IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7618 of 2012

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Ravi Kumar Son Of Late Avinash Chandra Gupta Resident of Mohalla Maya Bazar, North Gorakhpur, P.O. Gorakhpur, P.S. Gorakhpur, District Gorakhpur, Uttar Pradesh

... ... Petitioner/s

Versus

1. The Chairman,Central Bank of India, Chandramukhi Nariman Point, Mumbai.
2. The Assistant General Manager Cum Appellate Authority, Zonal Office, Central Bank Of India, Muzaffarpur, District- Muzaffarpur.
3. The Regional Manager Cum Disciplinary Authority, Regional Office, Central Bank Of India, Siwan, District- Siwan.
4. The Conducting Officer Cum Branch Manager, Central Bank Of India, Barharia Branch, Siwan District Siwan.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar, Advocate
For the Bank	:	Mr. Ajay Kumar Sinha, Sr. Advocte

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT

Date : 23-04-2024

Heard Mr. Alok Kumar, learned counsel for the petitioner and Mr. Ajay Kumar Sinha, learned Senior counsel appearing on behalf of the Bank assisted by Mr. Ajit Kumar Sinha, learned counsel for the Bank.

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

“(a) The order dated 28.01.2011 passed by the Respondent No. 3 vide RO/HRD/DA/2010-11/357 and Administrator Order vide RO/HRD/DA/2010-11/358 dated 28.01.2011 passed by respondent no. 3,

dismissed the petitioner contained in Annexure-12, be quashed with consequential reliefs.

(b) The order dated 24.06.2011 vide ZO/AA/11-12/137 of respondent no. 2 by which appeal was dismissed as contained in Annexure-15 be quashed with all consequential benefits.

(c) Any other relief or reliefs to which the petitioner be found entitled in law may also be granted."

3. Learned counsel for the petitioner submits that that the petitioner was put under suspension with immediate effect pending enquiry for his alleged act of fraudulent withdrawal from saving account of customers of Ekma Branch of Bank passed by respondent no. 3 on 20.09.2008. The respondent no 3 vide order dated 03.11.2008 has framed memo of charges against the petitioner and stating therein that the act of gross negligence involving the bank in serious loss as committed act of gross misconduct under Clause 5 (J) of disciplinary action procedure for work man dated 10.04.2002 and petitioner was directed to explain within seven days from receipt of this memo. The petitioner has received the aforesaid memo of charge on 25.11.2008 and filed his explanation in December, 2008 through registered post. The Branch Manager of Ekma Branch of Central Bank of India has sent a report to the Officer Incharge of Ekma Police Station on 14.10.2008 alleging therein that fraudulent withdrawal from the

pension holder customers account who were dead which amount is about Rs. 4,20,600/- and named two persons Prem Prakash Singh, Head Cashier and the petitioner (C.T.O.) posted at the Bank. Ekma Police Station instituted Ekma P.S. Case No. 90 of 2008 dated 14.10.2008 under Sections 406, 420, 467, 468, 120B of the Indian Penal Code. Learned counsel for the petitioner submits that Prem Prakash Singh, Head Cashier was granted the privilege of anticipatory bail on 21.05.2009 in Cr. Misc. No. 8628 of 2009 upon his undertaking to deposit half of the alleged amount, subject to non-prejudice by such deposit and thereafter the petitioner was also granted the privilege of anticipatory bail vide order dated 15.09.2009 passed in Cr. Misc. No. 6608 of 2009 subject to deposit half of the alleged amount i.e. Rs. 2,13,000/- and later on the petitioner has deposited the same.

