IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14867 of 2015

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Rai Yatish Chandra Sharma

... ... Petitioner/s

Versus

1. The Uttar Bihar Gramin Bank through its Chairman, Head Office-Kalambagh Chowk, Muzaffarpur.
2. The Board of Directors, Uttar Bihar Gramin Bank, Head Office-Kalambagh Chowk, Muzaffarpur.
3. The General Manager, Uttar Bihar Gramin Bank, its Head Office at Kalambagh Chowk, Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chakrapani, Advocate
	:	Mr. Madhuresh Singh, Advocate
	:	Mr. Dipak Kumar, Advocate
For the Bank	:	Mr. Prabhakar Jha, Advocate
	:	Mr. Amitesh Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT
Date : 11-03-2024

Heard Mr. Chakrapani, learned counsel for the petitioner and Mr. Prabhakar Jha, learned counsel appearing on behalf of the Uttar Bihar Gramin Bank.

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

> *(i) Issuance of an order, direction or writ in the nature of Certiorari quashing the order dated 19.10.2013 contained in HO/DAD/06/13- 14/No 525 as well as consequential administrative order dated 19.10.2013 contained in HO/DAD/06/13-14/No 526, by which the disciplinary authority has awarded the penalty*

of recovery of Rs. 1442454/- (fourteen lakh forty two thousand four hundred fifty four) only, from the amount of gratuity and leave encashment, payable to the petitioner, as a part of pecuniary loss of Rs. 21,16,251/- only caused to the Bank by the petitioner in terms of Regulation 39(1) (a) (iv) of Uttar Bihar Gramin Bank (Officers & Employees) Services Regulation, 2010.

(ii) Issuance of an order, direction or writ in the nature of Certiorari quashing the appellate order dated 04.03.2014 contained in letter no. HO/DAD/06/13-14/838, whereby and where under petitioner's appeal dated 25.11.2013 against the order of Disciplinary Authority has been upheld.

(iii) Issuance of an order, direction or writ in the nature of Mandamus commanding the respondent authorities to refund the amount of gratuity payable to the petitioner.

(iv) Any other relief or reliefs to which the petitioners may be found entitled to in the facts and circumstances of the case.

3. Learned counsel for the petitioner submits that when the petitioner was posted as a Branch Manager at Barwat pasrain

Branch of the respondent bank, a show cause has been asked to the petitioner by the vigilance officer of the bank regarding disproportionate assets, in which the petitioner submitted his statement in writing and prayed that he may be exonerated from the allegations made against him as the reason stated in his reply. A complaint was received against the petitioner which was investigated by the vigilance officer, and after completion of investigation, the investigating officer submitted his report dated 09.02.11 before the vigilance department by alleging therein that the petitioner as a branch manager has sanctioned and disbursed the KCC loan to borrowers seems an act of prejudicial to the interest of the Bank with some ulterior motives.

4. The Bank had asked show cause memo dated 28.02.2011 from the petitioner to explain on the five points stated in the memo within seven days. In the memo against the petitioner that he had recklessly financed KCC loan on fake land rent receipt and land possession certificate in the year 2008-09 & 2009-10 for his vested interest and accepted illegal gratification in disbursement of KCC loan for mala fide intention with vested interest and loan disbursed during petitioner's tenure turned into NPA accounts. Vide letter no. 46 dated 18.04.2012, the Disciplinary Authority of the Bank served

a memorandum along with statement of imputation of misconduct in the charge-sheet and directed the petitioner to submit the statement of defence. The petitioner had submitted his explanation on charge-sheet to the Disciplinary Authority on 25.04.2012 stating therein that he has made advances on the basis of L.P.C. and land receipt submitted by the KCC beneficiaries which was duly verified by the Assistant Branch Manager during course of pre-inspection and pre-inspection report, there is no instance of fabrication and manipulation and the KCC Loan was granted as per norms on the basis of L.P.C. and share of land verified by the inspection authority.

5. Learned counsel for the petitioner submits that the disciplinary authority had taken a decision vide letter no.70 dated 30.04.2012 to hold the departmental inquiry against the petitioner and appointed Sri Surendra Pathak as inquiring authority and Sri Tej Narain Singh as presenting officer respectively and they have been directed to submit his findings of enquiry within two months by holding sitting on day to day basis in respect of Charge-sheet dated 18.04.2012. Pursuant to the charges levelled against the petitioner departmental enquiry was conducted on various dates by the inquiry officer and during course of enquiry, the petitioner was superannuated on

