

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1323 of 2020

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Rakesh Roshan Gupta Son of Raghunath Prasad Gupta, Resident of Flat No. 305 C/o Satyam Apartment, Montessori School Lane, Boring Road, P.S. S.K. Puri, District- Patna.

... .. Petitioner/s

Versus

1. The Chairman Cum Managing Director, State Bank of India Nariman Point, Mumbai
2. The Appellate Authority-Cum- Chief General Manager, State Bank of India, Local Head Office, (LHO), West Gandhi Maidan, Patna.
3. The Appointing Authority-Cum- General Manager, State Bank of India, Local Head Office, West Gandhi Maidan, Patna.
4. The Deputy General Manager (Business and Operation), State Bank of India, Zonal Office, Kala Bhawan Road, Purnea.
5. The Assistant General Manager (Domestic Enquiry), State Bank of India, Local Head Office, Patna.
6. The Chief Manager, State Bank of India, Main Branch, Siwan.
7. The Manager (Vigilance), State Bank of India, Local Head Office, Patna.
8. Mr. Kumar Gaurav, Son of Ravindra Prasad, Resident of Mohalla- Jai Prakash Nagar, Purnea College Chowk, P.S. and District- Purnea, Erstwhile Branch Manager, Agwanpur Branch, Saharsa, at Present Posted as Manager, Personal Banking Branch, Near Dr. I.D. Singh Clinic, New Colony, Naya Bazar, Saharsa, Pin Code- 852201, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Advocate Mr. Rakesh Kumar Sharma, Advocate
For the Respondent/s	:	Mr.Kaushlendra Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 23-02-2024

Heard learned Senior Counsel for the petitioner
and learned counsel for the State Bank of India.

2. The present writ petition has been filed for
quashing the order dated 20.11.2019 passed by the Appellate



Authority communicated to the petitioner vide letter No.HR/A&R/2529 dated 21.11.2019 as well as the order of Appointing Authority dated 07.06.2019 communicated to the petitioner vide letter No.VIG/GEN/NK/97 dated 23.06.2019 by which punishment has been imposed on the petitioner as reduction to the post of Award Staff and fixing of basic pay of Rs.21,240/- per month and further ordered that the period of suspension would be treated not on duty.

3. Learned Senior Counsel for the petitioner fairly submits that prior to passing the present punishment order, order of punishment has been passed earlier against the petitioner, by which he was dismissed from service vide order dated 06.02.2015. Against which, the petitioner has preferred writ petition before this Hon'ble Court bearing CWJC No.19743 of 2015, which was finally allowed in favour of the petitioner vide order dated 23.04.2018, the operative part of the order are as follows:-

“As a consequence of the quashing of the second show cause notice dated 12.05.2014 the findings of the disciplinary authority dated 06.02.2015 and appellate order dated 19.09.2015, the petitioner would be entitled to reinstatement with all consequential



benefits. It would be open to the authorities to proceed in the matter from the stage of second show cause notice expeditiously.

The writ petition is allowed to the extent indicated above.”

4. Thereafter the petitioner submitted his representation along with the order of this Court dated 23.04.2018 passed in CWJC No.19743 of 2015. On 04.05.2018, in compliance of the order passed by this Hon'ble Court the respondent Bank has immediately reinstated the petitioner vide order dated 17.07.2018. The disciplinary authority accepted the enquiry report and left it to the appointing authority for further course of action. On 15.09.2018 second show cause notice was issued against the petitioner by appointing authority and only word “conclusively” has been changed from the earlier second show cause. In the show-cause dated 15.09.2018 the word ‘conclusively’ has been replaced as ‘tentatively’. Learned Senior counsel for the petitioner submits that the petitioner filed his reply to the second show on 07.10.2018. The Vigilance Department of Bank has issued a letter dated 21.02.2019 by which it differed from the findings of enquiry officer and demanded further reply. Reply has been submitted on



12.03.2019 and Bank sent a letter regarding proposed major penalty vide letter dated 01.06.2019. Thereafter petitioner filed his reply on proposed punishment on 06.06.2019. Final order has been passed on 07.06.2019 by which the punishment with reduction to the post of Award Staff and fixing of basic pay of Rs.21,340/- per month in terms of Rules 67(g) and 67(f) of SBI OSR, 1992 and further ordered that suspension period will be treated as not on duty has been passed.

5. Being aggrieved and dissatisfied by the said order, the petitioner preferred appeal and the appeal was rejected vide order dated 20.11.2019. Against which the petitioner has filed the present writ petition. The specific legal point raised by the petitioner that the disciplinary authority referred the matter to the Appointing Authority vide letter dated 21.02.2019 and thereafter the Appointing Authority passed the final order on 07.06.2019, which is in gross violation of Rule 68(3)(iii) of the State Bank of India Officers Services Rules, 1992.