4. Learned counsel for the petitioner further submits that the respondent no. 3 was not satisfied with the explanation of the petitioner and he has framed charges on 14.01.2009 and started departmental enquiry against the petitioner and one Shyamal Kishore, Branch Manager, Barharia Branch was appointed as Enquiry Officer and petitioner was permitted to be defended by a representative. The petitioner has filed his petition on 10.06.2010 before the respondent no. 4 stating therein that has performed his

duties as Computer Terminal Operation (CTO) with the best of ability and integrity and not involved with the alleged fraudulent withdrawal but pursuant to the direction of this Hon'ble Court in Cr. Mi9sc. No. 6608 of 2009 the petitioner has deposited half of the alleged amount i.e. Rs. 2,13,000/-. The respondent no. 4 has supplied the copy of written statement filed on behalf of the representative of the management and also asked the petitioner to file his detailed written statement by 19.07.2010 and after receiving the written statement from the petitioner, the respondent no. 4 conducted the enquiry and submitted his report dated 06.08.2010 to the respondent no. 3 and provided the finding of enquiry officer which has been already supplied to the petitioner and granted 15 days time from receipt of the order to submit explanation on the enquiry report.

5. Learned counsel for the petitioner further submits that from perusal of the enquiry report, it appears that charge no. 1 and 2 has not proved regarding charge no. 3 grossly negligent but about facilitating fraud charge has not been proved about charge no. 4 petitioner was found grossly negligent and charge of facilitating fraud was partially proved and with respect to charge no. 5, petitioner was found grossly negligent and about facilitating fraud, the same was partly proved. Learned counsel for the

petitioner submits that petitioner has filed his reply dated 15.10.2010 before respondent no. 3 stating therein that as per direction of the Hon'ble Court the petitioner has deposited Rs. 2,13,000/- half of the alleged defalcated amount on 22.10.2009 in SL Nominal account and requested to accept his show cause. The respondent no. 3 vide order dated 01.12.2010 which contained proposed final orders but in proposed but in proposed final order respondent no. 3 has stated that the enquiry officer hold the charge proved and further stated on the basis of above facts and his past track record punishment of "Be dismissed without notice is awarded" and at least a consolidated punishment on charge no. 1 to charge no. 05, respondent no. 3 awarded punishment "Be dismissed without notice" and thereafter the respondent no. 3 directed the petitioner to appear in person on 13.12.2010 for personal hearing. On 13.12.2010 the petitioner could not present himself for personal hearing and on 12.01.2011 personal hearing was afforded and the petitioner has appeared and filed his petition dated 12.01.2011 and stating therein that the petitioner has committed no fraud and further submits that he has already deposited Rs. 2,13,000/- on 22.10.2009 as per direction of the Hon'ble Court passed in the anticipatory bail petition of the petitioner i.e. Cr. Misc. No. 6608 of 2009. The respondent no. 3

vide letter dated 28.01.2011 passed final order which is repetition of proposed final order and the petitioner was awarded consolidated punishment "Be dismissed without notice" and consequently the respondent no. 3 has issued Administrative Order dated 28.01.2011.

6. Learned counsel for the petitioner further submits that from perusal of the proposed punishment order and final punishment order as contained in Annexures 10 and 12 respectively, it appears that the respondent no. 3 has based punishment specially on charge nos. 04 and 05, on past record of the petitioner which was not the subject matter of the present proceeding and virtually against the finding of respondent no. 4 who has held charge no. 01 and 02 has not proved, charge no. 03 grossly negligent but facilitating fraud has not proved, charge no. 04 grossly negligent charge of facilitating fraud partially proved and charge no. 05 grossly negligent but charge of facilitating commission of fraud partially proved but the respondent no. 3 has stated as charges proved which shows that he was predetermined the punishment against the petitioner. Learned counsel for the petitioner submits that the petitioner has challenged the order dated 28.01.2011 and filed his appeal on 21.02.2011 before the respondent no. 2 and stating therein that I was not involved in the

fraud taken place in the Ekma Branch and I got my anticipatory bail from Patna High Court after depositing Rs. 2,13,000/- which was 50% of the amount involved in the fraud and from perusal of the computer, there was not any caution or any mark in the computer neither any remark nor any caution mark in the computer. The allegation made against the petitioner are baseless and far from the truth respondent no. 2 after giving opportunity to the petitioner for personal hearing on 21.06.2011 but the respondent no. 2 has dismissed the appeal of the petitioner vide order dated 24.06.2011 confirmed the consolidated punishment "Be dismissed without notice".