31.07.2012. On 15.05.2013, one Gajendra Kumar who was allowed to participate in departmental enquiry, as a defence officer submitted his written arguments of defence before the enquiry officer, declining therein that altogether 10 charges leveled against the petitioner are not proved, thus the 36 years of service of the petitioner, at the verge of retirement may not be punished and he may be exonerated from the charges on the evidence collected during the enquiry. The Disciplinary Authority in its enquiry report submitted that the departmental enquiry was conducted on 10 points charges in which Charge No. 1, 2, 3 & 10 are proved, Charge No. 4, 8 & 9 are partially proved and Charge No. 5, 6 & 7 are not proved. The Disciplinary Authority vide letter no. 325 dated 25.07.2013, on enquiry report dated 22.07.13, in respect of charge sheet dated 18.04.12, holding Charge no. 1.2.3 & 10 as proved and Charge no. 4, 8 & 9 as partially proved and Charge no. 5, 6 & 7 as not proved asked the petitioner to go through the report thoroughly and submit his reply of above findings of Inquiring Authority. The petitioner submitted his detailed reply on 26.08.13 before the Disciplinary Authority of the respondent bank, by which, the petitioner gave detailed reply and submitted that the Inquiry Authority has excluded the materials which are relevant and included which are not relevant and findings in the enquiry report based on extraneous consideration and requested to set aside the findings of the report.

6. Learned counsel for the petitioner further submits that the disciplinary authority has passed a final order dated 19.10.2013, in the Departmental Enquiry which was held against the petitioner and award penalty for Recovery of Rs. 14,42,454/- (Fourteen Lakh Forty-Two Thousand and Four-Hundred Fifty-Four Rupees), from the amount of gratuity and leave encashment, payable to the petitioner, as a part of pecuniary loss of Rs. 21,16,251/- (Twenty-One Lakh Sixteen Thousand and Two-Hundred Fifty-One Rupees), caused to the Bank in respect of charge no. 10 in terms of Regulation 39(1) (a) (iv) of Uttar Bihar Gramin Bank (Officers & Employees) Service Regulations, 2010. The petitioner had preferred an appeal against the dated 19.10.13 on 25.11.2013 under Regulation 49 of Uttar Bihar Gramin Bank (Officers & Employees) Service Regulations, 2010 before the Chairman of Uttar Bihar Gramin Bank, Muzaffarpur and the Appellate Authority intimated to the petitioner that the Board found no scope to interfere with the findings and concurred with the findings of the Disciplinary Authority in respect of charges proved which commensurate

with the gravity of the charges proved, as such the Board of the Bank as Appellate Authority upheld the punishment awarded to the petitioner.

7. Learned counsel for the petitioner submits that the disciplinary authority as well as the appellate authority have failed to appreciate that no pecuniary loss to bank occurred, as will be evident from the memo of charges itself and it appears from the memo of the charge that no pecuniary loss was mentioned in the memo of charge and the present departmental proceeding was in complete violation of settled principle of law. From a bare perusal of the memo of charge dated 22.07.2013 it appears that the enquiry into allegation in respect of which the petitioner had been charged and petitioner has been punished which was not a subject matter of the memo of the charge. The authority without considering the nature of the charges levelled against the petitioner has directed to recovery of amount from the gratuity amount of the petitioner. The authority did not consider that the amount of gratuity cannot be attached both as per the service regulation as well as provisions of Payment of Gratuity Act and without pecuniary loss the petitioner has been awarded recovery of Rs. 14, 42, 454/- (Fourteen Lakh Forty-Two Thousand and Four-Hundred Fifty-Four Rupees) from the

amount of gratuity and leave encashment which is bad in law. Learned counsel for the petitioner relies upon the judgment reported in (2006) 5 SCC 88 in the case of ***M.V. Bijlani vs. Union of India & Ors.*** Paragraph nos. 14, 15, 20, 22 & 23 of which are quoted hereinbelow;

> *14. From a perusal of the enquiry report, it appears to us that the disciplinary authorities proceeded on a wrong premise. The appellant was principally charged for non-maintenance of ACE-8 Register. He was not charged for theft or misappropriation of 4000 kg of telegraph copper wire or misutilisation thereof. If he was to be proceeded against for misutilisation or misappropriation of the said amount of copper wire, it was necessary for the disciplinary authority to frame appropriate charges in that behalf. Charges were said to have been framed after receipt of a report from CBI (Anti-Corruption Bureau). It was, therefore, expected that definite charges of misutilisation/misappropriation of copper wire by the appellant would have been framed. The appellant, therefore, should have been charged for defalcation or misutilisation of the stores he had handled if he was to be departmentally proceeded against on that basis. The second charge shows that he had merely failed to supervise the working of the line. There was no charge that he failed to account for the copper wire over which he had physical control.*
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> *15. It will bear repetition to state that the*

charges which were framed related to only non-maintenance of ACE-8 Register and non-supervision of working of the line. In the absence of any charge that he had in fact misappropriated copper wire for his own benefit out of the disposal thereof, the question as regards purported misconduct by way of misutilisation of 4000 kg of copper wire could not have been gone into. Furthermore, it has not been shown that ACE-8 Register was required to be maintained in an appropriate form or in a particular manner i.e. in bound form or in loose sheets.