6. Learned Senior Counsel specifically submits that the Appointing Authority cannot take points of disagreement and has to give punishment based on the opinion of disciplinary authority on the enquiry report and Appointing Authority passed the final order on 07.06.2019, which was



received by the petitioner on 23.06.2019. But in the said order there is no detail given in the punishment order as only finding has been given, but adjudication had not been done. Counsel further submits that the similar mistake has been committed by the Appellate Authority by way of dismissing the appeal in mechanical manner. Learned Senior counsel submits that the order passed by the Appointing Authority and the appellate authority both are non-speaking order and without assigning any reason it has nowhere discussed that the statement of witness before the Judicial Magistrate has not been accepted at original level or at appellate level. There is non-consideration of this point that the alleged witness who put his signature on the debt note ought to be considered as his consent but the authorities were completely silent. Learned Senior counsel submits that this finding of the original and appellate authority has been in gross violation of **Roop Singh Negi Vs. Punjab National Bank and Others** reported in **(2009) 2 SCC 570**.

7. Learned counsel for the Bank, on the other hand, submits that the order passed by the Appointing Authority as well as Appellate Authority is completely in accordance with law. Learned counsel for the Bank submits that in compliance of the order passed by this Hon'ble Court after concurring with the



finding of the enquiry authority the disciplinary authority issued the second show-cause on 15.09.2018 on the enquiry report after receiving the reply to the second show cause notice, the matter was recommended to the appointing authority, who in turn issued a fresh show-cause notice dated 21.02.2019 differing with the findings of the enquiry authority on charge and article of charge and finding the said charge as tentatively proved. The reason for differing with the findings was also assigned that even if it is accepted that the version of the petitioner that he has got consent of Parmeshwari Thakur in withdrawing the money. The petitioner was not authorized as per the banking norm to withdraw the money from the account of a customer by using double entry withdraw voucher. Counsel for the Bank further submits that the double entry voucher can only be used for transaction involving bank's office account or for reversing/correcting the incorrect transaction. For withdrawing the money by a customer only two modes i.e., debit voucher or cheque is permissible as per the Bank's norm. The petitioner filed his second show-cause in which appointing authority has provided personal hearing and only after providing personal hearing to the petitioner, penalty of reduction to the post of Award Staff was imposed. Counsel further submits that in the



case of **State of Karnataka and Another Vs. N. Gangaraj** reported in **(2020) 3 Supreme Court Cases 423**, it has been held by the Hon'ble Supreme Court that power of judicial review conferred on the constitutional Court is not as like that of appellate Court but is only confined to decision making process and Court shall not re-appreciate the evidence or go into the adequacy of evidence. Counsel for the Bank also relied on the same Rule on which petitioner relied in his favour, i.e., Rule 68(3)(iii) of the State Bank of India Officers Service Rules, 1992, on which the petitioner is relying. The only difference is that the petitioner is construing the said Rule in his favour whereas Bank is construing the Rule in its favour.

8. In this background, it is essential for this Court to quote the said Rule in this judgment. The contents of the said Rule is as follows:

“68(3)(iii). If the Disciplinary Authority, having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in Rule 67 should be imposed on the officer; it shall, notwithstanding anything contained in sub-rule (4), make an order imposing such penalty.

Provided that where the



Disciplinary Authority is of the opinion that the penalty to be imposed is any of the penalties specified in clauses (e), (f), (g), (h), (i) & (j) of Rule 67 and if it is lower in rank to the Appointing Authority in respect of the category of officers to which the officer belongs, it shall submit to the Appointing Authority its recommendations regarding the penalty that may be imposed. Records of the enquiry specified in clause (xxi)(b) of sub rule (2), shall also be submitted to the Appointing Authority in respect of penalties to be imposed under clauses (f), (g), (h), (i) & (j) of Rule 67. The Appointing Authority shall make an order imposing such penalty as it consider in its opinion appropriate.”

9. After going through the provisions of rule, it transpires to this Court that upon reading main paragraph without proviso then it shall construe in favour of the petitioner but upon reading this paragraph i.e., main provision as well as the proviso, then it shall construe in favour of the Bank. It is the fundamental rule of interpretation that whenever interpretation has to take place the interpretation shall always and always be made after going through all the provisions as a whole and not



as a part and, therefore, this Court is of the firm view that there is no deficiency in passing the order in the light of Rule 63(3) (iii) the State Bank of India Officers’ Service Rules, 1992. In the light of the judgment quoted by the parties, the scope of judicial review is very limited. This Court is not sitting in appeal and therefore restrain himself to scrutinize the decision as like that of the appellate Court and in this view of the matter, this Court is of firm view that there is no merit in this application. Accordingly, this writ application is dismissed.

(Dr. Anshuman, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.03.2024
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