did not apply its mind to all the relevant material on record. All that we say is that the order imposing punishment does not disclose the application of mind because it does not consider even briefly the defence of the appellant nor does it record any reasons for rejection of the plea set up by the appellant.

9. Mr. Sanjiv Kumar, learned counsel appearing on behalf of the Bank submits that the writ petition is not maintainable and is thus fit to be dismissed in limine as the Appointing Authority, the Appellate Authority and the Reviewing Authority, applying after full application of their mind have concurrently held and found that out of the four

allegations made against the petitioner, three of the charges have been proved and one of the change was partially proved. It was also found that while he was posted as Field Officer at ADB, Muzaffarpur during the period 25th January, 2011 to 25th May, 2011 he failed to discharge his duties with utmost devotion, diligence, integrity and honesty and acted in a manner highly prejudicial to the Bank's interest in violation of Rule 50 (4) of State Bank of India, officer's Service Rules. The punishment imposed upon the petitioner is commensurate with the gravity of lapses held substantiated against him and due to lapses on the part of the petitioner a sum of Rs. 12.50 crore was defrauded from Mid Group Account no. 10150826519, maintained with the IFB Branch of Andheri (East) Mumbai through RTGS. All these transactions were done from State Bank of India, ADB, Muzaffarpur. It was found that his user ID was recorded for resetting of other officials password and the petitioner, acting as Field Officer of the Branch acted in casual manner and allegedly facilitated in fraudulent transactions or allowed this to happen by sharing his password with others/ outsiders and caused irreparable loss to the Bank. The gravity of allegation and lapses observed prima facia in the perpetrated fraud in which he was found to have been involved.

10. Learned counsel for the Bank further submits that the respondent Bank vide its letter no. 31 dated 25th May 2011 put him under suspension with immediate effect i.e. with effect from 25th May 2011 in terms of Rule 68 A (1) (a) of State Bank of India OSR pending further disciplinary proceedings against him. The petitioner was given liberty to file an Appeal before the Appellate Authority within 45 days of the receipt of this letter in terms of Rule 69 (1) & (2) of State Bank of India Officers' Rule and the Regional Manager sought explanation from the petitioner. The petitioner his explanation and denied the allegation made against him and after due consideration of the explanation submitted by the petitioner, the authority concerned was not satisfied with the explanation and decided to hold a disciplinary proceeding against the petitioner for major penalty against him in terms of Rule 68(1) of State Bank of India, Officers Service Rules and so served a charge sheet upon the petitioner. A list of documents on basis of which the charges-allegations were made against him was enclosed with the charge sheet and petitioner was directed to submit his statement of defense within fifteen days and he was also given liberty to peruse the relevant documents in the premises of the ADB, Muzaffarpur in the presence of the Branch Manager. The

Disciplinary Authority appointed Shri A. K. Mishra, the AGM to enquire into the charges leveled against the petitioner. The enquiry proceeding commenced on 23rd May 2012 in presence of Shri Y. P. Singh, Manager (Vigilance) Local Head Office, Patna - the Presenting officer and Shri Rajeev Kumar, SMGS IV as Chief Manager, External Auditor - the Defense Representative and After giving full opportunity the petitioner and applying the procedure, the Enquiry officer found the allegation no. 2 to be proved and the allegation no. 1, 3 & 4 to be partially proved. The article of charge was also found to be partly proved. Thereafter, the Disciplinary Authority, forwarded the enquiry Report dated 09th August 2012 to the petitioner along with disagreement letter dated 21.08.2012. The Disciplinary authority disagreed with the findings of the Enquiry Officer as with regard to allegation 1 & 4 as well as the Article of charge. The tentative reasons for disagreement were communicated to the petitioner and the petitioner was asked to make submission within 7 days. The petitioner submitted his reply on 14th September 2012 in which he stated that the allegations/charges have been wrongly found to have been proved and sought to exonerate him from the charged as alleged. The Disciplinary Authority called the petitioner for personal hearing on 18th October 2012. Accordingly, the petitioner appeared before the Disciplinary Authority and a personal hearing was given to him vide letter dated 15.10.2012. The Disciplinary Authority has called the petitioner for personal hearing on 18th October 2012. The personal hearing was given to him and after considering the report of the enquiry officer the submission of the petitioner as well as the submission during the course of personal hearing on 18th October 2012, the Appointing Authority vide his order dated 31st October 2012 imposed upon him the penalty of Reduction of five (5) stages in time Scale of pay for a period of 5 years with further direction that the officer will not earn increments during this period and on expiry of such period, the reduction will have the effect of postponing his future increments in terms of Rule 67 (f) of State Bank of India Officers service rules and the period of suspension will be treated as such I.e. not on duty. However he was given an opportunity of preferring an appeal before the Appellate Authority within 45 days in terms a Rule 69 (1) & (2) of the State Bank of India Officers Service Rules and accordingly the petitioner has filed an Appeal on 12th December 2012 before the Appellate Authority. The Appellate Authority, after considering all the point raised in his respective submission rejected the petitioner's Appeal on 29th October 2013 and declined to interfere in the order passed by the Appointing Authority on the ground that the allegations made against the petitioner as well as the Articles of charges have been found to be proved. The Authority also found that the punishment inflicted upon him appears to be appropriate and the same was communicated to the petitioner on 29th October 2013. Thereafter, the petitioner filed a Review petition on 22nd August 2014. Accordingly, a Review Committee was constituted which examined the Review petition. After considering all the materials on the record and also observed that, the petitioner should have ensured secrecy and safe keeping of his own password as per the Bank's instruction to avoid the fraudulent transaction. After considering all the facts, the review committee has rejected the review petition on 19th March 2015 and while dismissing the review petition, the review committee held that the punishment imposed upon the petitioner is commensurate with gravity of lapses substantiated against him.

11. Learned counsel for the Bank further submits that it appears from the aforesaid that all the three authorities i.e. the disciplinary authority, the appellate authority and the reviewing committee have concurrently held and found that the petitioner to be guilty of the lapses alleged against him.

12. Having regard to the facts and circumstances of the case as well as finding of the enquiry officer, without any material, single person cannot reset the password of any other employee, bank

has not produced VVRs of the alleged dates to substantiate the allegation against the petitioner. The Disciplinary Authority has not given any cogent reason for disagreeing with the report of enquiry offier. The C.B.I. in its inquiry has not found guilty the petitioner. Another officer, namely, Sudhakar Sinha whose password has been used for present fraudulent RTGS transaction, has been left out with minor penalty of censure.

13. In view of the discussions made hereinabove, this Court finds substance in the writ petition and set aside the order dated 31.10.2012 (*Annexure-1),* order dated 29.10.2013 (*Annexure-2)* and order dated 22.05.2015 *(Annexure-3).*

14. Accordingly, the writ petition stands allowed. The petitioner is entitled for all the consequential benefits and the respondent bank is directed to pay all the consequential benefits within a period of six months from the date of production/receipt of the copy of the order.

15. There shall be no order as to cost(s).

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
CAV DATE	16.04.2024
Uploading Date	24.06.2024
Transmission Date	NA