20. The enquiry officer proceeded as if in the departmental proceedings the appellant was charged with misappropriation of property. The witnesses not only spoke of theft of copper wire, but also stated about the existence of muster roll diaries. According to one Daya Shankar, the work shown in the diaries was correct. According to him, apart from erection of 300 lb iron wire in Section Geedam-Bijapur, 150 lb was erected in the entire section. He stated that broken pieces of wire found were sent to Jagdalpur through SIT diary. According to him, the work of erecting copper wire started from 5.11.1969 and continued up to March 1970. One Shri K.C. Sariya who was the successor of the appellant stated about the maintenance of the muster rolls and ACE-8 Register. According to him, stores pertaining to estimate were accounted for and ACE-8 sheets attached to estimate file. He further stated ACE-8 sheets *were in the estimate file. One Shri K.D. Shrivastava had stated that there was report of copper wire theft by one Shri Kashiram.*

22. The said finding of the enquiry officer itself demonstrates that ACE-8 sheets were being maintained and the quantity of copper wire mentioned therein existed of 4000 lb. He had furthermore noticed the muster rolls, work diaries and work orders of M/s Kashiram. The ultimate finding of the enquiry officer was:

> *"... As such there is nothing to establish that copper wires 4000 kg taken for copper wire theft replacement were utilised for erection on theft spots. Even if 175 spans are taken as erected out of 4000 kg of copper wire is not accounted for. In the requisition slip (DOC-6) 1000 kg of copper wire was issued by store linemen on 20.10.1969 to SIT Kashiram (purpose not mentioned) 4398 lb/2000 kg of copper wire was issued for shifting work from Tumar River to Mari River (vide DOC-8) through SIT Kashiram. 1000 kg of copper wire 150 lb/mile was issued vide DOC-10 to SIT Abdul Quadir for transportation to Bijapur on 30.10.1969. As such based on police report, work orders and diaries produced in evidence there appears to be no case of copper wire theft and if any wire was received for the work has not been accounted for. Thus, if there was a copper wire theft, supervision effected properly. All the facts that remain unexplained*

> *would have been taken care of. Defence has also not come out with details of receipt utilisation and theft report in their defence statement and has also avoided to submit written brief to prove his innocent."*
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> *23. Evidently, the evidences recorded by the enquiry officer and inferences drawn by him were not commensurate with the charges. If it was a case of misutilisation or misappropriation, the appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without framing appropriate charges. The charges are otherwise vague. We have noticed hereinbefore that the High Court also proceeded on the basis that the non-maintenance of diary amounted to misutilisation of copper wire.*

8. Learned counsel for the bank submits that, the petitioner was officer scale-II while discharging the duty as Branch Manager at Barbat Parsain and Dumariaghat under regional officer Bettiah and Motihari respectively and a charge-sheet was issued to him which constitutes misconduct under Regulation 18 & 20 of the Uttar Bihar Gramin Bank (Officers & Employees) Service Regulation, 2010 attracting penalty under Regulation 39. Altogether 10 charges were levelled against the petitioner. The departmental enquiry was commenced on 01.06.2012 and concluded on 24.01.2013. In 15 sittings of the

enquiry proceedings of the Management Representative/Presenting Officer produced 109 documents as documentary prosecution evidences and 2 management witnesses in the proceeding in support of the charges against the petitioner. The defence has produced 82 evidences as defence evidence during the departmental enquiry in his defence and on the findings of the enquiry authority he has held the charges no. 1, 2, 3 and 10 as proved, charges no. 4, 8 and 9 as partially proved and 5, 6 and 7 as not proved.

9. The findings of the Inquiry authority was sent to the petitioner for making a submission on 25.07.2013 and he was advised to submit his submissions in respect of the Inquiry authority and accordingly the petitioner has submitted his submission on Inquiry authority finding on 26.08.2013 and the disciplinary authority taking into consideration all the facts that emerged in the enquiry and the gravity of the charges proved and consolidated punishment was awarded by the disciplinary authority.

10. I have gone through the entire records and it was found that in the memo of charge no pecuniary loss was mentioned and the authority concerned has passed the order by which the recovery has been ordered from the amount of

gratuity and leave encashment of the petitioner. It appears that the authority concerned without appreciating the fact, the pecuniary loss was not the subject matter of the present proceeding and no pecuniary loss was mentioned in the memo of charge passed the order of recovery.

11. In view of the aforesaid the order dated 19.10.2013 *(Annexure-11)* and 04.03.2014 *(Annexure-13)* are set aside and the respondent-bank is directed to pay all the consequential benefits to the petitioner within a period of eight weeks from the date of the receipt/production of the copy of the order.

12. The writ petition is allowed.

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.04.2024
Transmission Date	NA