

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4859 of 2012

=====

KAMLESH KUMAR TRIPATHY S/O Late Raghuvir Saran Tripathy R/O
Mohalla- Priydarshi Nagar, Opposite To Delhi Public School, P.S.-
Rupushpur, Distt.-Patna, At Present Posted At Regional Office Madhya Bihar
Gramin Bank, Nawada

... .. Petitioner/s

Versus

1. The Madhya Bihar Gramin Bank And Null Meena Plaza, Near Museum,
Patna
2. The Chairman Cum Disciplinary Authority Madhya Bihar Gramin Bank,
Meena Plaza, Near Museum, Patna
3. The Board Of Director Cum Appellate Authority Madhya Bihar Gramin
Bank, Meena Plazar, Near Museum, Patna
4. The Enquiry Officer Cum Manager Madhya Bihar Gramin Bank, Branch
Office, Bodh Gaya

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Mukesh Kumar No-1, Advocate
For the Respondent-Bank	:	Mr. Mahesh Narayan Parbat, Sr. Advocate
	:	Mr. Ved Prakash Srivastava, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL JUDGMENT

Date : 15-02-2024

Heard Mr. Mukesh Kumar No.1, learned counsel
for the petitioner and Mr. Mahesh Narayan Parbat, learned
senior counsel assisted by Mr. Ved Prakash Srivastava, learned
counsel for the Bank.

2. The present writ petition has been filed for
quashing the order dated 14.09.2011 (Annexure-9) passed by the
Board of Director cum Appellate Authority Madhya Bihar
Gramin Bank whereby the punishment order dated 15.02.2011
(Annexure-7) of the Chairman cum Disciplinary Authority



Madhya Bihar Gramin Bank has been affirmed and the appeal filed by the petitioner against the punishment order dated 15.02.2011 (*Annexure-7*) has been dismissed.

3. Learned counsel for the petitioner submits that the petitioner had joined the bank service on scale 1 officer on 21.03.1980 in the Madhya Bihar Gramin Bank at Bihar Sharif then Nalanda Gramin Bank and since he is serving in the interest of the Bank and devoted for achievement for the Bank target and he was promoted on scale II officer Middle Management on 01.09.1999. When the petitioner was working as a manager posted in Branch office Dumaria while he was officiating the charge of Inspector of head office some charges were levelled and accordingly charge-sheet dated 08.09.2008 with regard to Travelling allowance Bill for regular Inspection of Branch office Dhanauli was served upon him and show cause was asked to him. From a bare perusal of the charge-sheet dated 08.09.2008 which contains two charges, the first charge deals with the petitioner submitted the Hotel Bill for thirteen days however he stayed only for eleven days hence he tried to put the Bank in loss for two days excess Bill, and second one is that the petitioner had submitted the Hotel Bill is excess in real rent of the Hotel hence once again he tried to put the Bank in loss by



presenting fake Bill. Vide letter dated 30.03.2009 a regular departmental proceeding was initiated under regulation 38 and 40 of the Officers and Employees service Regulations 2006 and enquiry officer and presenting officer were appointed to look into the truth of the imputations of lapses against the petitioner by the chairman-cum-disciplinary authority of the Bank. The petitioner participated and cooperated in the departmental proceeding and submitted his defense in writing letter dated 08.11.2009 stating therein in that the Enquiry Officer has produced altogether eleven documents and marked as ME1 to ME11 but in fact all these eleven documents are only one documents as preliminary enquiry report and each pages contains separate 11 evidences which have been marked as ME1 to ME11. ME-3 to 6 of Hotel registered and ME-2 of certificate of room rent of the said Hotel have not been proved by its author and even the original registered was called for but the same was not considered and even it is admitted fact that the Enquiry Officer who had conducted preliminary enquiry is below in rank of the petitioner. The original hotel registered was in custody of the Enquiry Officer and it was not produced during the proceeding for perusal and not been proved by its author only photocopy of the same was produced and marked



and even number of times the original hotel registered was demanded on behalf of the petitioner for perusal during course of proceeding but it was not given and not produced. The Enquiry Officer himself admits that the said bill was issued by the hotel in question and it is corroborated by the witness also and so far the total number of days are concerned that the petitioner stayed in the said hotel from 05.09.2007 to 08.09.2007 total four days and subsequently from 10.09.2007 to 18.09.2007 total nine days hence total days are thirteen days hence no question of eleven days as alleged in the memo of charge. So far as excess billing is concerned the Enquiry Officer produced a chart of room rate of the said hotel which is without seal and it is not on the letter pad of the said hotel and exhibited as ME-I and during course of proceeding the author of the same was neither examined nor cross examined and even the name of the author as mentioned in the said chart is one Murlidhar Mishra but in the said hotel no employee of such name.