7. Learned counsel for the petitioner submits that from a bare perusal of the punishment order is harsh and not in consonance with the gravity of the alleged offence and apart from the respondent no 3 has taken into consideration the past record which was not the subject matter in the charge memo and the appellate authority infer the guilt of the petitioner as he has deposited half of the defalcated amount. Learned counsel for the petitioner submits that in view of the aforesaid the punishment order must be set aside and the matter be remanded back to the disciplinary authority to consider the case of the petitioner afresh in accordance with law.

8. Learned counsel for the petitioner relied upon a judgment in the case of **Chairman-cum-Managing Director, Coal India Limited and Others Vs. Ananta Saha and Others, (2011) 5 Supreme Court Cases 142,** referring paragraph nos. 48 and 50 which are as follows:-

> ***"48***. *In ECIL v. B. Karunakar and Union of India v. Y.S. Sadhu, this Court held that where the punishment awarded by the disciplinary authority is quashed by the court/tribunal on some technical ground, the authority must be given an opportunity to conduct the inquiry afresh from the stage where it stood before alleged vulnerability surfaced. However, for the purpose of holding the fresh inquiry, the delinquent is to be reinstated and may be put under suspension. The question of back wages etc. is determined by the disciplinary authority in accordance with law after the fresh inquiry is concluded.*
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> ***50.*** *In view of the above, the relief sought by the delinquent that the appellants be directed to pay the arrears of back wages from the date of first termination order till date, cannot be entertained and is hereby rejected. In case the appellants choose to hold a fresh inquiry, they are bound to reinstate the delinquent and, in case, he is put under suspension, he shall be entitled for subsistence allowance till the conclusion of the enquiry. All other entitlements would be determined by the*

disciplinary authority as explained hereinabove after the conclusion of the enquiry. With these observations, the appeal stands disposed of. No costs."

9. Learned Senior counsel for the Bank submits that the enquiry was conducted in accordance with Rule and the ample opportunity was given to the petitioner to defend his case and there is no procedural irregularities in the present proceeding and the disciplinary authority after considering all the material on record, the findings of Inquiry Authority and submission of the petitioner over the same concurrent with the findings of Inquiry Authority and proposed charge-wise penalty with consolidated penalty of "Be dismissed without notice" under Clause 6(a) of Memorandum of Settlement on Disciplinary Action Procedure for workman and thereafter the disciplinary authority gave personal hearing to the petitioner and after considering the material on record, the findings of the Inquiry Authority and the submission of the petitioner over the same imposed final order and apart from that the Appellate Authority has also considered the points raised in Memo of Appeal and after giving the petitioner opportunity of personal hearing confirmed the findings recorded by the Disciplinary Authority and as such there is no infirmity in the impugned order.

10. In view of the aforesaid, it appears that the Disciplinary Authority has passed the order taking into consideration the past record of the petitioner which was not the subject matter of the present proceeding and the Authority inferred the guilt of the petitioner only on the sole ground that the petitioner has deposited the half of the defalcated amount but the same was deposited in compliance of the order passed by this Court in Cr. Misc. No. 6608 of 2009.

11. In this view of the matter, the order dated 28.01.2011 (Annexure-12) and dated 24.06.2011 (Annexure-15) are hereby set aside and the matter is remanded back to the Disciplinary Authority and the Disciplinary Authority is directed to complete the exercise in accordance with law within a period of six months and also take a notice to the aforesaid judgment **(2011) 5 Supreme Court Cases 142 (*supra*)** while passing the final order.

12. The writ petition stands allowed.

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(Rajesh Kumar Verma, J)

AFR/NAFR	NAFR
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