4. Learned counsel for the petitioner further submits that after the departmental proceeding the Enquiry Officer has submitted his enquiry report dated 18.12.2009 to the Disciplinary Authority in which the Enquiry Officer found that the management has failed to prove the charges levelled against



the petitioner and after full discussion and minutely consideration of the evidences as such oral and documentary the Enquiry Officer opined that charges are not proved. The Enquiry Officer has also pointed out in his report that it is difficult to place complete reliance of the documents produced by the presenting officer which are only photocopies and not certified by anybody on behalf of the said Hotel and even there is no stamp of the said Hotel on the said photocopies hence it cannot be treated as evidence and during the proceeding the management has produced only photocopies of the documents, without certified by anybody and without seal & signature of the said Hotel.

5. The disciplinary authority has partly differed and partly agreed with the finding of the Enquiry Officer after perusal of the enquiry report dated 18.12.2009 submitted by the Enquiry Officer. The disciplinary authority has stated in the show cause dated 08.03.2010 that so far the charge no.2 respect to fake bill of the said hotel is concerned do agree with the finding of the Enquiry Officer but so far the charge no.1 respect to false bill of the said Hotel for in place of eleven days there is thirteen days the disciplinary authority had differed with the finding of the Enquiry Officer and treated as proved. In



compliance of the show cause dated 08.03.2010 issued by the disciplinary authority the petitioner submitted his reply on 17.04.2010 before the disciplinary authority mentioning therein that both the charges were not proved by the management during course of proceeding, therefore, the Enquiry Officer after assigning reason came on conclusion that charges are not proved. The disciplinary authority has imposed punishment order dated 15.02.2011 without properly considering the show cause dated 17.04.2010 submitting on behalf of the petitioner as well as without considering the finding of the Enquiry Officer with respect to charge no.1 “k” and “kha” how ever the disciplinary authority has agreed with the finding of the Enquiry Officer with respect to charge no.2. The petitioner has preferred an appeal on 21.05.2011 under provision of regulation 47 of the said regulation before the Board of Director of the Bank and send it by registered post on 23.05.2011. The said appeal of the petitioner has been dismissed vide order dated 13.09.2011 by affirming the punishment order of the disciplinary authority. The appellate authority has also not considered that the order of punishment is based on the unsigned and unsealed photocopies of the documents which have not been proved by their author.

6. Learned counsel for the petitioner further



submits that the disciplinary authority cannot differ with the finding of the Enquiry Officer and impose punishment without giving any reason for punishment and can impose the punishment on the same finding of the Enquiry Officer upon which the Enquiry Officer has exonerated the petitioner and it appears from the dissatisfaction note of the disciplinary authority that without fresh material he has disagreed with the findings of the Enquiry Officer. The disciplinary authority has not produced any document or proof in support of his disagreement with the report of the Enquiry Officer and in absence of such documents on which the disciplinary authority has disagreed with the Enquiry Officer is mandatory to bring before the delinquent the show cause notice disagreeing with the enquiry report is not valid in law because it does not indicate the reasons on the basis of which the disciplinary authority proposed to disagree with the conclusion reached by the Enquiry Officer. It appears that without any material the disciplinary authority has punished the petitioner and the appellate authority has also upheld the order of the disciplinary authority which is bad in law.

7. Learned counsel for the Bank, on the other hand, submits that the departmental proceeding has commenced



against the petitioner for the two charges, the first charge had two parts (a) that he had submitted fake/wrong bills of hotel and (b) that he had submitted hotel bills of 13 days where as he stayed in the hotel only for 11 days. The second charge was that he submitted hotel bills in excess of the actual/prescribed rent/tariff. Though the Enquiry Officer submitted his enquiry report on 18.12.2009 with his findings that both the charges against the petitioner not proved. The disciplinary authority, on receipt of the enquiry report, agreed with the findings of the Enquiry Officer with respect to charge no.2 but he differed with the findings of Enquiry Officer in respect to charge no.1 with reason and he has assigned the detailed reasons for his such disagreement and sought comment of the petitioner vide letter dated 08.03.2010 and after receipt of the reply of the petitioner the disciplinary authority after considering all the materials on the record, with detailed and reasoned order passed impugned order imposing punishment on the petitioner of reduction of two increments in time scale. The appellate authority after full consideration of the case has pleased to dismiss the appeal of the petitioner and there is no infirmity in the order of the disciplinary authority as well as of the appellate authority and they have passed the order in accordance with law and after



giving full opportunity to the petitioner and compliance of the principle of nature justice.

8. After hearing both the parties, it has emerged that the disciplinary authority without any material has passed the punishment order against the petitioner and he has ordered reduction of the two increments in time scale which was imposed against the petitioner without any material and in the proceeding the original papers have not been produced by the presenting officer and even the employees of the hotel have not been examined in the proceeding and without any materials he has been punished.

9. In view of the aforesaid, the order dated 14.09.2011 (*Annexure-9*) and order dated 15.02.2011 (*Annexure-7*) cannot sustained and accordingly set aside and respondent-authorities are directed to pay all the consequential benefits to the petitioner in accordance with law within a period of eight weeks from the date of receipt/production of a copy of this order.

10. Accordingly, the writ petition is allowed.

(Rajesh Kumar Verma, J)

ajay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03 .04.2024
Transmission Date	NA

